

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating to the Game

AND

IN THE MATTER of an alleged doping offence by RACHEEL GELDENHUYS ("the Player")

Board Judicial Committee

Joseph de Pencier Canada

Dr. Stephen Targett New Zealand

Phil Thomson Australia

Appearances and Attendances:

Player's side:

Ms Rachelle Geldenhuys - Player

Marius Botha - Counsel for Player

Orna Prinsloo - Team Manager for South Africa Women's Sevens

Denver Wannies - Coach for South Africa Women's Sevens

South Africa Rugby Union:

Christo Ferreira - Senior Legal Manager

Clint Readhead - Senior Medical Manager

International Rugby Board:

Ben Rutherford - Legal Counsel

Tim Ricketts - Anti-Doping Manager

Heard: 15 March 2010 by way of telephone conference call

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. This decision of the International Rugby Board (IRB) Board Judicial Committee (BJC) is about the sanction to be imposed on the player Racheel Geldenhuys (Player) for an anti-doping rule violation involving cannabis. The Player does not dispute the violation.
2. The BJC has carefully considered all of the written evidence and submissions exchanged before the hearing, all the oral testimony and submissions made during the hearing on March 15, 2013, and the post-hearing written submissions. For the purposes of this decision, it is not necessary to refer to each piece of evidence and to each submission made to the BJC.

Background

3. The Player returned an Adverse Analytical Finding (A Sample 2742106) for Carboxi-THC at a concentration of 42.7ng/ml.
4. The test was conducted on November 30, 2012 as part of the IRB's Anti-Doping Programme at the Dubai Sevens Tournament (Tournament) forming part of the IRB Women's Sevens World Series 2012-2013 (Series). The Player was a member of the South African women's team. The detection of Carboxi-THC is consistent with the administration of the Prohibited Substance cannabis and/or marijuana. Cannabinoids, including cannabis, are a Prohibited Substance under Section 8 of the World Anti-Doping Agency 2012 List of Prohibited Substances and Methods. Cannabinoids, including cannabis, are classified as a Specified Substance.¹
5. The Player does not dispute that a sample was collected from her at the Tournament, that the sample in question is her's, that it returned an Adverse Analytical Finding for cannabis, and that she has committed an Anti-Doping Rule Violation.

The Relevant Regulations

6. The Series Anti-Doping Programme (Programme) is based upon IRB Regulation 21 with amendments for the specific context of a series of Sevens tournaments. IRB Regulation 21 and the Programme adopt the mandatory provisions of the World Anti-Doping Code (WADC). IRB Regulation 21, the Programme and the WADC are based on the principles of personal responsibility and strict liability for the presence

¹ For simplicity in this decision, references will be to cannabis.

of Prohibited Substances and/or the use of Prohibited Methods. IRB Regulation 21 and the Programme set out the sanctioning regime for anti-doping rule violations and the limited exceptions by which a reduction from the otherwise-mandatory sanctions. Since the provisions of the Programme and IRB Regulation 21 relevant to this case are the same, references will be to the IRB Regulation noting the corresponding Clauses of the Programme.

7. According to IRB Regulation 21.22 (Sanctions)², the presumed period of ineligibility for a first violation involving the “Presence” of a Prohibited Substance is two years:

21.22.1 The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), ...:

First violation: Two years.

8. But according to IRB Regulation 21.22.3³, a reduction is possible for a Specified Substance such as cannabis in certain circumstances:

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.

9. Furthermore, according to IRB Regulation 21.22.4 and 5⁴, a reduction is also possible for exceptional circumstances:

Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances

21.22.4 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 Regulation 21.2.1 (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 eliminated. In the event this Regulation 21.22.4 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

² Programme Clause 22.1

³ Programme Clause 22.3

⁴ Programme Clauses 22.4 and .5

period of Ineligibility for multiple violations under Regulation 21.22.10.

21.22.5 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 Regulation 21.2.1 (presence of 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.

The Issue

10. Should the normal period of ineligibility of two years apply to this Player?
11. The IRB says no: a period of ineligibility of between six and twelve months should be imposed.
12. The Player also says that the two-year period of ineligibility should be eliminated but that she should be given a strong reprimand. If a period of ineligibility is warranted, says the Player, three months would be a just and fair sanction.
13. Regulation 21.22.3 (Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances) requires a player with the Anti-Doping Rule Violation of the "Presence" of a Prohibited Substance:
 - a. to establish how the Specified Substance entered the player's body;
 - b. to establish that the Specified Substance was not intended to enhance sport performance or mask the use of a Prohibited Substance; and
 - c. to provide corroborating evidence in addition to her word which establishes to the comfortable satisfaction of the BJC the absence of intent to enhance sport performance or mask the use of a Prohibited Substance.
14. Regulations 21.22.4 and .5 (Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances) require a player with the Anti-Doping Rule Violation of the "Presence" of a Prohibited Substance:
 - a. to establish how the Prohibited Substance entered the player's system; and
 - b. to establish "No Fault or Negligence" (21.22.4) for the period of ineligibility to be eliminated; or

- c. to establish “No Significant Fault of Negligence” (21.22.5) for the period of ineligibility to be reduced by up to one-half.
15. The burden is on the Player to convince the BJC that this is a Specified Substance case meeting the requirements of Regulation 21.22.3, or an Exceptional Circumstances case meeting the requirements of Regulation 21.22.4 or .5. Otherwise, the BJC has no choice but to impose a sanction of two years ineligibility.

The Facts

16. During 2012, the Player was a provincial-level competitor, a member of the Golden Lions Rugby Union women’s team. Her last tournament of the season was the South African Rugby Union’s National 7’s tournament on November 9 – 11, 2012.
17. The Player was not a member of the South African national women’s 7’s team programme. Nor, did she think, was she in contention for a place on the national women’s team. But weeks prior to the Tournament, she had participated as a member of a “selects squad” which scrimmaged against the women’s national team at a training camp in preparation for the Tournament.
18. The Player’s Golden Lions coach, Mr. Thando Johannes Mhlongo, confirmed that the Player’s evidence that she had played her last match of the season during the tournament on November 9 – 11, 2012. The officials of the South African women’s 7’s team, whose evidence is reviewed below, stated that after that national event, and before informed November 27, 2012 of her selection for the in Dubai Tournament, the Player was never advised that she might be selected for for the South African women’s 7’s team.
19. On November 25, 2012, after the end of the Player’s season (as she then thought), she attended a party at a friend’s house. She was invited to smoke an ocra pipe (which she described as a “hubbly bubbly”), and she did so. She knew it contained cannabis. In her sworn statement and in her evidence-in-chief, made no reference to reluctance to smoke from the pipe. It was only towards the end of cross-examination that she testified that she did not initially want to smoke the pipe, but was subject to peer pressure to do so. Later in the evening, she was told that the cannabis she smoked was not normal but a stronger version called “cronic.” Also later that evening at the party, the Player ate half a muffin which she was subsequently told contained cannabis. In her sworn statement the Player said she did not use cannabis during the 2012 rugby season and she did not use cannabis at the party with the intent to enhance her sporting performance.

20. The sample taken at the Tournament from the Player is was her first doping control. The Player gave evidence that she had never received any anti-doping education, that she did not know at the time that cannabis was a Prohibited Substance, and that she did not know that traces of cannabis would remain in her system for some time after the party. (She did understand that use of cannabis was against the law.) Had she known that traces of cannabis would remain in her system after the party, she said she would have disclosed it to the coach of the South African Rugby Union women's 7's team when she was subsequently offered a chance to play at the Tournament.
21. In paragraph 16 of her principle submissions, the Player asserted that she had "limited knowledge" of the topic of anti-doping. Under cross-examination, the Player stated that she had heard of anti-doping rules in rugby but thought they only related to steroids, and not cannabis. She had never made an effort to acquaint herself with the anti-doping rules, such as by consulting the South African Rugby Union website.
22. On November 27, 2012, the Player was offered a spot on the South African women's 7's team to play at the Tournament. She stated that she was surprised and excited. She was a last-minute replacement for an injured athlete. So last minute that she joined the team in Dubai several days after it had left South Africa. She was chosen because her performance had been observed by the national team programme at the National 7's Tournament and subsequently as a member of the "select squad," because of the position she played, because she had a valid passport, and because she was available for the Tournament.
23. The Player's introduction to the team was rushed. She arrived at the team hotel very early in the morning. She met the team at the team meeting later that same morning, and began her training with it after that meeting.
24. As a result of her hurried introduction to the team and the Tournament, the Player signed the Team Member Consent Form without being given the chance, and without requesting the chance, to read the documents to which it referred.⁵ This form indicated that all members of the team, including the Player, had received the Anti-Doping Handbook, and had read or had the opportunity to read, the full Team Member Consent Form. In fact, the Player did not read the full document and did not receive or read the documents to which it referred, including the Anti-Doping Handbook.

⁵ There was conflicting evidence as to whether this signing took place at the hotel in the early morning when the Player first arrived in Dubai, or at the first team meeting she attended that same morning. In either case, it is clear the circumstances of the Player's signing the document were hurried and that there was no discussion about the form, or about the documents to which it referred.

25. The South African women's 7's team Manager, Ms. Orna Prinsloo, was the person who met the Player at the airport and brought her to the team hotel early the morning of November 29, 2012. Ms. Prinsloo had the Player sign the Team Member Consent Form. It was a rush to do so because of the Player's late addition to the team and later arrival in Dubai. She did not explain the form to the Player. She had in fact filled out the check boxes besides the Player's name indicating that the Player had received the Anti-Doping Handbook. But she never provided that Handbook to the Player (assuming that she might have received it earlier, through her provincial union programme). Under cross-examination, the Player indicated that she had trusted Ms. Prinsloo and had not asked questions about the form or the documents to which it referred. Ms. Prinsloo also testified that the Player was trusting her when it came to the form and its contents.
26. Ms. Prinsloo confirmed that the Player had never been subject to the pre-tournament medical screening for members of the womens team. The Player had never attended a national team technical session at which anti-doping rules were reviewed.
27. The South Africa women's 7's team Coach Mr. Denver Wannies had a short conversation with the Player upon her arrival at the hotel welcoming her. But at no time during the Tournament did he take the Player aside and speak to her about the anti-doping rules. He did not inquire whether the Player ever had a medications check done. He stated that while he was ultimately responsible for the entire national team programme, it was the responsibility of others to address the anti-doping rules with the players. He also stated that the team only had a physiotherapist with it at this Tournament, and no team doctor.
28. At the time of these events, the Player was 26 years old. She had studied to be and was employed as a fitness trainer. Under cross-examination she stated that as a fitness trainer she told her clients not to use drugs in sport.

The Player's Principle Submissions

29. The Player's key arguments can be summarised:
- a. She was a provincial level competitor who had never received anti-doping education prior to her surprise selection for the Tournament. She did not know cannabis was prohibited.
 - b. She attended the party and smoked cannabis for social purposes, thinking her season was over. She did not intend to enhance her performance.
 - c. Once selected to play in the Tournament, her joining the Team was very rushed. She trusted the team personnel and did not ask questions about the documentation she was asked to sign. No one asked her whether she knew

the anti-doping rules or offered to review them. Because she did not understand that cannabis was banned and that it would remain in her system after the party, she did not disclose her use of cannabis to the team personnel.

- d. In previous cases, more experienced athletes, including those who had received anti-doping education and who knew that cannabis was a prohibited substance, received periods of ineligibility of five to six months for a first Anti-Doping Rule Violation involving that substance (*Sean Fletcher*, December, 2012, *Mohamed Amin Jamaluddin*, January, 2011, *Vikhtang Mdzinarishvle*, June, 2008).
- e. By comparison, the Player's circumstances are less blameworthy. She deserves a shorter period of ineligibility, at worst, and more appropriately just a strong reprimand.

The IRB's Principle Submissions

30. The IRB's key arguments can be summarised:

- a. The Regulations permit a reduction of the period of ineligibility for a Specified Substance Anti-Doping Rule Violation only where there is corroborating evidence of a player's assertions that the Specified Substance was not intended to enhance performance. If this Player provides no corroborating evidence, the BJC cannot apply Regulation 21.22.3 to reduce the period of ineligibility.
- b. Even if Regulation 21.22.3 did apply, the Player's degree of fault would not merit a substantial reduction in the period of ineligibility.
- c. The Player failed to take the necessary personal responsibility as an athlete. She was a mature adult working in sport as a fitness trainer. She made no effort to acquaint herself with the anti-doping rules of rugby, including which substances were prohibited. She failed to ask questions about or secure a copy of the Anti-Doping Handbook when the fact of it was brought to her attention through having to sign the Team Member Consent Form.
- d. The Athlete's credibility is questionable concerning the events of the party and why she would agree to smoke cannabis, knowing at least that it was an illegal drug. In any event, the Player's consumption of cannabis at the party was excessive (as suggested by her evidence and by the high concentration in the Adverse Analytical Finding). It calls into question her assertion that her consumption of cannabis was a one-time, post-season circumstance. The circumstances of the Player consuming cannabis at this party are more serious than those of recent cases where other players received periods of ineligibility of between 4 and 6 months for a first Anti-Doping Rule Violation for cannabis.

- e. Any failure of the South African Rugby Union to ensure the Player received appropriate anti-doping education does not lessen the Player's personal responsibility for the Prohibited Substance found in her system and should not be the basis for any substantial reduction in the period of ineligibility (relying on *Jamaluddin*, a 2011 BJC decision cited by the Player, and on *Gurusinghe*, a 2011 BJC decision involving methylhexaneamine, which is also a Specified Substance).

The Post-Hearing Submissions

31. On April 10, 2013, the BJC issued Minute #2 seeking further submissions from the Parties on the matter of corroborating evidence:

1. The BJC would be grateful for further assistance from the Parties.
2. IRB Regulation 21.22.3 requires corroborating evidence of a Player's absence of intent to enhance sport performance or mask the Use of a performance enhancing substance for any reduction of the sanction in a case of a Specified Substance. In four places in the IRB's 12 March 2013 written submissions, counsel for the IRB argued application of this requirement (by reference to the corresponding clause of the Series Anti-Doping Handbook) in this case: IRB Written Submissions paragraphs 16, 17(c), 20 and 36.
3. The BJC invites the Player to make written submissions to respond to those written submissions of the IRB. In particular, the BJC asks the Player: How does this requirement apply in this case, if it does? If it does, on what evidence does the Player rely? The BJC would also accept written submissions from the South African Rugby Union (SARU) on the same matter if SARU chooses to make any.
4. The IRB will have the opportunity to reply to any submissions made by the Player and SARU.
5. The BJC invites submissions based on the evidence already before it. It will not receive additional evidence.

32. The Player replied that:

- a. She agreed with the IRB that Regulation 21.22.3 applied
- b. The evidence of her Golden Lions coach, of the South African women's 7's team manager and Coach, corroborated her evidence that that at the time of the party her competitive season was over to her knowledge.
- c. Therefore, there was corroborating evidence that she could not have taken the cannabis with the intent to enhance her performance.

33. The IRB responded that it "does not object to the Player's contention with respect to corroboration of a lack of intention to enhance her sports performance and leaves the question for the BJC to determine in its judicial discretion in light of IRB Regulation 21, the currently-applicable World Anti-Doping Code and the relevant

anti-doping jurisprudence.”

Discussion

34. The BJC must follow the Regulations. The Regulations and the Programme require a two year period of ineligibility for an Adverse Analytical Finding of Cannabis unless the Specified Substances rule applies, or unless the Exceptional Circumstances rule applies.
35. Neither Party argued that this was a case of Exceptional Circumstances. The BJC agrees that it is not. It will not apply Regulation 21.22.4 or .5 to eliminate or reduce the period of ineligibility. But the BJC does decide that Regulation 21.22.3 applies and that a reduction of the sanction is justified. This requires three findings.
36. Firstly, the BJC finds that the prohibited substance entered the Player’s body through smoking the pipe and eating the muffin at the party on November 25, 2012.
37. Secondly, the BJC is comfortably satisfied that the Player did not consume the cannabis with the intent to enhance her sport performance or to mask the use of another Prohibited Substance. We may not be entirely satisfied with all aspects of the Player’s account of how she came to have such a high concentration of metabol Carboxi-THC in her body (42.7ng/ml), but we accept that it was not for the purposes of enhancing her competitive ability.
38. In addition to the Player’s own assertion of lack of intent, there is the corroborating evidence of the staff of both the Golden Lions and the South African’s women’s 7’s team that at the time of the party the Player’s season was over. At the time she attended the party, she was not being considered for the national team. The subsequent selection, due to the injury of another player, was unforeseen. The Player cannot have had the intent to enhance her competitive performance with cannabis if her competitive season was over.
39. This BJC takes a similar approach to corroborating evidence as did the BJC in the case of *Irakli Chvihivivadze*, June 2, 2009, paragraphs 26 – 31. Corroborating evidence is not limited to direct evidence of other persons.⁶

⁶ The BJC also notes a similar approach in the very recent CAS decision *WADA v. Judo Bon Nederland, Dennis De Goede & Dopingauthoriteit* (CAS 2012/A/2747, April 15, 2013). That is a case which involved a different Specified Substance, but also whether there was corroborating evidence of lack of intent to enhance performance. The CAS Panel concluded in paragraph 7.17: “What is established, however, is that the Supplement was not taken in the immediate context of the competition and that the Athlete was injured in the period leading up to the competition and that he, therefore, was not planning to participate in any sporting events. ... Furthermore, his participation in the final round of the National Judo League in Nijmegen (in which the sample was taken) came as a surprise to him, ... In view of the above, the [Athlete] could not have planned

40. Thirdly, the Player's degree of fault is the criterion to be considered in assessing any reduction of the period of Ineligibility under Article 21.22.3
41. The anti-doping rules of rugby put all players under personal duty to avoid Prohibited Substances, and a responsibility for any found in their samples. This is a fundamental requirement of Regulation 21, which states in Regulation 21.2.1(a)⁷:
- 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.
42. The BJC finds that the Player did not meet her personal responsibility to inform herself about anti-doping rules of the sport of rugby, including that fact that they cover cannabis. She was aware of those rules (thinking they only applied to steroids). She said she warned her fitness clients of the dangers of drugs. She should have asked questions when she joined the South African women's 7's team and signed a document acknowledging receipt of the Anti-Doping Handbook. She neither sought nor read the Handbook when she had the opportunity.
43. There should be a period of ineligibility.
44. The IRB's submission is that the Player's degree of fault is high and should result in a sanction at least above that imposed in the other cannabis cases *Van Staveren* and *Jamaluddin* (both six months)). The IRB submits that twelve months would be an appropriate upper limit on any applicable sanction in this case, being fifty percent of the standard two-year sanction, and that the BJC consider it appropriate to impose a sanction between six and twelve months based on its consideration of the Player's degree of fault.
45. The Player cites *Jamaluddin* (six months), *Fletcher* (five months) and *Mdzinarishvle* (five months) as the appropriate precedents if a period of ineligibility is to be imposed. But *Mdzinarishvle* was a decision of over three years ago, and *Jamaluddin* a decision of over two years ago. Sanctions in cannabis cases have tended to become more severe in the intervening two years. This BJC respectfully notes the decision in *Fletcher* but finds its facts very different (and in this case the Player was not under any intoxicating influence when she decided to smoke at the party.) There is fundamental principle involved in this case: knowing the rules of the sport of rugby. The Player should have and could have known full well about the anti-doping rules and their treatment of cannabis. They are part of the rules of her sport.

or intended to take part in the Event of 28 May 2011. It follows from this that the Athlete did not act intentionally.”

⁷ Programme Clause 2.1(a)

The Player in this case bears a substantial degree of fault.

46. The BJC believes imposing a period of ineligibility of nine months is warranted by the circumstances of this case.
47. We add that the fact that the Player was selected to play at the Tournament as a member of the national women's 7's team without receiving any anti-doping education is of grave concern. The Player let herself down by not taking sufficient personal responsibility to learn about the anti-doping rules of the sport of rugby; but the South African Rugby Union failed her by not ensuring she was formally educated about anti-doping rules and their coverage of cannabis. Whether she was properly educated about anti-doping requirements should have been determined in selecting her. This especially in such hurried circumstances, and when she had not been part of the national team programme before. The BJC hopes the South African Rugby Union will take all necessary steps, including working with its provincial unions, to ensure that such a case cannot happen again.

Decision

48. The Player committed an Anti-Doping Rule Violation. The period of ineligibility will be nine months.
49. The Player was provisionally suspended on January 14, 2013 according to Regulation 21.19.⁸ In accordance with Regulation 21.22.12,⁹ the period of ineligibility will run from that date.

Costs

50. The BJC provisionally considers that there should be no orders for costs. But if either of the Parties wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.11,¹⁰ written submissions should be provided to the BJC via Mr. Ricketts by 17:00 Dublin time on May 10, 2013. Any responding written submissions from the Parties are to be provided by no later than 17:00 Dublin time on May 17, 2013.

⁸ Programme Clause 19

⁹ Programme Clause 22.12

¹⁰ Programme Clause 21.11

Review

51. Except for any order on costs, this decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25)¹¹ or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27).¹² Regulation 21.24.2¹³ sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.

Joseph de Pencier

Phil Tomson

Dr. Steve Targett

DATED this 1st day of May, 2013

¹¹ Programme Clause 25

¹² Programme Clause 26

¹³ Programme Clause 24.2