

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF THE TERMS OF PARTICIPATION IN THE IRB
JUNIOR WORLD CHAMPIONSHIPS 2012

AND IN THE MATTER OF ALLEGED DOPING OFFENCES BY **RODRIGO
PARADA HEIT** (ARGENTINA) CONTRARY TO SECTION 17 OF THE TERMS
OF PARTICIPATION FOR THE TOURNAMENT AND REGULATION 21

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

Judicial Committee

Graeme Mew, Chair (Canada)
Dr. George Ruijsch van Dugteren (South Africa)
Professor Yoshihisa Hayakawa (Japan)

Appearances

Ben Rutherford for the International Rugby Board
Dr Raymondo Sosa for the Player

Attendances

Rodrigo Parada Heit (Player)
Sol Iglesias (National Team Operations Manager, Unión Argentina de Rugby)
Tim Ricketts (Anti-Doping Manager, International Rugby Board)
Camilla Comás (English-Spanish Interpreter)

Hearing: 4 September 2012 by way of telephone conference

REASONS FOR DECISION OF THE BOARD JUDICIAL COMMITTEE

1. In October 2010, while playing an inter-provincial rugby match for the Cordoba province, Rodrigo Parada Heit (the "Player") was seriously injured. He experienced fracture-dislocation of the right ankle joint consisting of multiple fractures of the lower fibula, disruption of the tibio-fibular syndesmosis and detachment of the anterior part of the ankle joint capsule.
2. He underwent surgery including internal fixation which was removed in a second operation 10 weeks later.
3. The Player anticipated a long recovery period. He attempted to resume playing in June 2011 but between then and the end of the season he suffered

five ankle sprains and was dropped from the national team system in Argentina and from his provincial squad¹.

4. He returned to his home province of Salta where he trained daily and maintained a high protein diet. But the ankle remained problematic. The Player experienced pain, stiffness and lack of mobility. He was unable to perform some basic exercises, such as squats.

5. In early February 2012 the Player, who is a medical student, returned to Cordoba to take some exams. He went to the Walter Zampetti gymnasium. He says that he went there to do some weights. But he also spoke to a sports doctor – who has not been identified by name - who advised him that he could aid his recovery by using “Deca-Durabolin”.

6. Deca-Durabolin is the brand name used for nandrolone in Argentina. Nandrolone is listed as category S1.Androgenic Anabolic Steroid on the 2012 list of prohibited substances published by the World Anti-Doping Agency (“WADA”).

7. The Player was provided with a prescription for a 25mg dose of Deca-Durabolin which he filled in Cordoba and then took to Salta. There he had a nurse inject him with the substance.

8. The Player claims that he did not know at the time what sort of a substance Deca-Durabolin was, but he did know that it was “wrong” to use it. He did not at the time consider any adverse consequences of using it because he was no longer “in the system”. He claims to have taken it once only.

9. Within a short time after using Deca-Durabolin the Player started feeling that he had a greater range of motion in the ankle and that the pain was less.

10. He was invited by the coaches for the Salta provincial team to train with them and he played in two friendly matches with Salta under 21 teams at the end of February 2012.

11. On 9 March 2012 the Player was unexpectedly called up to “Los Pumitas” (the national Under 20 Squad). He went to the training camp on 17 March 2012 and was thereafter included in the Argentina Under 20 squad which participated in the 2012 IRB Junior World Championship (“the Tournament”) in South Africa.

12. The Player tested positive for the Prohibited Substances, 19-norandrosterone and 19-noretiocholanolone, following an In Competition test conducted at the Tournament on 8 June 2012 after Argentina's Match with Australia at Stellenbosch, South Africa.

¹ The Player had been part of the Unión Argentina de Rugby’s “PLADAR” and “CEDAR” programmes. PLADAR is an acronym for Plan de Alto Rendimiento/High Performance Plan, the IRB-funded high performance programme to assist the professionalisation of the Union's home-based players who receive a stipend to allow them to train on a professional/semi-professional basis while continuing to represent their home Clubs, provinces and the Pampas XV in the Vodacom Cup in South Africa. CEDAR is an acronym for Centro de Alto Rendimiento/High Performance Centre, the various high performance centres around Argentina where the players train.

13. 19-norandrosterone and 19-noretiocholanolone are metabolites of nandrolone and/or precursors, an anabolic androgenic steroid under Section 1 of the WADA Prohibited List 2012. Section 1 substances are not Specified Substances. The WADA Prohibited List was incorporated as Schedule 2 to Section 17 of the Terms of Participation for the Tournament. Section 17 sets out the Tournament Anti-Doping Programme (“the Programme”) which is based upon IRB Regulation 21.

14. The Player did not submit a Therapeutic Use Exemption or disclose his Use of Deca-Durabolin to his Union.

15. Following a preliminary review of the case in accordance with IRB Regulation 21.20.1, the Player was notified by the IRB of his Adverse Analytical Findings via the Unión Argentina de Rugby (the “Union”) by a letter dated 29 June 2012. The Player was verbally told about the contents of the letter in a telephone conversation with the Union on 2 July 2012. Specifically, it was on that date that he was informed that he was provisionally suspended from rugby activities with immediate effect. The Player thereafter received the IRB’s letter together with a Spanish translation.

16. Accordingly, the Player was provisionally suspended on 2 July 2012 pursuant to IRB Regulation 21.19.1 and has remained suspended since then.

17. The Player was informed of his right to have the “B” sample of his specimen analysed.

18. On 12 July 2012 the Player wrote to the IRB’s Anti-Doping Manager acknowledging that he had committed an anti-doping rule violation and waiving his right to have the “B” sample analysed.

19. This Board Judicial Committee (“BJC”) was appointed to hear the case against the Player. By letter dated 8 August 2012 the Player was informed of the composition of the BJC and that a hearing would be held to address the issue of the appropriate sanction to be imposed.

20. The BCJ subsequently provided directions with respect to the exchange of evidence and the provision of written submissions. The parties were advised that the hearing would take place on 4 September 2012 by way of telephone conference.

Anti-Doping Rule Violation Rule Established

21. At the outset of the hearing the Player confirmed his acceptance of the Adverse Analytical Findings. Accordingly, we are satisfied that the Player has committed an anti-doping rule violation contrary to Regulation 21.2.1²

² The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample.

Documentary Record

22. The BJC had before it a record which included the Doping Control Form, Team Member Consent Form, a Sample Analysis Reports from the South African Doping Control Laboratory at the University of the Free State in Bloemfontein, South Africa, a further Certificate of Analysis from the Laboratoire de controle du dopage at the INRS-Institute Armand-Frappier in Montreal, Canada, the Preliminary Review Report and certain correspondence between the Board and the Union and between the Player and the Union/Board.

23. The Player gave oral testimony at the hearing.

24. Written submissions were also received from the Board before the hearing and oral submissions were made by the legal representatives of the Player and the Board at the hearing.

The Facts

25. The circumstances giving rise to the anti-doping rule violation have already been set out. Not all of the evidence is repeated in this section of the decision.

26. The Player began his testimony with an apology. He stated that he never intended to enhance his sport performance. He used Deca-Durabolin to assist his recovery from injury. He only used it once. He knew it was "wrong" to use it.

27. Despite his medical training, the Player did not research Deca-Durabolin. While he knew what a steroid was, he did not know that nandrolone was a steroid or that Deca-Durabolin is a trade name for nandrolone.

28. By the time he used Deca-Durabolin, the Player said that he was desperate to find a better path to recovery. He had consulted a number of doctors and had received a variety of traditional and non-traditional treatments, none of which had had the desired effect.

29. Because at the time he used Deca-Durabolin, the Player was no longer in the national team system and he did not expect to be playing for some time, he therefore did not consider himself to be running a risk of committing an anti-doping rule violation.

30. The Player says he obtained or received assurances from the treating doctor that he "should not be concerned because being so small quantity in at least less than two months the ankle would be totally recovered and the substance would be eliminated from [his] system."

31. The Player stated that, as a result, he did not disclose his use of Deca-Durabolin on the Doping Control Form because he thought it was no longer in his system at the time he was tested (in fact the Doping Control Form only required medications and/or stimulants taken in the last seven days to be listed – according to the Player his use of Deca-Durabolin had occurred more than three months earlier).

32. The Player confirmed that he had signed the Team Member Consent Form for the Tournament acknowledging the Programme, and the IRB's jurisdiction over him in that respect. He acknowledged that he had received a copy of IRB Anti-Doping Handbook in Spanish prior to the Tournament. The Player also confirmed that he had attended an anti-doping educational session in Cape Town. The IRB's records show that on 1 June 2012 the Player completed the IRB's online anti-doping educational programme known as "Real Winner".

33. Dr Mario Larrain, Director of the Medical Department of High Level Competition of the Union, confirmed that as a member of the Union's regional Cedar (High Performance Centre) squads the Player would have been exposed to anti-doping talks and resources (including the IRB Anti-Doping Handbook/manual) with access to a team of specialist sports doctors and nutritionists and "[o]pen communication with members of the different teams (players, coaches, medical team) to report, when in doubt, about a substance or drug to be administrated".³

34. The Player said that he understood the principles of strict liability and personal responsibility for any Prohibited Substance found in his system.

35. Because the Player had not taken Deca-Durabolin for a number of months when he was tested, he said that he had no reason to believe that its contents were still in his system at the time he was tested.

The Rules

36. 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.

37. 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).

38. It is open to a Player to establish the existence of exceptional circumstances which would warrant a departure from the presumptive sanction of two years Ineligibility.

39. Clause 22.4 which is based on IRB Regulation 21.22.4 is in the following terms:

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

³ Email from Dr Larrain to the IRB Anti-Doping manager, dated 27 August 2012

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.

“No Fault or Negligence” is defined in Section A of the Programme as:

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.

40. In the event that a Player can establish that there was no significant fault of negligence on his part a reduced sanction can be considered. Clause 22.5 of the Programme provides:

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.

“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.

IRB's Submissions

41. The Player took a microdose of an anabolic steroid in the hope that it would be eliminated from his body by the time he would become subject to testing

42. There is no basis for reducing the presumptive sanction of two years because there are no exceptional circumstances.

43. In the first place the only evidence of the source of nandrolone is the Player's own assertion that he took Deca-Durabolin.

44. Even assuming that Deca-Durabolin is accepted as the cause of the presence of nandrolone in the Player's sample, the Player cannot establish no fault or negligence.

45. His apparent reliance on medical advice is an insufficient basis for avoiding fault. The commentary to Article 10.5.1 of the *World Anti-Doping Code* suggests that even the administration of a Prohibited Substance by an Athlete's personal physician without disclosure to the Athlete would not be sufficient to establish no fault or negligence because Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance.

46. In fact the Player did know that it was "wrong" to use Deca-Durabolin and even the most rudimentary enquiries would have informed the Player that Deca-Durabolin was nandrolone and that nandrolone is a Prohibited Substance.

47. Deca-Durabolin is a well known brand of anabolic steroid used by drug cheats intending to increase muscle growth rapidly or to recover from injury. The commercial name Deca-Durabolin itself (let alone the name of the principal component substance nandrolone) has received global media attention in various anti-doping cases including in relation to the high-profile proceedings with respect to baseballers Roger Clemens and Barry Bonds.

48. As a medical student the Player should have been more than equipped either himself or in consultation with a physician to review the Prohibited List and realise that this substance was prohibited. Additionally, given his fourteen-month battle to recuperate his ankle the sudden improvement following the Deca-Durabolin treatment should also have alerted him to question the treatment and at least raise it with the Union.

49. Although the Player was injured, he was not retired. Had he formed part of the IRB's Testing Pool or Registered Testing Pool he would have been available for Out of Competition testing while injured. Because he was not at the time part of such pools the Player (and his doctor) knew he would not be tested again at least until he was fit enough to return to play and be tested In Competition. That knowledge played an important role in the Player's election to utilise illegal means to expedite his recovery. Far from demonstrating no significant fault or negligence on the Player's part, he intentionally used Deca-Durabolin in circumstances where he believed such use would never be detected.

50. There should be no adjustment of the mandatory two year sanction in the circumstances of this case.

Player's Submissions

51. The Player points to the desperate circumstances that he felt he was in as he struggled to recover from injury. Although he knew what he did was wrong, he did not intend to cheat or to enhance his sport performance. He was injured, not playing and looking for an improvement in his recuperation.

52. The Player has admitted his mistake and has acted in good faith. His ready admission, his dedication to the Game and his contrition warrant consideration of the minimum sanction permissible.

Discussion

53. The sanctioning regime for an anti-doping rule violation involving a prohibited Substance that is not a "specified substance" requires the imposition of a period of two years Ineligibility unless there are either exceptional circumstances warranting a reduction, or aggravating circumstances justifying a more severe penalty.

Cause of Anti-Doping Rule Violation

54. We are satisfied that, on a balance of probabilities, the Players' anti-doping rule violation resulted from his use of Deca-Durabolin.

Exceptional Circumstances

55. In our view there are no exceptional circumstances that would warrant a reduced sanction.

56. In *CCES v Galle* (23 April 2009), a decision of the Sport Dispute Resolution Centre of Canada, an athlete was given an injection of what she understood to be routine vitamins by a coach, but which was actually Deca-Durabolin. The athlete had no knowledge that her coach was connected to steroids. Nevertheless, the tribunal declined to make a finding of No Significant Fault or Negligence. The arbitrator in that case held (at pages 20-21):

At this juncture, I do not propose to review the decisions referred to by the CCES because, to a large extent, they turn on their particular facts. However, those decisions reflect the high standards to which athletes are subject in order to promote and ensure drug-free sport for all competitors. In the result, I find that pursuant to Rule 7.38 [equivalent to Clause 22.1 of the Programme], the appropriate sanction is a period of two years of ineligibility from sport.

57. By contrast, in *IRB v Nuñez*, a decision of a Board Judicial Committee, a player was administered Deca-Durabolin as part of treatment for extreme pain while he was sedated. The BJC's medical members considered the administration of nandrolone would not have been predictable and accordingly the BJC held that there had been No Significant Fault or Negligence on the player's part on the basis that he "would have had no reason to believe that the pain treatment he was receiving from [his doctor] incorporated the administration of nandrolone." That player received a fifteen month period of Ineligibility.

58. In the present case we accept the IRB's submission that there is no question of erroneous or unwitting administration of Deca-Durabolin but, rather, a clearly discussed course of treatment centred on the Prohibited Substance in question and an apparent attempt to do so in an underhanded fashion without alerting the anti-doping authorities by attempting to ensure the substance was "eliminated" prior to returning to competition.

59. The Player has received anti-doping education and cannot credibly claim a lack of knowledge or understanding of his responsibilities. Rather, he took a calculated risk of using a Prohibited Substance in the belief and expectation that evidence of its presence would have been eliminated from his system before he was tested.

Decision

60. On 8 June 2012 the Player committed an anti-doping rule violation, namely the presence in his bodily sample of 19-norandrosterone and 19-noretiocholanolone. 19-norandrosterone and 19-noretiocholanolone are metabolites of nandrolone and/or precursors, an anabolic androgenic steroid under Section 1 of the WADA Prohibited List 2012.

61. The sanction imposed for these anti-doping rule violations is a period of Ineligibility of two years, commencing 2 July 2012 (the date upon which the Player was notified of the Adverse Analytical Finding and provisionally suspended) and concluding on (but inclusive of 1 July 2014).

62. The Players' 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

63. 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 9 November with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 16 November.

Review

64. 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.

30 October 2012

A handwritten signature in black ink, appearing to read 'Graeme Mew' with a horizontal line underneath the name.

Graeme Mew, Chairman