

INTERNATIONAL RUGBY BOARD

IN THE MATTER of the Regulations Relating
to the Game

A N D

IN THE MATTER of a doping offence by
ROMAN KULAKIVSKIY (“the
Player”)

Judicial Committee

T M Gresson	(New Zealand)	(Chairman)
Yoshihisa Hayakawa	(Japan)	
George van Dugteren	(South Africa)	

Appearances and Attendances

For the Board

Ben Rutherford	(IRB Legal Counsel)
Tim Ricketts	(IRB Anti-Doping Manager)
David Ho	(IRB Anti-Doping Officer)

Lily Orlovska	(Interpreter)
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For the Player

Roman Kulakivskiy	(Player)
Oleg Zaliznyy	(Coach Ukraine National Team)

Hearing

Written submissions and thereafter 17th April 2013 by way of telephone conference

REASONS FOR DECISION OF THE BOARD JUDICIAL COMMITTEE

1. On 16th November 2012 Roman Kulakivskiy (“the Player”) provided a urine sample (Code Number 2665302) during an out-of competition test conducted at the Ukrainian National Team’s Hotel on behalf of the International Rugby Board (“IRB”). Subsequently, the sample returned an Adverse Analytical Finding (“AAF”) for the substances Metenolone and Stanozolol (“the substances”).
2. Metenolone and Stanozolol are Anabolic Androgenic Steroids classified under Section 1 Anabolic Agents in the World Anti-Doping Agency (“WADA”) 2012 List of Prohibited Substances and Methods. The WADA Prohibited List is included in Schedule 2 of IRB Regulation 21. The substances are prohibited in-competition and out-of-competition. The Player had not applied for, and had not been granted, a therapeutic use exemption allowing him to use the substances.
3. Following receipt of the analysis result of the A sample, and after a preliminary review conducted in accordance with Regulation 21.20.1 (which confirmed that an anti-doping rule violation may have been committed) the Player was provisionally suspended on 12th December 2012. The AAF was acknowledged by way of an explanatory letter from the Acting Coach of the Ukrainian National Team. The Player subsequently confirmed that the AAF was accepted during a Directions Hearing conducted by the Chairman on 19th February 2013. No request for analysis of the “B” sample was received.
4. This Board Judicial Committee (“BJC”) was appointed to consider the Player’s case. Subsequently on 19th February 2013 during a telephone conference call involving the parties, the Chairman issued procedural directions which were promulgated in writing. In accordance with the Directions, prior to the hearing Counsel for the IRB filed written submissions. The Player did not provide a statement and no further written submissions were filed on his behalf, but as mentioned the Acting Coach had sent his letter to the IRB. Subsequently copies of medical records purportedly from Lodz Hospital (Poland) were also submitted to the IRB. The hearing took

place by way of a combination of telephone conferencing and Skype on 17th April 2013 during which the Player and Mr Zaliznyy gave evidence.

Factual Background

5. The Player is aged 26. He plays in the second row. He represented the Ukrainian National Team in five Internationals between February 2011 and 2012 including participating in the European Nations Cup IB Division Tournament involving six National Teams which play in a series of round-robin matches between 6th October 2012 and 1st June 2013. This Tournament also formed part of the qualification process for Rugby World Cup 2015 (the ENC and RWC Tournament).

6. On 29th December 2012 (ie. after the Player was advised of the AAF) his National Coach in a letter to the IRB Anti-Doping Manager stated:

“29.12.2012

*Mr Tim Rickett (sic)
Anti-Doping Manager
International Rugby Board*

Dear Mr Ricketts,

After discovering the banned substance in the blood of Roman Kulakivskiy and National rugby Federation of Ukraine has opened an internal investigation.

Mr Kukakivskiy rejects the taking of banned drugs, as well as doctor of the club and national team of Ukraine, and physio.

For the preparation of the national team of Ukraine for the European Championships and the internal Championship it is used the legal sports nutrition of well known manufacturer.

All the players of the club or of national team consume the sports nutrition to the general ration in the list of what there are no ingredients that prohibited in WADA list.

In the national team of Ukraine works the same staff of experts, as in Mr Kulakivskiy's club.

So the expectancy of hitting of the doping in the club and in the national team is excluded.

The Range of examined variants of possible hitting of banned substances has narrowed to only one possible.

At the end of December 2011 Mr Kulakivskiy was operated in Lodz (Poland) on the right knee joint. The reason for the operation: the rupture of the front cruciate ligament of knee, the rupture 80% lateral and external ligament, shaken meniscus (all document we'll present you).

National rugby Federation of Ukraine has sent a request to the clinic where Mr Kulakivskiy has been operated, to identify all medicaments used in operational and post operational period.

The doctor of Federation suggests that with medications used in operational and post operational period has entered some drugs that are prohibited by WADA.

The management of National rugby Federation of Ukraine and Mr Kulakivskiy realize the absurdity of the case of hitting of banned substance in the blood of athlete Mr Roman Kulakivskiy and ask you to consider this matter as accident.

*Acting coach of national team
Oleg Zaliznyy”*

7. Subsequently, on 9th January 2013, the National Rugby Federation of Ukraine sent copies of purported medical documents from Lodz Hospital in relation to the Player's operation to repair his anterior cruciate ligament on 19th December 2011. The documents included a summary (in Polish and English) of the Player's Hospital Treatment and Magnetic Resonance Tomography of the right knee joint¹.
8. On 27th October 2012 following the match between Ukraine and Germany the Player participated in an In-Competition Doping Control Test at Berlin. The test resulted in a negative finding. The Doping Control Test was the first in the Player's career.
9. The Out-of-Competition test (which was the second occasion he was subjected to Doping Control) conducted by the IRB at the Ukrainian Team Hotel occurred a day before the match between Ukraine and Czech Republic on 17th November 2012. Twelve players were tested. The only positive result was in respect of this Player. The test was conducted in the presence

¹ Unfortunately the accuracy of medical records is questionable. The BJC note the Polish version of the Hospital Treatment Summary referred to the Player having been prescribed "Fragmin", (an anti-coagulant drug used to reduce the clotting of the blood). Further there was not any reference in the records to the usual post-operative medication (eg. pain relief, antibiotics (possibly) and on-going use of Fragmin). The report also made no reference to the use of an anaesthetic. The English translation omitted any reference to Fragmin. None of the medical records referred to Metenolone and Stanozolol.

of the Team Doctor. The Player listed various medications taken in the last seven days before the test as follows:

Declaration of Medication/s and/or Supplement/s taken in last 7 days / Déclaration de Médication/s et/ou Supplément/s pris dans les 7 derniers jours / Declaración de Medicaciones y/o Suplementos ingeridos en los últimos 7 días					
Name / Nom / Nombre	Dosage / Dosage / Dosis	Date / Date / Fecha	Name / Nom / Nombre	Dosage / Dosage / Dosis	Date / Date / Fecha
1. Vitamins			5.		
- Amino Acid			6.		
3. IBUPROM	2 per day		7.		
4. PROMEFIN			8.		

10. The IRB Anti-Doping Handbook 2012 Edition Version 2 translated into the Russian language was sent to the Ukrainian Union for distribution to the National Team members in January (prior to the commencement of the European Nations Cup Tournament), and September (prior to the commencement of the ENC and RWC Tournament). The Handbook contains comprehensive relevant information in relation to “*inter alia*” Therapeutic Use Exemptions, Doping Control Procedures (Urine Sample Collection), the need to declare any medications or supplements taken in the last seven days, and Anabolic Androgenic Steroids.
11. During his evidence the Player was questioned by members of the BJC and skilfully cross-examined by Counsel for the IRB. Essentially, the Player accepted he was aware of the contents of the Acting Coach’s letter to Mr Ricketts and that given the negative finding following the Doping Control Test on 27th October 2012, the Lodz Hospital medication could not have been the source of the two banned substances. Further, the documentation obtained from the hospital did not refer to either of the steroids. When it was specifically put to the Player that he must have used the substances between 27th October 2012 and 16th November 2012, the Player stated he was unable to explain how the banned substances entered his body. He stated “*he did not know what had happened*” and only took substances given to him by the Team Doctor or Coach. However, in relation to this comment, he was unable to explain why he was the only player who tested positive as a result of the IRB Target Testing on 16th November 2012.
12. Further, he stated following his return to rugby after “*seven to eight months*” his right knee had caused on-going problems as a result of which on occasions he wore a brace and the Team Doctor gave him “*anti-inflammatory*” injections (Durolane) into the joint one or two weeks before the commencement of the Tournament. He did not declare the injections on the

Doping Control Form² as he understood he was only required to declare medications he had taken “one or two days before the game”. The Player did not suggest the “anti-inflammatory” injections could have been the source of the banned anabolic steroids.

Anti-Doping Violation Established

13. Regulation 21 sets out the framework under which all players can be subjected to Doping Control and the procedures for any alleged infringements of the Programme. The Regulation also adopts the mandatory provisions of the World Anti-Doping Code (“the Code”)³.

14. Both Regulation 21 and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.

15. Pursuant to Regulation 21.2.1 the “*presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample*” constitutes an anti-doping rule violation. Regulation 21 provides:

“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 Programme] on the part of the Player”.

16. In relation to the principle of personal responsibility Regulation 21.6 provides:

It is each Player’s responsibility to ensure that:

- (a) no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;*
- (b) he does not commit any other anti-doping rule violation;*
- (c) ...*
- (d) he informs Player Support Personnel, including, but not limited to, their doctors of their obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by them does not violate any of the provisions of the Regulations.*

It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines.”

² As indicated the Doping Control Form requires a player to declare any medication and/or supplement taken in the last seven days. Clearly, if the anti-inflammatory injections were administered more than seven days previously, there was no obligation on the player to declare them.

³ The WADA Code can be found on the WADA website at http://www.wada-ama.org/documents/world_anti-doping_program/WADP-The-Code/WADA_Anti-Doping_CODE_2009_EN.pdf

17. Pursuant to Regulation 21.3.1 the Board has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the BJC. The Player accepted and did not challenge the analytical findings of the laboratory. Accordingly, the BJC finds the Board has established to the required standard the anti-doping rule violation; that is the presence of the Prohibited Substances Metenolone and Stanozolol in the Player's bodily sample.

Sanction

18. The period of ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers) is two years for a first violation. This period of ineligibility can be reduced in certain circumstances which include exceptional circumstances as set out in Regulation 21.22.4 (No Fault or Negligence), 21.22.5 (No Significant Fault or Negligence).
19. The period of ineligibility may also be increased when there are aggravating circumstances (Regulation 21.22.9).
20. The exceptional circumstances provisions in Regulation 21.22.4 and 21.22.5 contain two threshold requirements which must be established by the Player on a balance of probabilities (Regulation 21.3.1). First, he must prove how the Prohibited Substance entered his system. Second, he must prove he bears no fault or negligence (Regulation 21.22.4) or he bears No Significant Fault or Negligence.
21. In his letter to the IRB in suggesting the banned substances were administered during and after the Player's knee operation, Mr Zaliznyy requested "... *(the) hitting (sic) of banned substance in the blood (of the Player) ... be consider(ed) ... as an accident*" (refer last paragraph). Essentially he suggested the Player bore no fault. However, as mentioned during the hearing it became patently clear the proposition the ingestion of the banned substances was hospital related could be completely discounted. Further, as indicated when questioned, the Player was unable to explain how

the steroids entered his system. He did not suggest it could have been as a result of receiving the injections of the anti-inflammatory drug, Durolane.

22. Therefore because the Player has failed to establish how the two anabolic steroids entered his system, neither Regulation 21.22.4 or Regulation 21.22.5 can be applied to the circumstances of this case.

Aggravating Circumstances Which May Increase the Period of Ineligibility

23. Mr Rutherford submitted, given the case presented by the Player, it was appropriate Regulation 21.22.9 was invoked. The Regulation provides:

Aggravating Circumstances Which May Increase the Period of Ineligibility

21.22.9 *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.

24. It will be noted the last paragraph contains a permissive qualification in respect of the application of this Regulation in that a Player can avoid the application of the Regulation by admitting the anti-doping rule violation at the first opportunity. In our view the legislative intent behind this provision is to promote full candour on the part of the Player as to the circumstances of the infraction and thus obviate the need for protracted investigations and hearings.
25. The Player was advised of the AAF on 12th December 2012. It could be suggested after the notification the Player promptly admitted the infraction on 29th December 2012 when the Acting Coach, on the Player's behalf, accepted the AAF but suggested the banned substances had entered the

Player's system as a result of "*an accident ie. through the medication used operatively and post-operatively when the Player's cruciate ligament was repaired*". Further, during the Directions Hearing on 19th February 2013, although the Player acknowledged the AAF, he still maintained the hospital treatment was the source of the banned substances. However, as indicated, during the hearing the Player accepted this fanciful proposition was not sustainable. Accordingly, while there may have been a prompt admission in relation to the AAF, in these circumstances we do not consider it is appropriate the Player should be permitted to avoid the application of the Regulation.

26. Counsel submitted an uplift in the sanction above two years was justified because of the following factors:

- The Player's false claim the prohibited substances were ingested as a result of the Lodz Hospital medical treatment for his injured knee.
- The evidence clearly indicated the steroids must have been taken during the Tournament period between 27th October 2012 and 16th November 2012. Given this was after he had been previously tested there was a strong inference the Player thought he would not be tested again.
- In relation to the Player's comment he only took substances provided by the Team Doctor or Coach, none of the remaining 11 Players who were tested returned Adverse Analytical Findings. Thus, it was submitted it could be inferred the two steroids were consumed in addition to the substances supplied to the Team.
- The Player's lack of honesty in response to questions during the hearing in failing to disclose the circumstances relating to the taking of the banned substances indicated intentional use, possibly to expedite his recovery from on-going problems (which were still present in November) in relation to his knee following surgery.
- "*Alarmingly*" (stated Mr Rutherford), there have been several recent cases featuring players from East European countries (including players from the Ukraine) involving anti-doping violations through the use of steroids (including Stanozolol). Conduct of this nature should be emphatically denounced. This could be achieved by the

imposition of a condign sanction above the standard sanction of two years.

27. Mr Rutherford also drew our attention to the current re-draft of the World Anti-Doping Code being considered by WADA. He argued if it applied to this case the Player would not be able to establish a lack of intention or recklessness and would be suspended for a period of four years⁴. Thus, it was submitted the BJC should invoke Regulation 21.22.9 for the "*purposes of achieving an appropriate outcome in this case in accordance with IRB Regulation 21, the Code and the intentions of WADA*".
28. While apparently it is currently WADA's intention to prescribe more severe sanctions that factor, in itself, cannot be determinative as to whether Regulation 21.22.9 should be applied. Ultimately, our decision must be considered on the basis of the specific circumstances of this case and the current Regulations.
29. Neither the Player or Mr Zaliznyy made any submissions in response to the IRB submissions in relation to 21.22.9.
30. In considering this issue we were mindful of the need to be satisfied there was procedural fairness in the Player being made sufficiently aware the IRB would seek an increased sanction under Regulation 21.22.9. We are satisfied this occurred. The IRB in its letter dated 11th December 2012 to the Player advised him if aggravating circumstances were found to exist the BJC had the discretion to increase the period of ineligibility although this may be avoided by a prompt admission of the anti-doping rule violation. Further, the IRB in its written submissions sent to the Player prior to the hearing clearly indicated that it sought an aggravated sanction. Further, at an early stage of the hearing the Chairman explained to the Player that in relation to the IRB seeking an uplift in the sanction above the standard sanction of two years, complete candour on his part as to the source of the banned steroids would be an important consideration the BJC would take into account.

⁴ See version 2 of the Code re-draft, Article 10.2.1 at http://www.wada-ama.org/documents/world_anti-doping_program/WADP-The-Code/Code_Review/Code%20review%202015/WADC-2015-draft-version-2.0.pdf

31. The BJC's research has indicated there have been relatively few guideline cases involving the use/presence of prohibited substances where the standard sanction has been uplifted because of aggravating factors. In the recent case of IAAF v SEGAS & Kokkinariou⁵ it was noted:

"... (the) imposition of an increased Ineligibility Period is discretion(ary) ... a single example of aggravating circumstances may warrant the maximum period ..."

(Para 94)

And further:

"... most if not all doping practices are timed to avoid detection. As a result an aggravating circumstance is likely to require a further element of deception."

(Para 129)

32. In the NADP Award in UKAD v Bernice Wilson⁶ the Panel observed:

"... we do not necessarily find it compelling to compare individual features of individual case with one another, and whilst consistency in decision making is important, one tribunal may (within reason) legitimately take a different view from another".

(Para 92)

33. We agree with all these observations.

34. 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.....

⁵ CAS 2012/A/2773

⁶ 28 September 2011

(Emphasis added)

35. In the case of UK Anti-Doping v Craig Windsor Jnr⁷ the UKAP held that the athlete's (a Professional Boxer) persistent denials in relation to three anti-doping violations (use and possession of anabolic steroids on three occasions) warranted an increase of 21 months above the standard sanction. The uplift was based on findings of possession of two prohibited substances, the use of one of them over a "*not insignificant period of time*"; the doping was "*planned*" in that the athlete specially selected steroids which were used to assist with training and increase strength for the planned bout. Further, the athlete fabricated a false defence by claiming his partner was responsible⁸; and only admitted the violations on the day of the hearing. The maximum sanction was discounted by three months on the basis of the athlete's late admissions of the three anti-doping rule violations.
36. In IRB v De Klerk⁹, a second infraction case involving the presence of the anabolic agent Testosterone, it was noted but for the fact the IRB did not seek an increase beyond the minimum sanction of eight years ineligibility the BJC would have increased the sanction because the Player's explanations in relation to his whereabouts obligations were not credible (refer para 21).
37. We are satisfied the surrounding circumstances relating to the Player's infraction point to an intentional use. It is clear the two steroids were taken (possibly to assist the recovery of the knee in the belief he would not be tested again) after 27th October 2012 (which resulted in a negative finding) and before 16th November 2012 thus during the period of the Tournament and in this regard on many occasions over recent years BJC's have stressed the use of banned substances during tournaments is to be deprecated. However, we do not consider these factors should result in an uplift of the standard sanction. They are factors which are incorporated within the factual matrix for which there is a prescribed standard sanction.
38. However, in determining whether the standard sanction in this case should be increased we considered the following factors:

⁷ National Anti-Doping Panel, SR/0000120093

⁸ Both of them swore affidavits to this effect

⁹ <http://www.irbkeeprugbyclean.com/downloads/cases/59/120404%20IRB%20v%20Andre%20de%20Klerk%20decision%20final.pdf>

39. As indicated, we found the Player's explanation as to the source of the two banned steroids most unconvincing. In this regard, although the letter of 29th December (supra – para 6) was written by the National Coach who referred to the Federation Doctor's suggestion the hospital could have been the source of the two banned steroids, we are satisfied the Player was complicit in this untruthful statement being conveyed to the IRB. Further, during the hearing, after the Player had conceded the hospital treatment could not have been the source of the banned steroids, again there was a lack of candour whereby he asserted in a less than credible fashion that he did not know how they had entered his system. As mentioned above, he claimed he only took substances given to him by his Coach but when he was further questioned he was unable to explain why of the twelve players tested he was the only player who tested positive as a result of the target testing carried out on 16th November 2012.
40. Further, although the Player has committed the one infraction, we consider (in contrast to other anti-doping violation cases involving one banned substance) the fact two banned performance enhancing steroids were used is also a relevant aggravating factor.
41. Thirdly, as mentioned over recent years there have been several cases¹⁰ involving players from this region using banned substances (including Stanozolol) and accordingly, we accept the IRB submission this is an appropriate case where there is a need to send a clear message denouncing this type of conduct and deterring others from behaving in similar fashion.
42. For these reasons we agree it is appropriate to impose a condign sanction clearly denouncing the Player's overall conduct and consider an uplift in the standard sanction is appropriate.

¹⁰ The cases include:

IRB v Demen (15 November 2010)

<http://www.irbkeeprugbyclean.com/downloads/cases/49/Demen%20BJC%20Decision%20final.pdf> – Stanozolol

IRB v Abishev (14 November 2010)

<http://www.irbkeeprugbyclean.com/downloads/cases/47/101114%20Azat%20Abishev%20December%20final.pdf>

IRB v Yagudin & Zhivatov

<http://www.irbkeeprugbyclean.com/downloads/cases/69/130121%20IRB%20v%20Yagudin,%20Zhivatov,%20&%20Kosarev.pdf>

IRB v Pronenko

<http://www.irbkeeprugbyclean.com/downloads/cases/56/Y14123659-Pronenko.pdf>

43. In the recent case IRB v Lytvynenko, Sukhikh and Zhulavskiy¹¹ the BJC found anti-doing violations of tampering or attempted tampering with part of doping control had been committed by the two Ukrainian players and the Team Manager (Zhukavskiy). Essentially, the BJC found the two players, assisted by the Manager, had subverted doping control by deception whereby the players changed jerseys with the result the selected player was not tested.
44. In relation to the Manager, the BJC commented:
- 85. *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.*
 - 86. *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.*
 - 87. *He compounded his actions by his evasiveness and lack of candour as a witness at the hearing.*
 - 88. *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.*
 - ...
 - 90. *BZ's behaviour is unacceptable in rugby union or any other sport.*
 - 91. *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.*
 - 92. *This is particularly so where individuals are placed in positions of responsibility and trust.*
 - 93. *BZ shall therefore serve a period of Ineligibility of four years."*
45. While, as indicated, we are satisfied in this case there should be an uplift in the sanction we do not consider the Player's conduct was as serious as that of Zhukavskiy. Certainly, the Player has been less than honest in his explanations provided to the BJC, but the Player's infraction was for the

¹¹ <http://www.irbkeeprugbyclean.com/downloads/cases/81/J-130529-GM-Ukraine%20Players%20Reasons%20Final.pdf>

presence of prohibited substances whereas the circumstances in Zhukavskiy involved deceptive conduct designed to subvert the Doping Control process and subsequent evasiveness. This conduct resulted in the maximum sanction being imposed.

46. Although we are satisfied the Player's conduct involved intentional use and he sought to evade responsibility by being untruthful prior to and during the hearing, we consider that it can be distinguished from Windsor in that he did not commit multiple violations over a significant period of time. Further, in Windsor the athlete was directly involved in fabricating a false defence by claiming his partner was responsible whereas in this case the Player was complicit in the misleading information that was suggested by the Team Doctor and submitted by the Assistant Coach. We also note, in Windsor the Anti-Doping Rule Violations were not admitted until the day of the hearing, whereas as mentioned, the Player admitted the Anti-Doping Rule Violations but failed to disclose the manner by which the banned substances were ingested. Accordingly, for these reasons we do not consider the uplift should be as severe as the increased sanction in Windsor.
47. Balancing all these factors we have concluded a period of three (3) years ineligibility is an appropriate and proportionate sanction for the anti-doping violation committed by the Player.

Decision

48. For the reasons outlined, the sanction imposed for this anti-doping rule violation is a period of ineligibility of three years (36 months) commencing from 12th December 2012 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) the 12th December 2015.

Costs

49. 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 Ho by 17:00 Dublin time on 8th July 2013, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 26th July 2013.

Review

50. 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.

T M Gresson
Chairman

21 June 2013