

CAS 2007/A/1364 WADA v/FAW and James

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr David W. **Rivkin**, Attorney-at-law in New York, United States of America

Arbitrators: Mr Peter **Leaver** QC, Barrister in London, United Kingdom

The Hon. Michael **Beloff** QC, Barrister in London, United Kingdom

in the arbitration between

WORLD ANTI-DOPING AGENCY (“WADA”), Montreal, Quebec, Canada

Represented by Dr. François Kaiser, Attorney-at-law in Lausanne, Switzerland

- the Appellant -

and

FOOTBALL ASSOCIATION OF WALES (“FAW”), Cardiff, United Kingdom

Represented by Mr Michael Cully, Solicitor in Cardiff, United Kingdom

- the First Respondent -

CERI JAMES, United Kingdom

- the Second Respondent -

* * * * *

1. PARTIES

- 1.1 The Appellant World Anti-Doping Agency (hereinafter referred to as “WADA” or “Appellant”), is an independent international anti-doping agency, whose aim is to promote, coordinate, and monitor, at the international level, the fight against doping in sports in all its forms.
- 1.2 The First Respondent, Football Association of Wales (hereinafter referred to as “FAW”), a member of International Federation of Association Football (hereinafter “FIFA”), administers football in Wales and runs six international teams.
- 1.3 The Second Respondent, Mr. Ceri James, is a citizen of the United Kingdom who was a football player with the English team Welshpool Town Football Club (hereinafter “WTFC”) before he was suspended for a doping violation. WTFC is affiliated with the FAW, the governing body for football in Wales.

2. BACKGROUND FACTS

- 2.1 On March 24, 2007, Mr. James was selected for an in-competition urine test on the occasion of the Welsh Premier Football League match between Haverfordwest County and WTFC. The urine sample was collected in conformity with the applicable regulations by UK Sport, the National Anti-Doping Organization for the United Kingdom, and FIFA Doping Control Regulations. The sample was sent to the Drug Control Centre of King’s College (London), a laboratory accredited by WADA.
- 2.2 With a letter of 13 April 2007, UK Sport notified the FAW that the Drug Control Centre had found the “A” urine sample collected from Mr. James (sample No. A1071966) positive for

Benzoyllecgonine, which is classified as a stimulant on the WADA Prohibited List.

- 2.3 With a letter of 17 April 2007, the FAW notified Mr. James that his urine sample was found positive for Benzoyllecgonine, and that he had the right to have the “B” sample analysed. The FAW also informed Mr. James that it would convene a Review Panel to decide whether a doping offence has been committed and whether an interim suspension should be put in place until the matter was concluded.
- 2.4 With a letter of 19 April 2007, Mr. James notified Mr. Paul Evans, the Head of Discipline and Welfare at the FAW, that he “[could] not argue with the result of the sample.” Mr. James followed up with a letter on 20 April 2007, stating that he “will not be needing the B Sample.”
- 2.5 At the FAW Review Panel meeting on 20 April 2007, the panel concluded that there was prima facie evidence that a doping offence has been committed. Furthermore, the panel decided that an interim suspension was appropriate. With a letter of 24 April 2007, Mr. James was notified of the Review Panel’s decision and told that he must not participate in any football activity until all disciplinary proceedings had been completed.
- 2.6 On 22 May 2007, an Appeals Panel of the FAW found that the presence of a prohibited substance in Mr. James’s body was clear and unchallenged, but took note of the good character evidence submitted by Mr. James and the fact that this was Mr. James’s first offence. The Appeals Panel noted that the FAW Regulation 11.2.1 specifies a minimum suspension of 6 months and a fine for a first offence.
- 2.7 As a result, the Appeals Panel decided to suspend Mr. James from all participation in football for 6 months and 10 days, from 21 April 2007 until 31 October 2007. Mr. James was ordered to pay a fine of £250.00, suspended for two years from 24 March 2007 and payable only if

Mr. James breached the FAW Doping Control Regulations during this period. In addition, Mr. James was ordered to pay the cost of the hearing in the amount of £300.00.

3. CAS PROCEEDINGS

- 3.1 On 27 August 2007, WADA filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter “CAS”) against the decision of the FAW Appeals Panel (hereinafter the “Appealed Decision”). The appeal was made according to Article 61.6 of the FIFA Statutes, pursuant to which: “[WADA] is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or League.” Pursuant to Article 1.8(a) of the Rules of the Football Association of Wales Limited (hereinafter “FAW Rules”), the Members of FAW must comply fully with the statutes, regulations, directives and decisions of FIFA at all times and to ensure that these are also respected by its members.
- 3.2 On 28 August 2007, copies of the Statement of Appeal were notified by the CAS to Mr. James and the FAW. On 29 August 2007, a copy of the Statement of Appeal was also notified by the CAS to FIFA.
- 3.3 On 30 August 2007, FAW filed an Application for a provisional ruling under Rule 37 of the Code for Sports-related Arbitration (hereinafter “Code”), contending that WADA’s Statement of Appeal was filed outside the time limit provided by the FIFA Statutes. WADA submitted a reply letter on 5 September 2007, and FAW submitted its sur-reply on 6 September 2007. With a 7 September 2007 letter, CAS informed the parties that the Deputy President of the Appeals Arbitration Division submitted the FAW’s Application to the arbitration panel, upon its appointment. With a 2 October 2007 letter, FAW formally withdrew its Application for a ruling on this basis.

- 3.4 On 10 September 2007, the Appellant filed its Appeal Brief.
- 3.5 On 28 September 2007, CAS issued a notice that the CAS Arbitral Panel for the present dispute (hereinafter the “Panel”) was constituted as follows: Mr. David W. Rivkin as President, Mr. Peter Leaver as arbitrator designated by the Appellant, and the Hon. Michael Beloff as arbitrator designated jointly by the Respondents.
- 3.6 FAW and Mr. James filed their Answers on 3 October 2007 and 9 October 2007, respectively.
- 3.7 The parties agreed that no hearing was required.

4. SUMMARY OF THE PARTIES’ POSITIONS

WADA

- 4.1 WADA argues that the FIFA Statutes and Regulations are applicable to the present case. WADA points out that pursuant to Article 1.1 of the FAW Rules, these Rules must be read and construed in conjunction with FIFA Statutes and Regulations, and in case of a conflict, the FIFA rules shall prevail. Furthermore, pursuant to Article 1.8(a) of the FAW Rules, the Members of FAW must comply fully with FIFA Statutes and Regulations and ensure that these are also respected by their members.
- 4.2 WADA points out that according to Article 61.6 of the FIFA Statutes, “[WADA] is entitled to appeal to CAS against any internally final and binding doping-related decisions passed by FIFA, the Confederations, Members or League.”
- 4.3 WADA argues that its appeal was timely pursuant to Article 61.1 of the FIFA Statutes, which states that: “Appeal against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21

days of notification of the decision in question.” WADA points out that pursuant to Article 60.2 of the FIFA Statutes, “*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*” Under Swiss law, deadlines fixed per days start to run from the day following receipt of a decision. WADA submits that since FIFA Statutes do not provide to the contrary, the deadlines must be computed pursuant to this general Swiss law principle. Moreover, WADA points out that the CAS has applied this principle in its prior cases. As a result, WADA contends that its Statement of Appeal, filed on 27 August 2007, was lodged within the statutory time limit.

- 4.4 As to the substance of its Appeal, WADA points out that since cocaine is a prohibited substance, and its metabolite, Benzoyllecgonine, was detected in Mr. James’s “A” Sample, a violation of Article II.1 of the FIFA Doping Control Regulations has been established.
- 4.5 WADA argues that pursuant to Article 65.1(a) of the FIFA Disciplinary Code, Mr. James must incur a two-year suspension for his doping offence. An athlete can ask for a reduction of the suspension period to half the sanction otherwise applicable if he bears “no significant fault or negligence.” WADA argues that Article 65.2, which allows for a reduction, is not applicable in the present dispute, because it applies only in cases where the circumstances are “truly exceptional.” Mr. James’s regrets, hard work for his club, or intent not to take drugs in the future do not justify a reduction of the suspension period.

FAW

- 4.6 FAW concedes that the Appealed Decision was in error due to its failure to apply the sanctions prescribed by Article 65 of the FIFA Disciplinary Code. FAW accepts that its Doping Control Regulations, which prescribed a 6-month suspension for Mr. James’s offence, were inconsistent

with the FIFA Disciplinary Code, which prevails over FAW Regulations. FAW notes that its new Anti-Doping Regulations, effective 1 August 2007, incorporate the FIFA sanctions pursuant to Article 65 of the FIFA Disciplinary Code.

- 4.7 FAW points out that it withdrew its Application for a provisional ruling on 2 October 2007.
- 4.8 FAW does not express an opinion on whether Mr. James's suspension period should be reduced pursuant to Article 65.2 of the FIFA Disciplinary Code, which allows such reduction when the athlete bears no significant fault or negligence.

Mr. James

- 4.9 Mr. James adopts the submissions of FAW in its Application for a provisional ruling, and asks the CAS to rule as to whether WADA's Statement of Appeal was timely. Mr. James does not make any additional submissions in that regard.
- 4.10 Mr. James states, by way of explanation and mitigation, that he has never taken drugs before, and that on the occasion at issue, he was acting "under extreme peer pressure in an unfamiliar environment." Mr. James includes with his Answer a letter from the Chairman of WTFC, who testifies to Mr. James's good character and asks for a lenient sentence. Mr. James notes that the drug he took was not a performance-enhancing drug. He further underscores the importance of football in his life and expresses his intention never to take drugs again.
- 4.11 Taking into account the foregoing, Mr. James asks the CAS to find that a 12-month suspension is a "proper, fair and proportionate punishment," and that the circumstances need not be "truly exceptional" to warrant such reduction of the suspension period. In the alternative, he argues

that taking into account all the facts, the circumstances of his case were exceptional enough to warrant the reduction.

5. JURISDICTION AND APPLICABLE LAW

- 5.1 The jurisdiction of the CAS in the present matter is not disputed and derives from Article 61.6 of the FIFA Statutes and Article R47 of the Code. Pursuant to Article 61.6, WADA can appeal to doping-related decisions to the CAS (see above at 3.1). Moreover, pursuant to Article R47 of the Code: *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.”*
- 5.2 According to Article R57, *“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.”*
- 5.3 As to the applicable law, in accordance with Article R58 of the Code, since the Appealed Decision was issued by the FAW, the Panel must decide the dispute applying primarily the FAW rules and regulations. In this respect, the Panel notes that pursuant to Article 1.1 of the FAW Rules, such rules must be read and construed in conjunction with the FIFA Statutes and Regulations, and in the case of conflict, the FIFA Rules must prevail (see above at 3.1).

6. ADMISSIBILITY

- 6.1 As FAW previously argued in its Application for a provisional ruling (subsequently withdrawn), Mr. James submits that WADA's appeal was lodged outside the 21-day deadline provided by Article 61.1 of the FIFA Statutes.
- 6.2 Article 61 of the FIFA Statutes does not contain a provision as to how to compute the time limit. However, Article 60.2 provides that CAS shall "*primarily apply the various regulations of FIFA and, additionally, Swiss law*" (see above at 4.3). Since the FIFA Statutes are silent on the computation of the time limit, this Panel therefore concludes that Swiss law applies to the time limit calculation.
- 6.3 The Panel notes that under Swiss law, deadlines fixed per days start to run from the day following the receipt of a decision, with the day of receipt not included. This method of computing deadlines has been applied by the CAS in its precedents (see, for example, *WADA v. Assis & FPF*, CAS 2006/A/1153, Nr. 41). Moreover, according to Swiss law, if the last day of a time period is a Sunday or another holiday, then the last day is extended to the following working day. Article R32 of the Code is consistent with the Swiss law on the matter of computing of deadlines.
- 6.4 The Appealed Decision was notified to WADA on 6 August 2007, and WADA filed its Statement of Appeal on 27 August 2007. The Panel concludes that the appeal was timely because, first, it was filed within the 21 days time limit calculated from August 7th and, second, August 26th was a Sunday.

7. DISCUSSION

Burden and Standard of Proof

- 7.1 As a preliminary issue, this Panel has to find what burden and standard of proof have to be applied on doping-related issues. It has to be noted that, pursuant to Article 9.1 of the FAW Rules, the burden of proof is with the FAW in any hearing before a discipline panel. As to the standard of proof, a doping offence has to be proven beyond a reasonable doubt.
- 7.2 Once the FAW has discharged its burden, the athlete accused of an anti-doping rule violation is subject to “strict liability.” This means that the presence in the athlete’s body or bodily specimen of a prohibited substance, regardless of the athlete’s intent, fault, negligence, or knowledge, is sufficient to establish an anti-doping rule violation and thus the athlete’s presumptive guilt (see Article 2.2 of the FAW Rules and Article II.1.1 of the FIFA Doping Control Regulations).

Evidence of Doping

- 7.3 The analysis of Mr. James’s “A” sample showed evidence of Benzoylcegonine, a cocaine metabolite. Cocaine is a stimulant included in the list of prohibited substances. Mr. James recognized that he “tried some drug” and admitted the result of the sample. With a letter of 20 April 2007, Mr. James confirmed that he did not request the analysis of a “B” sample.
- 7.4 The Panel, therefore, adopts the conclusions of the prior tribunal that Mr. James has committed a doping violation. In accordance with the standard of proof set forth by the FAW Rules, the Panel concludes, bearing in mind the seriousness of the allegation, that Mr. James’s anti-doping rule violation is proven beyond a reasonable doubt, not least because of Mr. James’s admissions.

Sanction

- 7.5 Under Article 11.2.1 of the FAW Rules in force when the Appealed Decision was made, the sanction for the first infringement of the doping control regulations is, at a minimum, a 6-month suspension from all matches at every level, and a fine. However, under the FIFA Disciplinary Code, Mr. James must be sanctioned under Article 65.1(a) for the presence of a prohibited substance or its metabolites or markers. Under that provision, an athlete must incur a two-year suspension for his first offence. Pursuant to Article 1.1 of the FAW Rules, in the case of conflict between FIFA Rules and FAW Rules, FIFA Rules prevail (see above at 4.1).
- 7.6 In its Answer, the FAW accepted that its Appeal Panel should have deployed the sanctions prescribed by FIFA and that, in failing to do so, it imposed too short a suspension on Mr. James (see above at 4.6). Furthermore, Mr. James does not dispute the applicability of the two-year suspension to his offence in his Answer. Therefore, the Panel concludes that Mr. James's sanction had to be imposed pursuant to Article 65.1(a) of the FIFA Disciplinary Code.
- 7.7 Article 65.2 of the FIFA Disciplinary Code allows for a reduction of the applicable sanction in half if the athlete can show that he bears "no significant fault or negligence." Furthermore, if the athlete can show that he bears no fault or negligence at all, the applicable sanction "becomes irrelevant." (see Article 65.3 of the FIFA Disciplinary Code).
- 7.8 In the present case, Mr. James admittedly ingested cocaine during a night of partying in Liverpool with his friends, knowing that he was taking "some drugs." Therefore, the Panel concludes that Mr. James acted with fault and negligence in regard to the anti-doping rule violation.

- 7.9 However, the question remains whether Mr. James's fault or negligence is "significant," pursuant to Article 65.3 of the FIFA Disciplinary Code. The FIFA Disciplinary Code does not define "significant fault or negligence," but FIFA has accepted the World Anti-Doping Code (hereinafter "WADC"), and the language of Article 65.3 of the FIFA Disciplinary Code is substantially similar to that of Article 10.5.2 of the WADC. The official comments on the WADC can be viewed as laying down an initial guideline as to how "significant fault or negligence" should be interpreted. Although these comments are not binding upon the Panel, they form a body of information which can be taken into account when interpreting the rules and regulations in the WADC.
- 7.10 The official commentary to Article 10.5 of the WADC emphasizes that the Article is applicable in "truly exceptional" cases. For example, the athlete could be found to bear no significant fault or negligence, and thus have his suspension halved, if the positive test was a result of a mislabelled vitamin, sabotage by an associate, or administration of the prohibited substance by the athlete's physician or trainer without disclosure to the athlete.
- 7.11 The circumstances of the present case are very different from those contemplated in the above examples. Mr. James knew that he was taking drugs, and any peer pressure he may have felt does not make his case "truly exceptional" so as to reduce his responsibility. The Panel cannot accept that Mr. James's apparent inability to resist peer pressure, or his ignorance as to the effect of drugs, is a circumstance mitigating Mr. James's fault or negligence significantly or, indeed, at all. If it were to do so, this Panel would create a loophole enabling athletes who have been found guilty of a doping offence to obtain an unwarranted reduction of the sanction provided for by the applicable anti-doping regulations.

- 7.12 The Panel observes that the good character evidence submitted by Mr. James, which the Panel accepts, cannot mitigate his culpability so as to reduce his sanction. Whether an athlete has committed an anti-doping offence in the past, for example, is relevant only for determining the applicable range of sanctions, not to reduce the sanction given for a first offence. (*See Knauss v. FIS*, CAS 2005/A/847, Nr. 7.5.2). While Mr. James's intent not to commit any violations in the future is commendable, it cannot affect the sanction for the offence already committed.
- 7.13 As the sanction cannot be reduced (see above at 7.7-7.12), the Panel finds and holds that the Appealed Decision must be varied and that, pursuant to the FIFA Disciplinary Code, Mr. James's anti-doping rule violation must be sanctioned with a full two-year suspension.

8. COSTS

- 8.1 The Panel notes that under Article R65 of the Code, concerning international disciplinary cases ruled in appeal, the present proceedings are free. Accordingly, the fees and costs of the arbitrators together with the costs of the CAS are borne by the CAS, with the exception of the minimum Court Office fee of 500 Swiss Francs paid by the Appellant, which in any event is kept by the CAS.
- 8.2 Pursuant to Article 65.3 of the Code, the Panel must decide which party shall bear the costs of the parties or in which proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

8.3 Having taken into account the specificity of the matter, the conduct and the financial resources of the parties, the Panel is of the view that it is reasonable for each party to bear its own costs and expenses incurred in connection with this appeal arbitration procedure.

* * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces:

1. The appeal filed by the World Anti-Doping Association on 27 August 2007 is upheld, and the Appealed Decision issued by the Appeals Panel of the FAW on 22 May 2007 is varied to impose a two-year sanction.
2. Mr. Ceri James is declared ineligible for a period of two years, from 25 April 2007 to 24 April 2009.
3. The award is pronounced without costs, except for the Court Office fee of CHF 500 (five hundred Swiss Francs) already paid by the World Anti-Doping Association and to be retained by the CAS.
4. Each party shall bear its own costs.

Done in Lausanne, 21 December 2007

THE COURT OF ARBITRATION FOR SPORT

David W. Rivkin
President of the Panel

Peter Leaver QC
Arbitrator

Hon. Michael Beloff QC
Arbitrator