

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF ALLEGED DOPING OFFENCES BY **OLEG LYTVYENKO, SERHII SUKHIKH** and **BOGDAN ZHULAVSKYI (UKRAINE)** CONTRARY TO REGULATION 21

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

Judicial Committee:

Dr Ismail Jakoet (South Africa)
Gregor Nicholson (Scotland)
Graeme Mew (Canada – Chair)

Appearances

Ben Rutherford, Counsel for the International Rugby Board

Also Present

Tim Ricketts (IRB Anti-Doping Manager)
Oleg Zaliznyy (Head Coach, Ukraine Rugby 15 Team)
Oleg Lytvynenko (Player)
Serhii Sukhikh (Player)
Bogdan Zhulavskyi (Team Manager, Ukraine Men's Team)
Lily Orlovska (English-Russian Interpreter)

Heard by way of telephone and video conference, 9 April 2013

DECISION OF BOARD JUDICIAL COMMITTEE

1. Following the European Nations Cup Division 1B match between Ukraine and Germany in Berlin on 27 October 2012 (the "Match"), one of the players selected for doping control procedures was Serhii Sukhikh ("SS"). Instead of presenting himself at the doping control station for testing, he gave his shirt to his team-mate Oleg Lytvynenko ("OL"), who proceeded to provide a Sample, passing himself off as SS. His ability to perpetrate this deception was facilitated by him obtaining SS's passport from the national team manager of the Ukraine team, Bogdan Zhulavskyi ("BZ"), which he then used to prove that he was SS.

The Parties

2. The International Rugby Board (“IRB” or “Board”) is the International Federation for the sport of rugby union. The IRB has adopted the *World Anti-Doping Code* (the “Code”) and has implemented the Code in its own anti-doping rules, contained in Regulation 21 of the *Regulations Relating to the Game* (“IRB Regulations”) and its related provisions.

3. SS and OL are players on the Ukraine national rugby team. The both play in one of the prop positions. SS is 34 years old and has played for his country 22 times. OL was also 34 at the time of the events described in these reasons. He has played 13 times for Ukraine. BZ was Team Manager with the Ukraine Senior National Representative Team in the 2012 European Nations Cup Division 1B.

Process

4. On 7 December 2012, following an investigation by the IRB, the IRB’s Anti-Doping Manager wrote to SS, OL and BZ via the Ukraine Rugby Federation (the “Union”), advising them that each of them was being charged with the anti-doping rule violation of tampering or attempted tampering with any part of Doping Control, contrary to Regulation 21.2.5. In addition, SS was notified that he was being charged with failing or refusing to submit to Sample collection, contrary to Regulation 21.2.3.

5. Whereas SS and OL promptly admitted to having committed anti-doping rule violations following notification of the charges, BZ’s initial position (by a statement made on 20 December 2012) was that “in this incident I consider the fault not premeditated”. It was not until 4 March 2013 that BZ unequivocally acknowledged that he had committed an anti-doping rule violation (albeit with mitigating factors).

6. A Board Judicial Committee (“BJC”) was appointed to hear the case. A directions hearing was convened by telephone on 4 March 2013. A hearing date was set for 9 April 2013.

7. The hearing lasted for over six hours. Oral testimony was given by OL, SS and BZ. Oral and written submissions were received from the IRB and submissions were also made by the Union. In addition, the BJC was provided with a documentary record consisting of the following:

- a) Match Sheet, Germany v Ukraine – 27 October 2012
- b) Team member Consent Form – 19 October 2012 (FIRA-AER European Nations Cup)
- c) Doping Control Form - 27 October 2012 (Serhii Sukhikh)
- d) Doping Control Form - 16 November 2012 (Oleg Lytvynenko)
- e) DCO Report – 16 November 2012 (Steffen Kursawe)
- f) Chaperone Report – 16 November 2012 (Dr Michael Schied)

- g) Out of Competition Testing report (including a selection of photographs “Rugby UKR GER”) – 16 November 2012 (Dr George Pandela)
- h) Declarations re Chaperone Confirmation Passport and DCO Confirmation Photo (including 3 passport photographs) – 22 November 2012 (Dr Michael Shied)
- i) Declarations re Chaperone Confirmation Passport and DCO Confirmation Photo (including 3 passport photographs) – 22 November 2012 (Steffen Kursawe)
- j) Email from Dr Hans Geyer, German Sport University, Cologne to IRB – 5 December 2012
- k) DNA Analysis Report – 5 December 2012 (Dr Christian Winkler and Dr Steven Rand, LGC Forensics)
- l) Notification letters from IRB to each of OL, SS and BZ (via the Union) – 7 December 2012
- m) Unsigned statement, Serhii Sukhikh, 17 December 2012
- n) Email sent on behalf of Serhii Sukhikh to IRB, 17 March 2013
- o) Signed statement, Oleg Lytvynenko, 19 December 2012
- p) Email Oleg Lytvynenko to IRB, 17 March 2013
- q) Signed statement, Bogdan Zhulavskiy, 20 December 2012
- r) Letter from Oleg Zaliznyy, Deputy Head Coach, Ukraine Rugby Federation, to IRB – 20 December 2012
- s) IRB “Keep Rugby Clean” Anti-Doping handbook (English and Russian versions) 2012
- t) IRB Personnel Information for Oleg Lytvynenko, Serhii Sukhikh – 1 March 2013
- u) Correspondence between IRB, the parties and the Union

8. For the reasons that follow, this Board Judicial Committee has concluded that all of the anti-doping rule violations alleged to have been committed by SS, OL and BZ have been established. The seriousness of these breaches of the IRB’s Anti-Doping Regulations warrants the imposition on these individuals of the maximum sanction provided for by the IRB Regulations.

9. While we have considered all of the evidence and submissions that were placed before us, we refer only to the evidence and submissions which we consider necessary to do so in order to explain our reasoning and conclusions.

Facts Giving Rise to the Anti-Doping Rule Violations

10. The match between Ukraine and Germany formed part of the qualification process for the Rugby World Cup 2015.

11. SS wore number 1 during the Match against Germany. OL wore number 3. SS was selected for In Competition Doping Control following the Match.
12. According to his initial statement, SS said "having known about the need to submit of the doping control from the manager Mr Bogdan Zhulavsky I asked Mr Oleg Lytvynenko (my friend and teammate) to undergo tests instead of me after I went to the hotel because of my feels unwell."
13. OL said that SS had "drank a sports drink "GUITAR" before the match and during and after the match he felt feverishness and he had an excited appearance and he was afraid that his sample will be positive."
14. When challenged at the hearing on his reason for not taking the test, SS initially maintained that he did not feel well due to injury and that he felt he would be physically unable to take the test. When pressed, however, he eventually conceded that he was concerned that he might test positive.
15. The Chaperone, Dr Michael Schied, was not able to locate SS after the Match on the field and contacted BZ, as the Team Manager, for assistance. Dr Schied then proceeded to the Ukraine locker room in an effort to locate SS.
16. Approximately ten minutes after the conclusion of the Match, OL then presented himself to Dr Schied, having switched shirts with SS and falsely identifying himself as SS.
17. According to Dr Schied, he saw BZ pick a specific passport out of a pile of Ukraine team passports and handed it to OL (posing as SS) who then handed that passport to Dr Schied as confirmation that he (OL) was SS.
18. BZ tells the story differently. He says that he was informed at the end of the Match that Player no.1 (among others) had been selected for doping control. He was aware that the doping control officers couldn't locate the player who had been wearing shirt no. 1. BZ recalled that players were disappointed with the outcome of the game. At one point he (BZ) asked where no. 1 was. OL came forward. He said he was no. 1 and took what BZ assumed was his (OL's) own passport from a bunch of passports that BZ was holding at the time.
19. What is not in dispute is that after obtaining SS's passport from BZ, OL then signed the Doping Control Form under the name of SS.
20. Dr Schied states that he was satisfied at the time that OL was SS on the basis of OL's shirt number (no. 1); his oral confirmation that he was SS; the identification of OL as SS by BZ; and the handing over of SS's passport by BZ. Dr Schied had "vague reservations" about the photograph in the passport but discounted these due to the "ageing of the athlete and the flat contrast and poor quality of the picture in consideration."
21. OL attended the Doping Control Station with Dr Schied. Mr Steffen Kursawe was the lead Doping Control Officer who conducted the testing of OL (under the pretence that he was SS).
22. Mr. Kursawe confirmed that the "manager of the Ukrainian team was occasionally present in the doping control area".

23. OL, still wearing jersey number 1, presented SS's passport to Mr Kursawe.

24. Mr Kursawe "recognized a difference between the picture in the passport and the present person. Compared to the picture of the passport the player lost a lot of hairs [*sic*]. This didn't seem suspicious to me since the picture could be old."

25. OL, still posing as SS completed the Doping Control process "without any problems and... was very cooperative."

26. Dr Schied had taken a large number of photographs during the Match which he reviewed some time later, on 30 October 2012. In some of those photographs he was able to identify the players wearing jersey numbers 1 and 3 for the Ukraine and "recognized that the player with jersey no. 1 was another player during the game and player number 3 presented himself as player number 1."

27. Dr Schied sent these photographs to Mr Kursawe who agreed and informed the testing agency for which he and Dr Schied were working and which the IRB had instructed to conduct the Doping Controls. The agency then informed the IRB. Dr Schied and Mr Kursawe then prepared statements on 16 November 2012.

28. The IRB arranged a subsequent set of Doping Controls on the Ukraine team, conducted Out of Competition on 16 November 2012 under the supervision of Dr George Pandelea. At this Doping Control session a photograph was also taken of OL holding his passport. SS was not part of the Ukraine team tested on this occasion apparently due to non-selection on account of injury however Dr Pandelea obtained a photograph of the passport of SS from BZ.

29. OL provided urine and blood Samples and signed the Doping Control Form dated 16 November 2012. His signature appears to be similar to the signature he used when signing as SS on 19 October 2012 in Berlin.

30. The IRB sent a copy of the photograph of OL with his passport and a copy of the photograph of the passport of SS to Dr Schied and Mr Kursawe. Dr Schied and Mr Kursawe confirmed in separate statements dated 22 November 2012 that OL was the player who presented to both of them on 27 October 2012 for Doping Control under the false pretence of being SS and that the photograph of the passport of SS was the passport which Dr Schied says BZ handed to OL who subsequently gave it to Dr Schied and Mr Kursawe for the purposes of identifying himself as SS.

31. The IRB arranged for the urine and blood Samples of OL taken on 16 November 2013 to be analysed for their DNA at the German Sport University Cologne, a WADA accredited laboratory.

32. The IRB also arranged for the urine Sample of OL (when posing as SS) on 19 October 2012 to be analysed for DNA at the same laboratory. Correspondence from Dr Hans Geyer on 5 December 2012 and the subsequent written DNA Analysis Report of the same date confirmed that both urine Samples and the blood Sample came from the same person, namely OL.

33. According to the IRB's records SS and OL have played together in nine international matches since 2008. The Team sheets from the IRB's records of those matches clearly demonstrate that whenever SS and OL have played together OL has never worn the number 1 shirt with SS being, apparently, the longstanding first choice number 1 (loose-head prop) as against OL who appears predominantly to play tight-head prop (number 3).

The IRB Regulations

34. The IRB Anti-Doping Regulations are based on the *World Anti-Doping Code* (the "Code"). The Regulations provide that "Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List of Substances and Methods published annually by the World Anti-Doping Agency" (Regulation 21.2). "Persons" is defined as a "natural person or an organisation or other entity".

35. IRB Regulation 21.6 addresses the principle of personal responsibility and provides:

21.6.1 It is each Player's responsibility to ensure that:

- (a) ...*
- (b) He does not commit any other anti-doping rule violation;*
- (c) He is available for Sample collection; and*
- (d) ...*

21.6.2 It is the responsibility of Player Support Personnel to ensure that they:

- (a) Cooperate with the Player Testing programme;*
- (b) Use their influence on Player values and behaviour to foster anti-doping attitudes;*
- (c) Are knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the Code which are applicable to them or the Players they support including these Anti-Doping Regulations; and*
- (d) Educate and counsel Players regarding anti-doping policies and these Anti-Doping Regulations.*

21.6.3 It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of the Programme including the Guidelines.

36. The term "Player Support Personnel" includes any "coach, trainer, manager, agent, Team staff, official, medical personnel, paramedical personnel, parent or any other Person working with, treating or assisting Players participating in or preparing for Matches."

37. The anti-doping rule violations proscribed by the Regulations include:

- *Refusing or failing without compelling justification to submit to Sample collection after notification as authorised in these Anti-Doping Regulations or otherwise evading Sample collection.* (Regulation 21.2.3);
- *Tampering or Attempted Tampering, with any part of Doping Control* (Regulation 21.2.5)

38. Regulation 21.22.2 provides that the sanction applicable to one of these anti-doping rule violations is a period of two years Ineligibility unless the conditions provided for in Regulations 21.22.4 (No Fault or Negligence), 21.22.5 (No Significant Fault or Negligence), 21.22.6 (Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violation), 21.22.7 (Admission of Anti-Doping Rule Violation in the Absence of Other Evidence) and/or 21.22.8 (Where a Player or Other Person Establishes Entitlement to Reduction in Sanction Under More than One Provision of the Regulation), or the conditions in Regulation 21.22.9 (Aggravating Circumstances Which May Increase the Period of Ineligibility).

39. SS, OL and BZ each rely on Regulation 21.22.5 as the basis for seeking a reduction in the presumptive sanction of two years Ineligibility on the ground that there was no significant fault or negligence on their part:

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.

“No Significant Fault or Negligence” is defined 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.

40. The IRB relies on Regulation 21.22.9 as the basis for increasing the two year standard sanction which would otherwise be applicable to BZ on the basis of aggravating circumstances:

If the Judicial Committee (or the judicial body of the Unions or Tournament Organisers) establishes in an individual case involving an anti-doping rule violation other than violations under Regulation 21.2.7 (Trafficking or Attempted Trafficking) and 21.2.8 (Administration or Attempted

Administration) that aggravating circumstances are present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased up to a maximum of four years unless the Player or other Person can prove to the comfortable satisfaction of the Judicial Committee that he did not knowingly commit the anti-doping rule violation.

A Player or other Person can avoid the application of this Regulation by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by an Anti-Doping Organisation.

41. When two anti-doping rule violations are asserted arising out of the same acts or omissions, as in the case of SS, the violations (if established) are considered together as one single violation for sanctioning purposes, with the sanction being based on the violation that carries the more severe sanction (Regulation 21.22.10(D)(i)).

IRB's Submissions

42. All of the witnesses were, to a greater or lesser degree, evasive in their answers. This does not reflect well on their credibility. By contrast the statements of the Chaperone and the Doping Control Officer were unchallenged.

43. There are no grounds which would warrant the BJC accepting any reduced sanction. Any such reduction, given the deceptive conduct of SS, OL and BZ to subvert the doping control process, would be unconscionable.

44. The reduction of the standard sanction on the grounds of "no fault or negligence" or "no significant fault or negligence" is only available in truly exceptional circumstances and not in the vast majority of cases (see the Commentary to Articles 10.5.1 and 10.5.2 of the Code).

45. SS, by asking OL to undergo doping control in his stead, intentionally evaded and tampered with the doping control process. He did so to avoid the possibility that his Sample would return an adverse analytical finding.

46. OL knew that he was covertly replacing a team-mate who feared that he might test positive if he underwent doping control himself.

47. BZ, as team manager, had ultimate responsibility for the compliance by all Team Members with doping control matters. The assertion that BZ did not know that it was SS and not OL who had played number 1 for his Team in a Match which had just been completed and which BZ had watched is preposterous.

48. SS would, subject to any grounds existing for a reduction in the standard sanction, be subject to a two year period of Ineligibility for the two anti-doping rule violations that he has been charged with.

49. Any aggravating factors on the part of SS and OL are mitigated by their prompt admission of their anti-doping rule violations. However, BZ's lack of candour and his position of responsibility are aggravating circumstances which,

in the absence of prompt admission by him that he had committed an anti-doping rule violation, warrant an increased sanction.

Respondents' Submissions

50. SS made a "human mistake" which he regrets. According to his Union he has done much for rugby. He has an excellent disciplinary record. He promptly acknowledged his guilt. He should receive some credit for all of these things.

51. OL says that he lied for his team-mate but did not realise the seriousness of his actions. He would never do something like that again. As a mature player he asks for mitigation.

52. BZ admits that he was not attentive but he did not act deliberately. He accepts that, as team manager, he had some understanding of the anti-doping regulations. However he did not at the time appreciate the seriousness of what had happened.

Discussion

53. The BJC had the benefit of not only hearing from SS, OL and BZ but, also seeing them through a video link. This was of great assistance as there were issues of credibility to be considered.

54. There is no doubt that each of SS, OL and BZ participated in conduct intended to beat the system. The only issues are whether there are sufficient mitigating factors to reduce the standard two year sanction for any or all of the respondents and whether, in the case of BZ, there are aggravating factors.

No Significant Fault or Negligence

55. The IRB argued that "No Fault or Negligence cannot apply and was not intended by WADA to apply to the more serious level of cases where Use of a Prohibited Substance or Prohibited Method is not involved".

56. While "No Significant Fault" cases which do not involve a Prohibited Substance or Method are few and far between, in the absence of express language to the contrary we do not accept that Regulation 21.22.5 (No Significant Fault or Negligence) could never apply to an anti-doping rule violation under Regulation 21.2.3 or Regulation 21.2.5.

57. In *NZRL Inc v Tawera*, a decision of the Sports Disputes Tribunal of New Zealand (6 May 2005) it was noted (at paragraph 26) that the "criteria for No Fault or Negligence offer little assistance, as they deal with the use or administration of Prohibited Substances or Methods." *Tawera* was a failure to comply case where a rugby league player initially discarded the urine sample he had been in the course of producing and briefly left the testing area. He subsequently returned and provided another sample which tested negative. The

tribunal rejected a submission that an intentional or purposeful refusal could not be anything other than one involving a significant degree of fault. It held instead that “the totality of the circumstances needed to be viewed” and continued, at paragraph 32:

We accept that, as a general principle, it is proper to treat a failure to supply a sample as seriously as the provision of a sample which returns a positive result; otherwise, athletes would have an incentive to cheat. But the commentary to Art.10.5.2 makes it clear that the purpose of the Article is to balance that kind of consideration against the interests of athletes in recognising that the anti-doping regime can produce harsh results. Further, while ... it will be rare for an athlete to prove no significant fault in the case of an intentional refusal to provide a sample, we do not think the wording of the Code should be read down to limit the application of Art. 10.5.2, in cases of failure to supply, to cases of inadvertence.

58. In *Tawera* the tribunal found that there had been “an unfortunate combination of circumstances” which rendered the player’s actions understandable, if not excusable. In the “particular and exceptional circumstances” of the case, the tribunal was satisfied that there was no “significant” fault or negligence on his part.

59. By contrast, SS, OL and BZ have cynically and deliberately colluded in subverting the doping control process.

Serhii Sukhikh

60. SS claimed that the reason for his missed test was that he felt unwell. In his statement he referenced his consumption, before the Match, of a sports drink called “Guitar” which had been given to him by “the doctor”. His statement continued:

During and after the match I felt feverishness, had an excited appearance and felt a sharp pain in my stomach and I asked to make the substitution on 61 minute. Having known about the need to submit of the doping control from the manager Mr Bogdan Zhulavsky I asked Mr Oleg Lytvynellko (my friend and teammate) to undergo tests instead of me after I went to the hotel because of my feels unwell.

61. However, when cross-examined, SS denied that the drink was the source of him feeling unwell. Rather, he claimed he was injured during the match. He said that he was worried he would faint if he underwent doping control. Yet he acknowledged that he was not too sick to walk to his hotel, which was adjacent to the stadium. Several photographs which accompanied the chaperone Dr Michael Schied’s statement showed SS standing watching the match from the team bench area dressed in his track-suit after being substituted. He subsequently attended the post-match banquet, but claimed he only went for 10-15 minutes because he wanted to see the doctor.

62. As already noted, when pressed, SS admitted that he said he was afraid that his sample “will be positive”.

63. We found SS to be an unreliable witness. We were struck by his reluctance to be open and candid even after he and his confederates had admitted committing anti-doping rule violations.

64. We find no mitigating circumstances that would warrant a reduction in any of the standard two year sanctions that would otherwise apply. But for his prompt admission of an anti-doping rule violation when presented with the evidence against him, we would have been receptive to a request for an increased sanction.

Oleg Lytvynenko

65. The account given by OL at the hearing also deviated from his written statement.

66. OL had worn the number 3 shirt during the Match. After the Match, OL was approached by SS. SS told OL that he had been selected for doping control. He said he was unwell and asked OL to take the test in his stead. The players exchanged shirts on the way to the changing room.

67. In his statement OL said that after he left the changing room he saw the manager, BZ, and told him that it was him who had played with the Number 1 shirt. OL took one of the passports which BZ had in his hands and went to submit to the doping control.

68. At the hearing when asked what was said between him and BZ when he fetched SS's passport, OL was evasive. He said he could not remember what he told BZ or what BZ said to him. But when pressed he did concede that BZ would have known that SS had played the Match with the number 1 shirt, that BZ "probably" knew that OL was undergoing doping control instead of SS and that while he could not definitely remember, BZ was "probably" present when OL was at the doping station (but he could not recall why someone other than BZ had witnessed the doping control form which OL (posing as SS) signed.

69. Nevertheless, it is to OL's credit that he has consistently acknowledged his own wrongdoing. He has also admitted that his initial instinct would have been to protect his team-mate and his manager. In response to questioning from the BJC he confirmed that he had not been pressurised into so doing.

70. In the BJC's view, OL's remorse, while apparently genuine, when viewed in the "totality of the circumstances", does not change the fact that he, too, was an active and voluntary participant in a corruption of the doping control process. Accordingly, no reduction of the standard sanction of two years is warranted.

Bogdan Zhulavskiy

71. As Team Manager, BZ was the person responsible for completing and submitting the Team sheet which listed SS as player number 1 and OL as player number 3. In addition he was ultimately responsible in all respects for the Team and all Team Members including in anti-doping matters.

72. According to his statement dated 20 December 2012, BZ:

... approached to all team and in the presence of the doctor and the coach declared numbers 4 of players which have to pass - the doping test... but number No. 1 in a changing room didn't appear, I left to look for it out of a changing room ... there was a player at number No. 1, he told me in a changing room didn't hear me, because was in WC, took from me the passport, at this moment me distracted other players of our team and the doctor...

73. This evidence stands in contrast to the statement of SS who confirmed that BZ had told him he had been selected for doping control:

Having known about the need to submit of the doping control from the manager Mr Bogdan Zhulavsky I asked Mr Oleg Lytvynenko (my friend and teammate) to undergo tests instead of me...

74. BZ said that he had been told by a doping control official that the player wearing jersey number 1 could not be found after the Match. He went to the changing room to look. He was subsequently approached by OL who said that he had been Player Number 1 and retrieved a passport before proceeding to doping control. He says he does not know whose passport OL took.

75. BZ claims that he did not recall the jersey numbers of players.

76. BZ acknowledges that he was “in and out” of the doping control area but cannot explain why he signed the doping control form of another Ukraine player who underwent testing that day, but not that of OL/SS. He denies deliberately avoiding signing the form of OL/SS.

77. As noted above, BZ admits that he was not attentive, but denies acting deliberately. He agrees that as Team Manager he had some knowledge and understanding of anti-doping regulations, but ironically he had not himself read the anti-doping handbooks which had been distributed to the players under his charge.

78. BZ asks for “mitigation”. However, we find no basis for considering a reduced sanction.

Aggravating Circumstances

79. It is open to the BJC to consider a period of Ineligibility of more than two years when there has not been a prompt admission of the anti-doping rule violation. By way of recap, Regulation 21.22.9 provides, *inter alia*:

A Player or other Person can avoid the application of this Regulation by admitting the anti-doping rule violation as asserted promptly after being confronted with the anti-doping rule violation by an Anti-Doping Organisation.

80. The IRB's letter charging BZ was sent to the Union on 7 December. In his statement, dated 20 December, written in English, BZ said:

I didn't check which passport took from me the player No. 1. I presented to the assistant to the representative anti-doping committee of the player with a shirt No. 1 as No. 1.

....

That player Lytvynenko Oleg handed over the fact of that additional - according to the passport Sukhikh Sergey I found the test in Ukraine when I started studying documents given out to players in more detail.

In this incident I consider the fault not premeditated

81. Even allowing for imperfections in BZ's English, there is nothing in his initial statement which acknowledges any knowing participation in the deception. Rather, he claims that he was not aware of the deception until after he returned to Ukraine following the Match.

82. At the directions hearing on 4 March 2013, BZ admitted that OL had obtained SS's passport from a bunch of passports held by him (BZ) and, as a result, that he had committed an anti-doping rule violation. But he maintained that his actions had been characterised by neglect rather than fault.

83. The directions hearing took place just shy of three months after the IRB had sent out its notification letters. By any measure, BZ cannot be regarded as having made a "prompt" admission after being confronted with the anti-doping rule violation.

84. Accordingly it is open to the BJC to consider whether there are aggravating circumstances which would warrant an increase in the standard sanction.

85. The Commentary to Article 10.6 of the Code (which corresponds with Regulation 21.22.9) provides:

Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation.

For the avoidance of doubt, the examples of aggravating circumstances described in this Comment to Article 10.6 are not exclusive and other aggravating factors may also justify the imposition of a longer period of Ineligibility.....

86. We do not accept BZ's assertions that the anti-doping rule violations of SS and OL occurred through his inadvertence, rather than his active participation in a corruption of the doping control process.

87. It is beyond belief that BZ did not know that it was SS who had been selected for doping control. In our judgment, he knew that OL was not "Player No. 1". His evidence that he did not know which passport OL had taken from him is unconvincing.

88. While there is no evidence to suggest that the deception effected by SS, OL and BZ was part of a pre-meditated scheme or plan, BZ, as Team Manager, had a position of responsibility and trust. The provisions of Regulation 21.6.2 bear repeating:

21.6.2 It is the responsibility of Player Support Personnel to ensure that they:

(a) Cooperate with the Player Testing programme;

(b) Use their influence on Player values and behaviour to foster anti-doping attitudes;

(c) Are knowledgeable of and comply with all anti-doping policies and rules adopted pursuant to the Code which are applicable to them or the Players they support including these Anti-Doping Regulations; and

(d) Educate and counsel Players regarding anti-doping policies and these Anti-Doping Regulations.

89. BZ was familiar with the anti-doping rules. It seems unlikely that he would not have fully understood the seriousness of the deception which was unfolding after the Match. Even if the BJC was minded to accept (which we do not) BZ's statement that OL picked SS's passport from the batch which he held, rather than BZ picking it out himself, it is entirely inconceivable that he did not know that OL was passing himself off as SS yet he did nothing to stop the deception being carried out.

90. He then compounded his complicity in the actions of his players by his actions (or inaction) at the doping control station and after the team had returned to Ukraine.

91. In that regard, BZ says in his statement of 20 December 2012 that he "signed all documents [the Doping Control Forms] on passing by our 4 players instead of the doctor."

92. In fact, the Doping Control Form clearly notes SS's name at the top in block letters (which BZ would have seen when Dr Schied presented to him searching for SS). SS's Doping Control Form indicates that he (in fact OL) provided the Sample at 18:16 and that the form was signed at 18:26. No Team representative signed SS's form. Copies of two of the other Doping Control Forms for Ukrainian players completed during that testing session and signed for by BZ were tendered in evidence. Of them, player A provided his Sample at 16:53 and he and BZ signed the form at 17:05, that is, before SS/OL's form. Player B provided his Sample at 18:33 and he and BZ signed that form at 18:40, that is, 14 minutes

after SS/OL's form was completed. Yet in his statement and his evidence at the hearing, BZ emphasised that all were hurrying to the banquet.

93. Pressed on why he did not witness the form completed by OL masquerading as SS, BZ, having signed the forms of the other three Ukrainian players selected for doping control, he said he must "have missed" it.

94. The conduct of BZ cannot be explained, as was suggested by Mr. Zhalyskny on behalf of the Union, as the mistakes of a young manager who acted negligently rather than deliberately.

95. Rather, BZ engaged in dishonest and corrupt manipulation of the rules. He abused his position of trust by not only failing to stop the deception being perpetrated by SS and OL but by aiding and abetting it.

96. He compounded his actions by his evasiveness and lack of candour as a witness at the hearing.

97. The conduct of BZ constitutes aggravating factors which warrant a sanction that is proportionate with the seriousness of his actions and which will deter others from behaving in a similar manner.

98. Little guidance is given to panels considering what an increased sanction should be where there are aggravating factors. In *IAAF v SEGAS & Kokkinariou CAS 2012/A/2773* it was noted that the imposition of an increased sanction is discretionary and that a single aggravating circumstance might warrant the maximum increase while multiple examples might result in a lesser period than the maximum.

99. BZ's behaviour is unacceptable in rugby union or any other sport.

100. In our view a strong message needs to be sent that all participants in the Game have responsibilities to maintain the integrity of anti-doping rules and procedures.

101. This is particularly so where individuals are placed in positions of responsibility and trust.

102. BZ shall therefore serve a period of Ineligibility of four years.

Decision

103. On 27 October 2012 the following anti-doping rule violations were committed:

Serhii Sukhikh

- tampering or attempted tampering with any part of Doping Control, contrary to Regulation 21.2.5;
- failing or refusing to submit to Sample collection, contrary to Regulation 21.2.3

Oleg Lytvynenko

- tampering or attempted tampering with any part of Doping Control, contrary to Regulation 21.2.5

Bogdan Zhulavskiy

- tampering or attempted tampering with any part of Doping Control, contrary to Regulation 21.2.5

104. The sanction imposed for these anti-doping rule violations are the following periods of ineligibility, commencing 7 December 2012 (the date upon which the provisional suspensions took effect):

Serhii Sukhikh

- Two years Ineligibility concluding on (but inclusive of) 6 December 2014

Oleg Lytvynenko

- Two years Ineligibility concluding on (but inclusive of) 6 December 2014

Bogdan Zhulavskiy

- Four years Ineligibility concluding on (but inclusive of) 6 December 2016

105. The attention of SS, OL and BZ is drawn to IRB Regulation 21.22.13 which provides, inter alia that:

No Player or other Person 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.

Subject to paragraph (iii) below, no Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in any athletic contest or any activity in any sport (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory [to the Code] or any Signatory's member organisation, or in any athletic contest in any sport authorised or organised by any professional league or any international or national level event organisation.

106. The full text of Regulation 21.22.13 concerning status during Ineligibility should be consulted.

Costs

107. 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 7 June 2013 with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 14 June.

Review

108. 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.

29 May 2013

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

Graeme Mew, Chairman