

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL

IN THE MATTER OF MOTOR SPORT IRELAND

AND

Athlete IS-1535

DECISION OF DISCIPLINARY PANEL

BACKGROUND:

1. The athlete in this case is Mr IS-1535 who had applied for and was issued with a Motor Sport Ireland Competition Licence No [...] on [...] [...] 2012. Pursuant to this license he participated in a [...] Kart Race Meeting held on [...] 2012 at [...] .
2. After the event he was randomly selected for and submitted to Anti-Doping Testing carried out by the Irish Sports Council Anti-Doping Unit. The analytical report that the Irish Sports Council received from its designated laboratory, the Deutsche Sportochschule Köln Institut für Biochemie, found the presence of a carboxy-THC at a concentration of 1260mg/ml which is greater than the decision limit of 18ng/ml.
3. Pursuant to this adverse analytical finding the Irish Sports Council carried out a review pursuant to Article 7.2 of the Irish Anti-Doping Rules and confirmed that the athlete did not hold any relevant Therapeutic se exemption.
4. In view of the adverse analytical finding the athlete and the relevant National

Governing Body - Motor Sport Ireland - were informed of the alleged violation of Article 2.1 of the Rules. The athlete contacted the secretary to the Disciplinary Panel by telephone indicating that he did not wish to have his B sample analysed and that he was admitting the violation. This admission was confirmed by e-mail to the secretary on 3rd May 2012 where the athlete wrote:

“I am admitting to the alleged claims against me and I accept that I was in violation of the Irish Sports Anti-Doping Rules 2009.”

5. A hearing of the Irish Sports Anti-Doping Disciplinary Panel was duly convened for Wednesday 23rd May 2012 pursuant to Article 8 of the Rules.

THE HEARING:

6. The Disciplinary Panel consisted of

Adrian Colton QC - Chairman.

Dr Mick Molloy (Medical Practitioner)

Damian McDonald (Sports Administrator).

Also present were:

Secretary - Ms Nicola Carroll BL

For the Irish Sports Council:

Ms Siobhan Leonard - Anti-Doping Unit.

For Motor Sport Ireland:

Mr Alex Sinclair CEO

Dr Frank O'Donoghue - Anti-Doping Officer.

Mr Dermott Quigley.

Athlete:

Mr IS-1535.

Accompanied by Mr [...] .

Stenographer:

Ms. Jane Fortune from Gwen Malone Stenography Services Ltd.

7. At the hearing the athlete re-affirmed his admission and accepted that he had violated the Irish Anti-Doping Rules.
8. The Panel then invited submissions from the National Governing Body in respect of the matter. Mr Quigley presented submissions on behalf of Motor Sport Ireland and referred to the written submissions which had been made on its behalf of 16th May 2012. Mr Quigley pointed out that as part of the licence application which was issued on [...] to Mr IS-1535 he had agreed to and submitted to be bound by the general competition Rules and Regulations of Motor Sport Ireland and the Irish Anti-Doping Rules. When he was issued with his competition licence he was also issued with the Irish Sports Council Brief Guide to Anti-Doping Wallet Card and the Motor Sport Ireland Notice of Anti-Doping for competitors, copies of which were circulated to the panel.
9. Mr Quigley stressed that the Governing Body considered this to be a serious offence in particular having regard to the high level of the specified substance. In particular Motor Sport Ireland was concerned that Mr IS-1535 posed a danger not only to himself but also to other competitors. He accepted that the particular substance namely cannabis was not a performance enhancing drug

but that its use could have a very damaging impact on those participating in the sport of karting. Such a high level of use could represent a danger to the athlete, to other competitors and also spectators. The only mitigating circumstance that Motor Sport Ireland could see was the fact that the athlete made an early admission to the offence. It was Motor Sport Ireland's view that the maximum penalty allowable should be applied and he also confirmed that it had already provisionally suspended the athlete's competition licence with effect from 18th April which was the date upon which the sports body had been informed of the adverse finding.

10. During questioning from the Panel it was conceded that there was no evidence to suggest that Mr IS-1535 driving had been in any way erratic or that anyone had been inconvenienced by his conduct. It was confirmed that there would have been Stewards present at the event.
11. The athlete indicated that he had consumed cannabis when he went out with a friend who had returned from Belgium who had come home for the weekend. He indicated that he went out on the Friday night (the competition being on the Sunday morning). He indicated that he had a few drinks and had smoked cannabis. He indicated that he had "three or four". He indicated that the drug made him sleepy really but that it gave him a sense of euphoria for a few hours. He didn't think it was going to affect him on the day of the event. On the day in question it felt like a normal day, he was excited for the race but that he felt normal. He participated in [...] events qualifying for the ;...]. He said that he was nervous and "ashamed". He confirmed that this

was his first time participating in a karting event. He confirmed that he had obtained the information from Motor Sport Ireland in relation to the Anti-Doping Rules. He said he was “shocked at how serious it was afterwards. I was just ashamed after. I lost all hope once I knew, once I got tested I didn’t know what to do.”

When questioned by Dr Molloy he indicated that he had felt dehydrated on the day but confirmed that he was able to pass urine when the sample was required.

12. In response Mr Sinclair on behalf of Motor Sport Ireland emphasised how seriously this matter was taken by the Governing Body. It was their view that the use of this drug by its participants could cause serious injury and that this practice was simply unacceptable in its sport. They were particularly concerned about safety issues.

THE PANEL’S DECISION:

13. The Panel was satisfied to the requisite standard that the athlete Mr IS-1535 was guilty of a violation of Article 2.1 of the Irish Anti-Doping Rules.
14. Pursuant to Article 10.1 of the Rules the athlete was therefore liable to the imposition of a period of ineligibility for 2 years.
15. The Panel considered the provisions of Article 10.3 which provides for the elimination or reduction of the period of ineligibility for specified substances

under specific circumstances. It was common case that the substance in question was a specified substance.

16. The Panel was satisfied from the evidence of Mr IS-1535 that he had established how the specified substance had entered his body. The Panel also accepted that it was not intended to enhance the athlete's sport performance or mask the use of a performance enhancing substance.
17. In terms of corroborating evidence of the absence of an intention to enhance sport performance, the Panel had regard to the agreed position from the National Governing Body that cannabis was not a performance enhancing substance. This has also been confirmed in previous hearings of the Irish Sport Anti-Doping Disciplinary Panel and from evidence given to the Panel in those hearings. In particular, the Panel had regard to the previous decisions of the Panel in "In the matter of The Motor Cycling Union of Ireland and Gary Gibson" and "In the matter of The Motor Cycling Union of Ireland and Seamus O'Mahony" and to the evidence given by Dr Braithwaite in the Gibson hearing and adopted in the O'Mahony hearing. Dr Braitwaite is a Consultant Toxicologist and Registered Clinical Scientist with numerous clinical and academic appointments during his career and is the author and co-author of several publications in the field of analytical, clinical and forensic toxicology. Dr Braithwaite gave evidence (which was accepted by the Panel in each of those decisions) to the effect that cannabis was not sport performance enhancing. In short, the Panel was satisfied that the athlete had established the criteria in Article 10.3.1 which would entitle the Panel to eliminate or reduce

the period of ineligibility.

18. In determining whether it should reduce the period of ineligibility the Panel had to consider the athlete's degree of fault. The Panel gave this very careful consideration. It was, in particular, concerned to consider the impact of Motor Sport Ireland's submission to the effect that the use of the specified substance in question posed a dangerous risk not only to himself, but to other competitors and spectators at this sport. Mr IS-1535 himself had indicated that there had been no adverse effects on him in terms of his driving and indeed there was no evidence to contradict this. We considered this to be a difficult issue and in coming to our conclusion we were very much guided by the judgement of Mr Michael Collins, Senior Counsel, in an appeal case "In the matter of Mr Thomas Lawlor" which considered this very issue. That case involved an athlete engaged in the sport of motor cycling who had been tested positive for carboxy-THC. In the course of submissions on behalf of Mr Lawlor he sought to argue that since his own judgement had not been inhibited the penalty imposed by the original panel should be reduced. The appeal panel considered the issue of "the extent to which the consumption of such a drug could inhibit his judgement as he participated in a sport which exposed spectators and other participants to risk of injury." We quote from the judgement;

"The Irish Anti-Doping Rules, and the WADA Code on which they are based, are concerned with the potential dangers of doping in sport. In order to combat the problem, the imposed a regime of strict liability based on the risk

posed to sporting events by the types of drugs they list as prohibited. They do not require individual scientific analyses of degrees of impairment of athletes in individual cases. As well as being extremely burdensome on National Disciplinary Authorities, such would risk undermining the aim of the code to eradicate doping in sport. While the actual concentration of a drug may be taken into account in determining the proportionality of a penalty, evidence as to the degree of impairment of an athlete is not relevant to the Panel, or the Disciplinary Panel on appeal.” (our underlining).

In another passage of the judgement Mr Collins says;

“It seems to us that the issue of the dangerous nature of the sport (and therefore the necessity to ensure that participants are at not at anything less than their full fitness and alertness) is only relevant insofar as it may play a role in assessing the participant’s degree of fault.”

19. Clearly the focus of the Rules in relation to a degree of fault are on whether or not the use of the drug was intended to enhance sporting performance or alternatively to mask the use of a performance enhancing substance. This appears to be the key mischief at which the Rules are targeted.
20. Of course the Panel must have regard to the basic principles upon which the Rules are based and which have been referred to many times by Disciplinary Panels. The introduction to the Rules states as follows;

“Doping is fundamentally contrary to the spirit of sport....

The spirit of sport is the intrinsic value of sport. The spirit of sport is a celebration of the human spirit, body and mind and is characterised, amongst other values, by ethics, fair play, honesty, health and respect for and compliance with, the spirit and letter of rules and laws. Anti-doping programmes seek to preserve the spirit of sport.”

21. It is each athlete’s personal duty and responsibility to ensure that he/she does not permit prohibited substances to enter his/her body and in that regard Mr IS-1535 must take responsibility for his actions which he admitted at an early stage.
22. The Panel also had regard to previous decisions involving the use of this specified substance to ensure a level of consistency in relation to the decisions of these panels. Of course each case turns on its own facts.
23. In this case the Panel was particularly troubled by the very high level of the specified substance in question. Having reviewed the reported decisions we could find no similar concentration which was hugely in excess of the decision limit. The Panel considered that the actual high concentration of the drug found in this case was a relevant factor in determining the appropriate penalty which is in excess of previous penalties for the use of this particular substance in somewhat similar circumstances.
24. Having considered all matters the Panel came to the unanimous conclusion

that the athlete should be subject to a period of ineligibility of 9 months.

25. The Panel had regard to the provisions of Article 10.7.2 of the Rules and the timely admission made by the athlete in this case. The Panel takes the view that such admissions are to be encouraged as they confirm an acknowledgement by the athlete of his wrongdoing and avoid unnecessary expense and delay in the determination of such issues. The Panel therefore rules that the sanction imposed should commence on the date of the violation in question namely [...] 2012.
26. The Panel would like to place on record its thanks for the work of the secretary Ms Nicola Carroll BL for all her help to the Panel in terms of both the preparation and presentation of the hearing.

DATE: 29 May 2012

SIGNED: Adrian Colton
Mick Molloy
Damian McDonald.