

SAIDS

In the matter of Reghack Muller

Disciplinary Committee	Adv J Lubbe SC Prof D Hendricks Dr R Collins
Player	Reghack Muller
Legal Representative	Mr. D Viljoen from Visagie Vos Attorneys
Prosecutor	Adv N Kock
Recorder	Ms. S Mbatha
Date of hearing	3 November 2011
Place of hearing	Johannesburg

[1] Introduction

Reghack Muller (the Player) has been charged with an anti-doping rule violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS). According to a report received from the accredited laboratory from the Free State University dated 8 September 2011 and signed by Dr PJ van der Merwe, the Player tested positive for a metabolite of cannabis. The concentration was 46ng/ml which is above the WADA DL of 18ng/ml.

[2] Pre-hearing

Although there is no specific provision in the rules to convene a pre-hearing meeting, Article 8.4.1 read with Article 8.4.11 can be interpreted to make provision for such a procedure. Mr. Viljoen on behalf of the Player raised no objection to the meeting. At the meeting Mr. Viljoen informed me that the Player admits the said violation. He also formally admitted the chain of evidence and advised that the only issue at the hearing will be that of sanction. The hearing was recorded and the admissions noted.

[3] Hearing

At the commencement of the hearing Mr. Viljoen on behalf of his client entered a plea of guilty. The minutes of the pre-hearing meeting was read into the record and Mr. Viljoen and the Player confirmed the admissions recorded at the said meeting.

[4] The Player has played 60 games as a professional player. About four or five days before he was tested, he and his girlfriend, his brother and another friend went to a well known restaurant to celebrate his 50th game for the Falcons which he was about to play on the coming weekend. At the restaurant they had a couple of drinks. People in the restaurant were smoking what is popularly referred to as a hubbly-bubbly pipe. While they were enjoying themselves, guests in the restaurant offered the pipe to them. These people were complete strangers. As it was a public place and other guests also smoked similar pipes, he did not expect that there was anything illegal in the smoking or that the pipe contained any illegal or prohibited substance. He took a couple of drags (two or three) and did not smell or taste anything unusual. His brother however remarked that he tasted something unusual. When the strangers were asked what was in the pipe they gave a vague reply indicating only that it was “a mixture of flavours”. The Player testified that he did not experience any effects from the smoking. He was tested on 9 August 2011 and the result of the test was positive for the specified substance as stated above. He informed as that he is not a user of cannabis and ascribed the positive test to the smoking of the said pipe a couple of days before the test.

[5] The Player’s evidence was corroborated by his girlfriend and brother who both testified on his behalf.

[6] Submissions

Mr. Viljoen in a well researched and presented argument submitted that the Player has established how the prohibited specified substance entered his body as envisaged by Article 10.4 of the WADA Code. (Code). His evidence was corroborated by two credible witnesses.

He further submitted, with reference to decided cases in the UK, New Zealand and the International Rugby Board, that the concentration of the substance was modest, the Player is not a regular user of cannabis, that cannabis is not a performance enhancing drug and that the substance was not used to enhance performance. He submitted that the degree of fault was negligible and that the Player has already served his time as he was already provisionally suspended for five weeks.

Mr. Kock did not really challenge the submissions by Mr. Viljoen but submitted that the Player was negligent to a degree to smoke a pipe offered by complete strangers even though it was in a public restaurant. He submitted that the time served under the provisional suspension is not an appropriate sanction and that an additional period of suspension is required.

[7] Finding

We are comfortably satisfied on the evidence that the Player has established how the said substance entered his body.

We find that there was a degree of fault, although not high, on the side of the Player to accept a pipe from complete strangers not knowing what substance(s) is in the pipe.

We disagree with the submission that the period served in terms of the provisional suspension is an adequate sanction. A further period of suspension is required.

The Player is a first offender who has fully cooperated and has shown remorse. The positive test seriously impacted on his career as a professional rugby player and he has missed an opportunity to be included in the SA Sevens team. We accept that he has suffered embarrassment and shame in his personal life and amongst his peers, teammates, family and friends.

[8] Conclusion

For the reasons set out above:

- 8.1 An anti-doping rule violation has been established;
- 8.2 the Player shall be subjected to a period of ineligibility from all sport from 27 September 2011 up to and including 10 December 2011, a period of 11 weeks in total.

J Lubbe SC

For and on behalf of the Committee

11 November 2011