

THE IRISH SPORTS ANTI-DOPING DISCIPLINARY PANEL

**IN THE MATTER OF THE IRISH AMATEUR
WEIGHTLIFTING ASSOCIATION
AND Athlete IS-1537**

**RULING OF THE IRISH SPORTS
ANTI-DOPING DISCIPLINARY PANEL**

1. **Background to the case**

Mr. IS-1537 is [...] years of age and is an amateur sportsman who previously played soccer until his career ended through a cruciate ligament injury. Since then he has become involved in weightlifting and gymnastics through a school of fitness known as [...].

On the [...] 2012 a competition under the auspices of the Irish Amateur Weightlifting Association (“Weightlifting Ireland” or “the Association”) known as the [...] Championships was held. [...] . Mr. IS-1537 and 2 friends from [...] entered the competition some time prior to the date of the competition but none of them were members of Weightlifting Ireland. They joined the Association on the day of the competition and paid their membership fees. This was Mr. IS-1537's first weightlifting competition.

The competition involved competitors at various levels from beginners to more advanced competitors. All competitors were amateur.

Following his participation in the competition, Mr. IS-1537 was selected at random as one of 4 people to be tested for the presence of any prohibited substances in their bodies. A urine sample was taken from him in the presence of 2 chaperones at the doping control station.

As appears from the doping control session report prepared by the lead doping control officer, Mr. Declan Byrne, it appears that during the period when he was in the presence of the chaperones, Mr. IS-1537 told one of them, Mr. Stuart McKenzie Smith that he, Mr. IS-1537, had taken some “hash” at a party in the previous 2 weeks. However, Mr. IS-1537 did not mention this on the declaration of medications or supplements taken over the previous 14 days on the doping control form.

The samples were dispatched to the testing laboratory in Germany¹ on the [...] 2012. The laboratory noted that there was some damage to the TNT packaging in which the samples had been sent, that the cap of the B sample bottle was damaged but that the A sample bottle was intact. The laboratory stated that there was no evidence of leakage from the B bottle.

The analytical report from the laboratory in relation to the A sample found “*the presence of carboxy-THC at a concentration of 21.7ng/ml, which is greater than the decision limit (DL) of 18ng/ml. The combined standard uncertainty estimated by the Laboratory at the Threshold 15ng/ml is 0.9ng/ml. This constitutes an Adverse Analytical Finding (AAF).*” The report pointed out that “*detection of carboxy-THC is consistent with the administration of the prohibited substance tetrahydrocannabinol (THC)*” commonly known as cannabis.

The Irish Sports Council carried out a review of the AAF on the 22nd November 2012 as required under Article 7.2 of the Irish Anti-Doping Rules (2009 version) (“the Rules”) and certified that the review conducted by it did not reveal a valid and applicable therapeutic use exemption or departure from the International Standard for Testing or the International Standard for Laboratories in force at the time of Testing or analysis that caused the AAF. On the 23rd November 2012, the Irish Sports Council wrote to Mr. IS-1537 notifying him of the alleged violation of the Rules and advising him as to the relevant procedure including his entitlement to request that the B sample be analysed. On the same date, the Irish Sports Council notified Weightlifting Ireland and the Irish Sport Anti-Doping Disciplinary Panel of the alleged violation.

Mr. IS-1537 did not request that the B sample be analysed and at all stages accepted that he had, albeit unintentionally, committed a violation of the Rules.

2. The hearing on the 9th January 2013

A Disciplinary Panel consisting of Michael M. Collins SC (Chairperson), Ms. Sarah Keane (Chief Executive Officer of Swim Ireland) and Mr. Martin Walsh (medical

¹ Deutsche Sporthochschule Köln Institut Für Biochemie.

consultant) was convened and a hearing organised for the purpose of adjudicating as to whether Mr. IS-1537 had committed a violation of the Rules and if so what consequences should be imposed.

As required under Rule 8.4.1 of the Rules, Mr. IS-1537's National Governing Body (i.e. the Association) presented the case against Mr. IS-1537. The Association was represented by its President, Mr. Harry Leech, Mr. Patsy Conboy, Drug Testing Officer for the Association and Mr. Edward Flood, Assistant Anti-Doping Officer of the Association. Dr. Una Maye, head of the anti-doping unit in the Irish Sports Council attended the hearing as an observer pursuant to Rule 8.3.7 and Ms. Nicola Carroll BL, Secretary to the Disciplinary Panel also attended. Mr. IS-1537 represented himself and gave evidence.

His evidence, which the Panel accepts, was to the effect that on the evening of the [...] 2012, 8 days before the competition, he was out socially with some friends for a drink following which a number of people in the group went back to a friend's house. Somebody produced some cannabis and Mr. IS-1537 and his friends smoked it. He had not smoked cannabis for about 3 years. He said in evidence:

“... it was a stupid thing to do. I had no thoughts of anything to do with the competition at the time or anything to do with performance. It was just a stupid decision after a few beers basically.”

He was not aware of any connection between cannabis and performance in sport other than assuming that it would have a negative effect in any sport that required any kind of concentration or coordination. It was not in dispute that cannabis is not a performance-enhancing drug in the context of weightlifting.

As pointed out by Mr. Walsh of the Disciplinary Panel, the results from the testing laboratory showed a very low level of cannabis in Mr. IS-1537's system and only marginally above the decision limit of 18ng/ml which is consistent with both a low level of use and non-regular use.

The Association, accepts that Mr. IS-1537 did not smoke the cannabis with any intention of enhancing his sports performance. No issue of using the cannabis to

mask the use of any performance-enhancing substance arises and there is no allegation or evidence to that effect.

3. **Decision**

The fact of a violation under Article 2.1 of the Rules is not in dispute in this case. Accordingly, the issue is as to the appropriate sanction to be imposed. Article 10.1 of the Rules provides:

“The period of Ineligibility imposed for a first violation of Article 2.1, Article 2.2 or Article 2.6 shall be 2 years Ineligibility, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.3 and 10.4, or the conditions for increasing the period of Ineligibility, as provided in Article 10.5, are met.”

There is no dispute but that this is Mr. IS-1537's first violation. Mr. IS-1537 relies upon Article 10.3 as applicable in the circumstances of the present case to warrant either reducing or eliminating the period of ineligibility. The Association has suggested, in light of all the circumstances, that a period of 4 to 6 weeks would be an appropriate period of ineligibility.

Article 10.3 provides as follows:

“Where a Participant can establish how a Specified Substance entered his or her body or came into his or her Possession and that such Specified Substance was not intended to enhance the Athlete’s sports performance or mask the Use of a performance enhancing substance, the period of Ineligibility found in Article 10.1 shall be replaced with, at the minimum, a reprimand and no period of Ineligibility, and at a maximum, a period of ineligibility of 2 years.

10.3.2. To justify any elimination or reduction, the Participant must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Participant’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.”

Mr. IS-1537 has approached the unfortunate circumstances facing him in a very straightforward and creditworthy way. He has fairly admitted the violation and did

not seek to avail of procedures which were open to him such as requiring that the B sample be tested. There appears to have been some damage to the cap of the B sample and while the testing laboratory stated that there was no evidence of leakage from the B bottle, they also stated in an email of the [...] 2012 that “*We of course do not know if any volume is missing.*” Thus, there was certainly the potential for a more protracted investigation and hearing had Mr. IS-1537 chosen to exploit whatever potential difficulties may (or may not) have existed in the process whereby the samples were transmitted to the testing laboratory.

The Panel has had the opportunity to assess Mr. IS-1537's credibility by hearing his oral testimony and the Panel is satisfied that Mr. IS-1537 was an honest and truthful witness. He has given evidence that he did not intend to enhance his performance in the sport by smoking the cannabis. The burden of establishing this lies upon the athlete. In David, *A Guide to the World Anti-Doping Code* (2008) the author notes in a footnote:

*“A tribunal cannot infer that there is no intention to enhance performance from the characteristics of the specified substance and the sport which the athlete who has taken the substance participates in.”*²

Thus, the mere fact that cannabis is not a performance-enhancing drug is not in itself sufficient evidence to warrant the inference that Mr. IS-1537 did not take the cannabis with an intention to enhance his performance.

Furthermore, Article 10.3.3 requires corroborating evidence of the lack of intent in addition to the athlete's word. However, in the unusual circumstances of this case, the Panel is satisfied that such corroborating evidence exists.

First, while the non-performance-enhancing nature of the substance is not in itself sufficient evidence from which one can draw an inference of a lack of intent, that is not to say that the nature of the substance is irrelevant and its lack of performance-enhancing potential reduces the evidential burden which lies on the athlete in establishing a lack of intent. In the commentary on the equivalent Article in the

² Page 173, footnote 18, citing SDT 9/04, *NZRL –v- Erihe* www.sportstribunal.org.nz.

World Anti-Doping Code (Article 10.4), the commentary points out that the distinction between Specified Substances and Prohibited Substances is that *“there is a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible non-doping explanation.”* Cannabis is a Specified rather than a Prohibited Substance. The commentary continues:

“This Article applies only in those cases where the hearing panel is comfortably satisfied by the objective circumstances of the case that the Athlete in taking or possessing a Prohibited Substance did not intend to enhance his or her sport performance. Examples of the type of objective circumstances which in combination might lead a hearing panel to be comfortably satisfied of no performance-enhancing intent would include: the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete’s open Use or disclosure of his or her Use of the Specified Substance ... generally, the greater the potential performance-enhancing benefit, the higher the burden on the Athlete to prove lack of intent to enhance sport performance.”

Thus, the non-enhancing nature of the cannabis is a factor which may be considered when taken into account with other factors.

Secondly, there is the fact that 8 days lapsed between the smoking of the cannabis and the competition. It seems unlikely that somebody would take cannabis this far in advance of the competition with intent to improve his performance unless he believed that cannabis would remain in his system to an appreciable extent for at least 8 days and would be performance-enhancing. Not only is there no evidence to this effect, but such evidence as there is, is to the contrary in that the residual amount of cannabis left in Mr. IS-1537's body was only just above the relevant threshold.

Thirdly, there is the fact that the uncontradicted evidence from the Association was that Mr. IS-1537 disclosed his use of cannabis to one of the chaperones after he had completed the test. In the Panel’s view, it is unlikely that he would have made this disclosure if he had intended his use of cannabis to be performance-enhancing.

Finally, there is the important fact that the Association, though prosecuting the case against Mr. IS-1537 as it was obliged to do, accepted without reservation that Mr. IS-1537 did not have any such intent and made that concession at least in part on

the basis of the personal knowledge of the officers of the Association of Mr. IS-1537. In circumstances where there is no dispute between the two sides about a particular proposition (i.e. that Mr. IS-1537 did not have any performance-enhancing intent), it seems to the Panel that it would be perverse for the Panel to find nonetheless that the athlete had failed to establish a lack of such intent, having regard in particular to the notorious difficulties of establishing issues of intent or lack of intent.

Accordingly, the Panel is satisfied that there is objective evidence available to it, apart from Mr. IS-1537's own word, which establishes to the Panel's comfortable satisfaction that Mr. IS-1537 did not have any intent to enhance his performance. As noted above, no issue arises as to any use of the cannabis to mask the use of any performance-enhancing substance.

The Panel is therefore satisfied that it has the discretion to impose a sanction which ranges from a reprimand to a period of ineligibility of 2 years. The commentary on the World Anti-Doping Code states that *"It is anticipated that the period of Ineligibility will be eliminated entirely in only the most exceptional cases."* However, it does seem to the Panel that the circumstances of this case are most unusual. It seems to be a rare situation that an athlete enters a competition for the very first time on the same day that he first joins the relevant sporting organisation and then finds himself selected for testing. Indeed, it occurs to the Panel to ask whether the resources of national governing bodies are best employed by selecting persons in this type of situation and at this entry level of the sport for testing. The circumstance of Mr. IS-1537's first entry into the sport and into the Association, his immediate acknowledgement of the violation, the low level of cannabis found, Mr. IS-1537's evidently sincere expression of regret not only for his mistake but for the trouble he had caused to both his Association and the sport generally are all factors which in combination satisfy the Panel that this is an appropriate case which warrants a reprimand rather than a period of ineligibility.

The fact that a violation has been found is in itself a matter of some significance. Because the Panel had formed the view set out above immediately following the hearing on the 9th January 2013, the Panel communicated the outcome to Mr.

IS-1537 and the Association on the evening in question and drew Mr. IS-1537's attention to the fact that if he were to commit a second violation, there is less flexibility in the Rules in how a second violation is treated and so the finding of a violation in itself has certain consequences of which he needs to be aware.

In these circumstances, the Panel reprimands Mr. IS-1537 but does not impose any period of ineligibility on him.

Michael M. Collins SC
Ms. Sarah Keane
Mr. Martin Walsh

11th April 2013