

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR DAVID GEORGE

SPORTS FEDERATION: CYCLING SOUTH AFRICA

DATE: SATURDAY 1 DECEMBER 2012

PLACE OF HEARING: SAIDS OFFICES, CLAREMONT, CAPE TOWN, SOUTH AFRICA

DISCIPLINARY PANEL ("PANEL"): MR ANDREW BREETZKE (CHAIRMAN)
MR RAY BRINK
DR NASIR JAFFER(MEDICAL REPRESENTATIVE)
MR HASNODIEN ISMAIL (SPORTS ADMINISTRATOR)

CYCLING SOUTH AFRICA: WILLIAM NEWMAN

PROSECUTOR: NIC KOCK

SCRIBE: MS RAYANAH REZANT

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 2.1 OF THE SAIDS ANTI-DOPING RULES.

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code ("WADC") adopted and implemented by the World Anti-Doping Agency in 2003. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of the South African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

PROCEDURAL MATTERS

The Athlete had been given proper notice of the hearing, but had elected to waive his right to attend. Correspondence addressed to SAIDS on the 19 November 2012 from the attorney of the Athlete, E.Q.M Hunter, stated that the Athlete "waives his right to the conduct of a hearing as contemplated in terms of Article 8 of the Anti-Doping Rules currently in existence."

It is the right of the Athlete to waive his right to attend the inquiry, and the hearing therefore proceeded in his absence and on the papers presented.

SUMMARY OF EVIDENCE AND ARGUMENT

The charge against the Athlete was set out in written correspondence addressed to the Athlete on the 9 November 2012. The charge against the Athlete read as follows:

You are formally charged with an anti-doping violation in terms of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport (SAIDS).

On 29 August 2012, you provided a urine sample (2635529) during an out-of-competition test. Upon analysis the South African Doping Control Laboratory reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was the Peptide Hormone, Erythropoietin (EPO). EOP is categorised under Class S2 Peptide hormones, Growth Factors and Related Substances, on the World Anti-Doping Code 2012 Prohibited List International Standard.

Documentation presented included the Doping Control Form, Sample Analysis and Chain of Custody Form. The Athlete had admitted guilt in communicating with SAIDS, and did not contest the positive test in the written submissions presented.

FINDING ON THE CHARGE

The Panel unanimously found that the presence of the prohibited substance identified as *Peptide Hormone, Erythropoietin (EPO)* was proven. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2009 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1.1 of the Rules reads as follows:

It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the

anti-doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

The Athlete has been found guilty of a doping offence in respect of *Peptide Hormone, Erythropoietin (EPO)*. EOP is categorised under *Class S2 Peptide hormones, Growth Factors and Related Substances*, on the World Anti-Doping Code 2012 Prohibited List International Standard.

The Athlete has the right to present evidence and argument as to the possible reduction in sanction based on the SAIDS Rules. Furthermore, the Athlete was given the opportunity to present SAIDS with information relating to any third parties involved in the commission of his anti-doping violation, with a view to such co-operation leading to a reduction in sanction. The Athlete elected to present no such evidence or argument in respect of sanction.

Dr Jaffer informed the Panel that EPO is a naturally-occurring hormone, produced by the kidneys, that stimulates the production of red blood cells. This hormone can also be manufactured and injected into the skin or directly into the blood stream (intravenously). From a medical perspective EPO is used to bring patient's red blood cells into normal levels, and as such is only used for seriously ill patients. By increasing the red blood cell count, the Athlete is able to improve athletic performance, specifically in endurance events.

The use of artificial EPO as a means of increasing athletic performance has been linked with numerous drug-use scandals in professional cycling. A review of the past three years highlights this problem as the following athletes either tested positive for EPO, admitted the use thereof or were found guilty of the use of EPO: *Denis Galimzyonov, Lance Armstrong, Ivailo Gabrovski, Rasa Leleivyte (female), Steve Houanard, Pasquale Muto, Manuel Vazquez Hueso, Thonas Frei, Gabriele Bosisa, Mickael Larpe, Niklas Axelsson, Dan Staite, Roy Sentjens*. Given the extent of the use of EPO within professional cycling, it is regrettable that the Athlete chose to exercise his right to silence, as it is the opinion of the Panel that it is improbable that he was alone in the administering of EPO – the securing of the substance and the administering thereof must have required third part assistance. This fact was regarded as an aggravating factor by the minority of the panel, as envisaged in 10.6.

SAIDS argued that the sanction to be imposed be two years, and that the provisions of 10.8, 10.8.1 and 10.8.2 be applied.

In terms of Rule 10.6 the Panel is able to consider aggravating factors in

If the SAIDS Anti-Doping Disciplinary Committee or SAIDS Anti-Doping Appeal Panel establishes in an individual case involving an anti-doping rule violation other than violations under Article 2.7 (Trafficking) and 2.8 (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 Athlete or other Person can prove to the comfortable satisfaction of the hearing Committee that he did not knowingly commit the anti-doping rule violation.

The Panel considered whether the failure of the Athlete to attend the inquiry and answer to the anti-doping violation charge could be considered aggravating – this was considered given the fact that the sourcing and administration of EPO must have required assistance from third parties. The minority of the Panel held that the failure of the Athlete to attend was regarded aggravating, and as such a sanction in excess of the 2 year period should be considered. A separate minority finding has been drafted in respect of this argument.

The majority of the Panel were of the opinion that there was insufficient evidence before the panel to justify the requirement that “circumstances are present which justify the imposition of a period of ineligibility greater than the standard sanction”. The failure of the Athlete to attend does not amount to a circumstance as envisaged. The exercising of a right not to attend the inquiry, cannot as such be regarded as such a circumstance, even though in exercising the right the Panel is frustrated.

In the matter of *CAS 2012/A/2773 The International Association of Athletics Federations (IAAF) v. The Greek Athletics Federation (SEGAS) & Ms Irimi Kokkinariou* the case involved blood doping and the athlete was given a 4 year sentence based on aggravating factors – these being that she had blood doped over a protracted period and within a carefully planned doping scheme. This evidence was presented at the hearing, and as such the Panel was able to consider it. It may be that the Athlete *in casu* was involved in a similar planned

scheme – but no evidence was presented in this regard and his failure to attend cannot be construed as an acknowledgement that there was such a system in place. As such, the majority of the Panel find that there are no aggravating factors to justify a sanction in excess of two years.

SANCTION

In reviewing the evidence and argument presented, the majority decision of the Panel on the issue of sanction was as follows:

1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10.10 of the Rules, for a period of two years;
2. The period of two years will be effective as of 5 November 2012 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on the 4 November 2014;

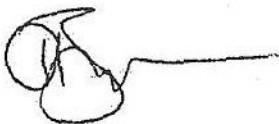
The Panel was unanimous on the issue of sanction in respect of the following:

3. In addition to the above, that the provisions of Rules 10.8, 10.8.1 and 10.8.2 be applied to the Athlete;
 - 3.1. all other competitive results obtained by the Athlete from the date of collection of the positive sample, being 29 August 2012, be disqualified with all of the resulting consequences including forfeiture of any medals, points and prizes (including prize money);
 - 3.2. As a condition of regaining eligibility, the Athlete must first repay all prize money forfeited as per 3.1 above;

3.3. Unless the rules of the International Federation provide that forfeited prize money shall be reallocated to other athletes, it shall be allocated first to reimburse the collection expenses of SAIDS as the anti-doping agency that performed the necessary steps to collect the prize money back, then to reimburse the expenses of the *Anti-Doping Organization* that conducted results management in the case, with the balance, if any, allocated in accordance with the International Federation's rules.

The Panel wishes to specifically record its disappointment that the Athlete elected not to attend the hearing. As stated, it is evident that the nature of this anti-doping violation related to an intentional act of administering a prohibited substance, which administering in all probability required the assistance of third parties. The fact that the Athlete chose not to attend the inquiry and respond directly to the charges, has resulted in the SAIDS and Cycling South Africa being prohibited from investigating the serious issue of this anti-doping violation within South Africa.

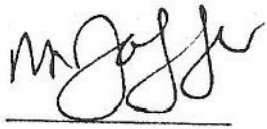
This done and signed at Cape Town this 2 day of December 2012



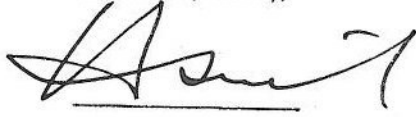
Andrew Breetzke



Ray Brink (minority)



Nasir Jaffer (minority)



Hasnodien Ismael (majority)