

**NATIONAL ANTI-DOPING PANEL
IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ANTI-DOPING RULES OF THE
BRITISH WEIGHTLIFTING ASSOCIATION**

Before:

David Casement QC (Chairperson)

Dr Kitrina Douglas

Mr Colin Murdock

Between:

UK Anti-Doping

Anti-Doping Organisation

-and-

Mr. Vasyl Kruk

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the final decision of the Anti-Doping Tribunal convened under the Anti-Doping Rules of the British Weightlifting Association ("the BWA"). The BWA has adopted the 2009 UK Anti-Doping Rules ("the Rules").
2. Article 2.1 and 2.2 of the Rules provides that the following shall constitute an Anti-Doping Rule Violation:

“The presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4.”

“Use or Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method, unless the Athlete establishes that the Use or Attempted Use is consistent with a TUE granted in accordance with Article 4”

3. The Athlete was charged with breaches of both Article 2.1 and 2.2 of the Rules by a Notice of Charge Letter dated 9 April 2014. The Athlete had been tested on 24 February 2014 during an Out-of-Competition test and the sample tested positive for three Prohibited Substances namely the metabolites of drostanolone, nandrolone and metandienone all listed in S1. A (Anabolic Androgenic Steroids) of the 2014 Prohibited List.
4. By email dated 22 May 2014 the Athlete admitted the charges made in the Notice of Charge Letter in response to an email from UKAD. The email also confirmed that the Athlete did not require an analysis of the B sample.
5. A most important feature of this case is that the Athlete has previously been found guilty of an Anti-Doping Rule Violation (“the First ADRV”) for which the Athlete received a two year period of Ineligibility beginning on 26 May 2012 and ending at midnight on 25 May 2014. The circumstances surrounding the First ADRV will be dealt with below.

Procedural History

6. A telephone directions hearing took place on 10 June 2014 which was attended by the Athlete and Mr Torrance on behalf of UKAD. Directions were given for the filing of a full response to the Notice of Charge stating all relevant facts for reducing or eliminating the sanction as well as other directions to case manage the proceedings up to a final hearing.

7. Pursuant to the directions the Athlete served a response as follows:

“As per our latest conference call I am confirming that I wont attend for hearing. I can confirm that I did take steroids in period between Feb 2014 and May 2014 during my ban period.

The genuine reason for it was not to cheat on competition but only bring fitness back.”

In this response the Athlete was alluding to his lack of fitness arising out of the period of Ineligibility imposed on the Athlete as a result of the First ADRV. It contains a frank admission that he was taking steroids during the period of Ineligibility. He went onto state that a further eight year period of Ineligibility “will throw me completely out of sport” and he asks that any Ineligibility should end in 2014 so that he can return to competition. He promised not to commit an ADRV again.

8. The final hearing took place on 5 August 2014. The Athlete did not attend the final hearing and informed the secretariat of the National Anti-Doping Panel that he had nothing further to add to his written response.
9. At the final hearing UKAD was represented by Ms Stacey Shevill as advocate and Mr Tony Jackson.

The First ADRV

10. The Athlete provided a sample to UKAD pursuant to an Out-of-Competition test in May 2012. The sample was found to contain stanozolol, testosterone and metabolites of those substances. Stanozolol and testosterone were at the time and remain Prohibited Substances.
11. UKAD issued a Notice of Charge letter to the Athlete whereupon he immediately accepted that he was guilty of the First ADRV. UKAD have addressed this tribunal in terms that whilst it would have pressed for a four year period of Ineligibility in

respect of the First ADRV because of the multiple and sustained use of Prohibited Substances the effect of Rule 10.6 of the Rules was that the maximum period that could be imposed was two years because of the prompt admission of guilt.

12. UKAD have stated that in respect of the present ADRV with which this Tribunal is concerned the circumstances of the First ADRV should be taken into account so as to justify the imposition of a lifetime period of Ineligibility and not the eight year minimum that is required by the Rules.

The Rules in respect of Sanction

13. The Rules at 10.7 identify how Sanction is to be calculated in respect of Multiple Anti-Doping Rule Violations. Rule 10.7.1 sets out a table showing the position in respect of a Second ADRV depending upon the Sanction for the First ADRV.
14. The position of the Athlete in the present case is that the First ADRV was a Standard Sanction. It is conceded by UKAD that the present case will require a Standard Sanction. The relevant position in respect of the table is therefore as follows:

<u>Second offence</u>	<u>RS</u>	<u>FFMT</u>	<u>NSF</u>	<u>St</u>	<u>AS</u>	<u>TRA</u>
<u>First Offence</u>						
<u>RS</u>	<u>1-4</u>	<u>2-4</u>	<u>2-4</u>	<u>4-6</u>	<u>8-10</u>	<u>10-life</u>
<u>FFMT</u>	<u>1-4</u>	<u>4-8</u>	<u>4-8</u>	<u>6-8</u>	<u>10-life</u>	<u>life</u>
<u>NSF</u>	<u>1-4</u>	<u>4-8</u>	<u>4-8</u>	<u>6-8</u>	<u>10-life</u>	<u>life</u>
<u>St</u>	<u>2-4</u>	<u>6-8</u>	<u>6-8</u>	<u>8-life</u>	<u>life</u>	<u>life</u>
<u>AS</u>	<u>4-5</u>	<u>10-life</u>	<u>10-life</u>	<u>life</u>	<u>life</u>	<u>life</u>
<u>TRA</u>	<u>8-life</u>	<u>life</u>	<u>life</u>	<u>life</u>	<u>life</u>	<u>life</u>

It can be seen from the table that the range of Sanctions is therefore between 8 years and life. What the actual Sanction should be within that range will depend upon a consideration of all of the circumstances of the case.

The Second ADRV

15. UKAD has addressed the Tribunal at length on the aggravating factors which it maintains justify the imposition of a lifetime period of Ineligibility:
 - (1) In respect of this ADRV the Athlete used three Prohibited Substances as opposed to using two in the First ADRV;
 - (2) in respect of both the First and Second ADRV the use of Prohibited Substances was deliberate and with full knowledge that he was breaching the rules, in short it was a flagrant breach;
 - (3) the use was intended to improve the performance of the Athlete in respect of both the First and Second ADRV. Although the Second ADRV was said by the Athlete not to be with the intention of cheating but merely to build up his fitness before getting involved in competition again in May 2014, we agree with UKAD that this is a distinction without a difference. The intention was to improve performance;
 - (4) the Athlete failed to disclose the substances at the time of the test and therefore tried to conceal them from UKAD.

16. UKAD took the Tribunal to a number of previous cases which illustrated how other Tribunals have approached the task of determining Sanction in the case of a Second ADRV. We have found those cases cited to be inconclusive on the approach to be taken which is entirely understandable given the different circumstances and the broad discretion given under the Rules.

17. The starting point is that a Second ADRV is a very serious matter and this is reflected in the fact that the starting point for the Sanction is eight years compared with the two year period in respect of the First ADRV. We consider that the matters identified by UKAD and which are set out above might have justified a slightly higher period of Ineligibility above the eight year minimum period.

Word Anti-Doping Code 2015

18. The World Anti-Doping Code 2015 comes into effect on 1 January 2015. The 2015 Code does not have application to the present case because not only does the ADRV occur before the effective date but also the final decision regarding Sanction has also taken place prior to that date. Likewise strictly the principle of *lex mitior* does not apply because the date for the commission of the ADRV and the date of the final decision regarding Sanction do not straddle that effective date.
19. It is accepted by UKAD that if this case were determined by the Tribunal after 1 January 2015 the maximum period of Ineligibility which could be imposed would be eight years: Article 10.7. There is no range of Sanctions available in respect of a second ADRV. That creates a situation whereby in respect of the same ADRV and similar circumstances one Athlete would receive a period of 8 years (if the decision is made after 1 January 2015) where as it might be a lifetime period (if the decision is made before 1 January 2015).
20. However the 2015 Code at Article 25.3 is of note. The provision is headed "Application to Decisions Rendered Prior to the 2015 Code"

"With respect to cases where a final decision finding an anti-doping rule violation has been rendered prior to the Effective Date, but the Athlete or other Person is still serving the period of Ineligibility as of the Effective Date, the Athlete or other Person may apply to the Anti-Doping Organisation which had results management responsibility for the anti-doping rule violation to consider a reduction in the period of Ineligibility in light of the 2015 Code. Such application must be made before the period of Ineligibility has expired. The decision rendered by the Anti-Doping Organization may be appealed pursuant to Article 13.2. The 2015 Code shall have no application to any anti-doping rule violation case where a final decision finding an anti-doping rule violation has been rendered and the period of Ineligibility has expired."

21. Therefore if the period of Ineligibility imposed by a Tribunal continues beyond the effective date, as it would in the present case, and the length of the period of Ineligibility is in excess of eight years, as UKAD have pressed for, the Athlete would be entitled to request UKAD to reduce it under Article 25.3. UKAD has submitted that it would oppose such an application. An appeal could then be brought under Article 25.3 although it is unclear from the Code to whom that appeal would be although UKAD have submitted it would likely be an appeal back to this Tribunal or another constituted by the National Anti-Doping Panel.
22. It is submitted by UKAD that it is a matter for the Tribunal to decide whether to take into account the changes brought about by the 2015 Code. We have come to the unanimous view that it is appropriate in the circumstances of this case to bear in mind the imminent change to the Code and that the appropriate period of Ineligibility for the ADRV is eight years to commence from 25 May 2014 when the Athlete was the subject of a Provisional Suspension.
23. We wish to make it clear that this is a case which turns on its own facts. It is not intended to set the benchmark for other cases involving a second anti-doping Rule violation. Neither is it intended to provide guidance on the application of Article 25.3 of the 2015 Code in respect of the review or appeals thereunder. There may well be circumstances when the case is so serious or certain factors exist whereby it would not be appropriate to reduce a substantially higher period of Ineligibility merely because of the changes to the Code.

Summary

24. The Tribunal finds that the Athlete has committed an Anti-Doping Rule Violation contrary to Articles 2.1 and 2.2 of the Rules.
25. The period of Ineligibility imposed upon the Athlete shall be a period of 8 years commencing from 9am (BST) 25 May 2014 and ending at 9am (BST) 25 May 2022.

Costs

26. In accordance with the discretion of the Tribunal under the 2010 Rules of the National Anti-Doping Panel Rule 11.2 we order that each party shall bear their own costs of these proceedings.

Rights of Appeal

27. In accordance with Article 13.4 of the Rules, the following parties shall have the right to appeal against this decision to the National Anti-Doping Appeal Tribunal: the Athlete, UKAD, BWA, the International Federation and WADA.
28. Any party that wishes to exercise such rights must file a Notice of Appeal with the National Anti-Doping Panel Secretariat no later than 21 days from the date of receipt of this decision, in accordance with article 13.7 of the Rules.

Signed by the Chairman on behalf of the Tribunal:



David Casement QC (Chairman)
Dr Kitrina Douglas (Specialist Member)
Colin Murdock (Specialist Member)

Dated 11 August 2014



Sport Resolutions (UK)
1 Salisbury Square
London EC4Y 8AE

T: +44 (0)20 7036 1966
F: +44 (0)20 7936 2602

Email: resolve@sportresolutions.co.uk
Website: www.sportresolutions.co.uk

Sport Resolutions (UK) is the trading name of The Sports Dispute Resolution Panel Limited