SPORT RESOLUTIONS (UK)

SPECIALIST INDEPENDENT DISPUTE SERVICE

SR/0000120111

**APPEAL TRIBUNAL**

**NATIONAL ANTI-DOPING PANEL**

*Before*:
Tim Kerr QC (Chairman)
Dr Neil Townshend (Specialist Member)
Dr Terry Crystal (Specialist Member)

B E T W E E N:

Mr Sebastian Kolasa

*Appellant*

- and -

UK Anti-Doping Limited

*Respondent*

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF THE RUGBY FOOTBALL LEAGUE AGAINST MR SEBASTIAN KOLASA**

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**DECISION OF THE NATIONAL ANTI-DOPING PANEL APPEAL TRIBUNAL**

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**Date of hearing: 1 May 2014**

**Date of decision: 22 May 2014**

1. **INTRODUCTION**

1.1 This is the decision of the National Anti-Doping Panel Appeal Tribunal ("the Appeal Tribunal") convened under Article 5.3 of the 2010 Procedural Rules of the National Anti-Doping Panel ("the Procedural Rules") and Article 13.4 of the Anti-Doping Rules of the Rugby Football League ("the RFL Anti-Doping Rules") to determine an appeal brought by Mr Sebastian Kolasa, a rugby league player.

1.2 Capitalised words below refer to those words as used in the RFL Anti-Doping Rules and/or the Procedural Rules, and as there defined. Not all terms used below are capitalised, only those of particular relevance in this case.

1.3 The appeal is against a two year period of ineligibility imposed on Mr Kolasa by the National Anti-Doping Tribunal ("the Tribunal") in a decision dated 24 February 2014, imposed in respect of a charge against Mr Kolasa of evading sample collection on 31 August 2013, contrary to Article 2.3 of the RFL Anti-Doping Rules.

1.4 The Tribunal found that the anti-doping rule violation contrary to Article 2.3 had been established, and imposed a period of ineligibility of two years from 1 September 2013. Mr Kolasa does not appeal against the finding that he committed the violation, and he agrees that any period of ineligibility should commence on 1 September 2013.

1.5 However, he says the Tribunal was wrong not to accept that he could rely on Article 10.5.4 of the RFL Anti-Doping Rules, which provides (so far as material here) for the two year period to be reduced by up to half where a person "voluntarily admits the commission of an Anti-Doping Rule Violation before having received .... a Notice of Charge ... and that admission is the only reliable evidence of the violation at the time of the admission ...".

1.6 At the hearing on 1 May 2013, the respondent ("UK Anti-Doping") was represented by Mr Graham Arthur, its Director of Legal, assisted by Ms Stacey Shevill, solicitor. Mr Kolasa attended and was represented by Mr Barnaby Hone of counsel. The Appeal Tribunal was grateful to all those attending for their helpful and constructive contributions.

1.7 This document constitutes the reasoned decision of the Tribunal, reached after due consideration of the decision of the Tribunal, the written evidence and the submissions made by the parties attending at the hearing and in writing.

## 2. **THE FACTS**

2.1 Mr Kolasa is a young rugby league player, born on 27 March 1995. He is a United Kingdom citizen, of Polish origin. He is now 19 years old. In 2013 he was attending Barnet & Southgate College and had obtained a BTech level 2 sports diploma and a level 2 NVQ in fitness instructing. He is aware of anti-doping rules and of his obligation to avoid taking prohibited substances. He has shown good skill and promise in playing rugby league.

2.2 On 8 August 2013, when he was 18, Mr Kolasa signed a contract to play for the London Skolars ("the Skolars"). The Skolars play in the Championship 1 league. Mr Kolasa accepts that he is subject to the rules of the Rugby Football League ("RFL"), including the RFL Anti-Doping Rules. He signed his contract with the Skolars in the middle of the playing season, and therefore missed the talk on anti-doping rules usually given to the players at the start of the season.

2.3 On Friday 16 August 2013, just over a week after signing his contract, he attended a party in London at which cannabis was smoked. He did not smoke any himself but later became concerned that he might have inhaled second hand cannabis smoke, and that this could cause him to test positive if he were subjected to doping control.

2.4 On Wednesday 21 August 2013, the Skolars were selected for out of competition testing at their training ground at the White Hart Lane Community Sports Centre in north London. The lead Doping Control Officer ("DCO") was Mr William Sutherland, who was accompanied by another DCO, Mr Kevin Taylor, and two chaperones, Messrs Mark Clark and Russell Grant. They arrived at 8pm and met the Skolars' head coach, Mr Joe Mbu, and the second team coach, Mr Dave Roberts.

2.5 Mr Kolasa was with the squad at the training session. He did not know that cannabis is prohibited in competition only and that as this was an out of competition test, the sample analysis would not include screening for cannabis. He became aware that testers were present and that he could be selected for testing. He was concerned that he could test positive for cannabis inhaled second hand at the party five days earlier. He did not know that this would not be an anti- doping rule violation and that any cannabis would not be detected anyway.

2.6 Mr Sutherland and Mr Taylor were with Mr Mbu in the office at the training ground to arrange the draw for random selection of players to be tested. The players were told to wait in the changing room upstairs and not go to the toilet or shower. The main door to the dressing room was watched by Mr Roberts and Mr Clark. Mr Grant was at the top of the stairs. Mr Taylor and Mr Sutherland became aware that Mr Mbu was pointing out a player apparently about to leave on a moped.

2.7 It is not clear from the written statements of Mr Taylor and Mr Sutherland, made within a day or two of the incident, whether Mr Mbu identified Mr Kolasa at that stage, but it is clear from their statements that he identified Mr Kolasa that evening. There is a note in Mr Mbu's hand of the names of 15 players in the squad, of which Mr "Colasa" was one.

Mr Mbu wrote next to his name: "[p]lay for U19s/he thought he did not need to stay as his [sic] not part of the main squad".

2.8 This was a reference to Mr Kolasa having previously played in the Skolars' under 19 squad before he signed his contract to play for the main squad, on 8 August 2013. Mr Mbu wrote this note on the evening of 21 August 2013, in the presence of Mr Sutherland and Mr Taylor. Mr Taylor's written statement says that he approached the man with the moped and asked him if he was with the Skolars, at which the man shook his head.

2.9 According to Mr Taylor's account, Mr Clark said to him "Are you with the team" and he again shook his head. However, an email the next day from Mr Stephen McGuinn, a testing officer for UK Anti-Doping who was not present, states that Mr Taylor and "the club team manager" asked the player whether he was part of the squad "but he replied saying 'he was not'".

2.10 The two contemporary written statements do not mention that the player mounting the moped was wearing a crash helmet, perhaps because it was thought too obvious to need stating. The Tribunal found that Mr Kolasa was "wearing a full face motorcycle helmet" (at paragraph 3.2 of its decision). This is correct and not surprising; it would have been illegal not to have worn one when riding away.

2.11 Mr Kolasa said in a statement given later, after he was charged: "I put my bike helmet on as I was walking down the stairs …" to the fire exit. The DCOs' belief that the player in question had left by that route was therefore correct. The identification of the player that evening as Mr Kolasa was also correct. But the written accounts from those present that evening do not mention either that Mr Kolasa spoke any words when confronted, nor that the person on the moped was helmeted.

2.12 Mr Kolasa's later (undated) statement said nothing about having been challenged or having shaken his head. In his later interview (of which more below), he denied having been asked if he was Sebastian Kolasa and, indeed, it was not the evidence of Mr Sutherland or Mr Taylor that he had been confronted with his actual name when by his moped. Mr Kolasa added in his later interview that if they did ask him anything, he did not hear because of the helmet obstructing his hearing (see page 7 of 15 in the interview transcript).

2.13 Mr Taylor then shouted to Mr Grant to check the dressing room. He did so and must have reported back that the player was not there. The DCOs and chaperones correctly formed the belief from Mr Mbu's information, at some stage that evening, that Mr Kolasa

was the player who had fled from the dressing room via the unguarded fire escape, gone to his moped and ridden off.

2.14 Mr Sutherland's written statement appears to attribute to Mr Mbu a positive identification of the player leaving as Mr Kolasa, at the time Mr Mbu commented, saying words to the effect: "What's he doing leaving?" Mr Taylor's written statement is to similar effect. In the later interview, Mr Mbu stated (page 9 of 15 in the interview transcript) that he was informed by one of the testers and one of his coaches that someone had left and "when we had made the checklist it was Mr Kolasa that had left".

2.15 According to Mr Taylor's written account Mr Clark, one of the chaperones, then texted Mr Kolasa, presumably having obtained his mobile telephone number but, said Mr Taylor "I do not think he replied". This was not followed up in any subsequent investigations. The text message is not in evidence. It is not explained how Mr Clark obtained Mr Kolasa's mobile telephone number. Mr Kolasa's subsequent written statements say nothing about any text message. The point was not put to him in his later interview.

2.16 During the evening of Friday 23 August 2013, another DCO, Mr Alan Garside, attended at Mr Kolasa's address and was admitted. He found there a man he recognised as Mr Kolasa from a photograph provided by UK Anti-Doping. Mr Garside notified Mr Kolasa that he had been selected for testing and was required to provide a urine sample. Mr Kolasa said he was nervous because he may have inhaled second hand cannabis at a party a week before.

2.17 He provided the sample and asked that his comment be recorded, but not on the doping control form as he did not want his parents to see it. He asked for how long he could be banned if he tested positive, presumably referring to second hand cannabis smoke. There is no evidence that Mr Garside explained that cannabis is not the subject of screening in out of competition tests; nor that Mr Garside told him cannabis is not banned out of competition.

2.18 The sample later tested negative. The analysis result record was dated 30 August 2013. Mr Kolasa was then asked to attend an interview with Mr Jason Torrance and Mr Pat Myhill, both of UK Anti-Doping. Mr Mbu was present and was also asked some questions. Mr Dean Hardman attended on behalf of the RFL. The interview took place during the afternoon of 16 October 2013, and was transcribed. We have already recounted above some of the relevant parts of the interview. Mr Kolasa admitted that he was the player who had left and that he left via the fire exit from the dressing room.

2.19 In addition to those matters, Mr Myhill also questioned Mr Kolasa specifically about the latter's purpose in leaving. Mr Kolasa said (page 11 of the interview transcript) that he "panicked when I saw them because I knew I could have been affected and I could get myself into trouble for something that I didn't do …". He meant that he thought he could test positive for cannabis even though he had not smoked cannabis.

2.20 Mr Myhill pressed him further. At pages 12-13 of the interview transcript he was able to secure an admission from Mr Kolasa that his purpose was to avoid the test. The relevant passage reads as follows:

> *Could I therefore put it to you that the reason you left through the fire exit was to avoid the doping control personnel?*
>
> *Yes, I guess it was one of the mistakes that people learn from.*
>
> *Sorry, I'm not trying to make it hard for you. I'm [sic] just want to be clear about what happened. … You knew that the doping control personnel would be at the door, so you went the back way out, the fire exit, in order to avoid the test?*
>
> *Yes, I guess so, yes.*
>
> *Not guess so, you either did or you didn't?*
>
> *Yes, I did.*

2.21 After a few more exchanges, Mr Myhill said that he had all that he needed, and thanked Mr Kolasa for being so honest. At the end of the interview, Mr Hardman asked if the test results from 23 August 2013 had been returned. Mr Torrance said that they had and were negative. He went on to explain to Mr Kolasa that cannabis is banned only in competition and that the laboratory would not have screened for cannabis.

## 3. **THE PROCEEDINGS**

3.1 On 19 November 2013, Ms Shevill of UK Anti-Doping sent the papers to Mr James Segan of counsel for review, to determine whether there was case to answer. She stated in her letter that the RFL believed that the charge was justified but that Mr Kolasa could rely on Article 10.5.4 of the RFL Anti-Doping Rules because of his admission during interview.

3.2 Mr Segan reviewed the papers and responded on 25 November 2013 that there was a case to answer, since Mr Kolasa had admitted in interview to deliberately evading sample collection; it was extremely unlikely that he could establish "compelling justification" for not providing a sample; and that, while he noted the RFL's view on Article 10.5.4, that was an issue for the Tribunal and for his part he had "considerable doubts" as to whether Mr Kolasa could bring his case within that provision.

3.3 Mr Kolasa was accordingly charged by letter dated 26 November 2013 with evading sample collection, contrary to Article 2.3 of the RFL Anti-Doping Rules. Mr Kolasa responded with two written statements (not dated), one of which included the statement: "I plead guilty to the offence I am being charged with". The Tribunal was appointed and its chairman gave directions for a hearing by consent, in a procedural order dated 19 December 2013.

3.4 The hearing took place on 12 February 2014. Limited oral evidence was heard from Mr Kolasa only, but the scope of the oral evidence was narrow and there was no dispute about the principal facts, which were as set out above. Our understanding of the facts as related above is founded on the documents and was not disputed by either party.

3.5 The Tribunal decided that the anti-doping rule violation was established – indeed, it was admitted. The Tribunal rejected the contention that Mr Kolasa could rely on Article 10.5.4 of the RFL Anti-Doping Rules. The Tribunal considered (at paragraph 7.7) "whether there was, prior to Mr Kolasa's admission made in interview on 16 October, sufficient evidence to establish to their comfortable satisfaction that the Anti-Doping Rule Violation in breach of Article 2.3 had been committed including the requirement for proof of bad faith".

3.6 The Tribunal decided (at paragraph 7.7 and 7.7.1-5) that "the admission … did no more than confirm a set of facts that was already unequivocally clear based on Mr Kolasa's conduct", in that he had recently submitted to the RFL's jurisdiction; he had deliberately left avoiding the main exits when asked to stay following the start of the testing procedure; he covered his face with a motorcycle helmet to avoid being identified; he lied when challenged as to whether he was a member of the squad; and did not respond to a text sent to him when it was clear he was the missing squad member following a head count.

3.7 The Tribunal therefore imposed a period of ineligibility of two years. The Tribunal accepted (at paragraph 8.1 3)) that it could backdate the start of the period because Mr Kolasa had promptly admitted the anti-doping rule violation when confronted with it, at the interview. The Tribunal decided to start the period of ineligibility from 1 September 2013, the last date on which Mr Kolasa completed for the Skolars.

3.8 Mr Kolasa appealed by a notice of appeal dated 14 March 2014. He did not appeal against the decision that the anti-doping rule violation was established; nor against the start date of the period of ineligibility. He appealed against the decision that he was not entitled to rely on Article 10.5.4 of the RFL Anti-Doping Rules and sought a reduced period of ineligibility.

3.9 The Appeal Tribunal was then appointed. Its chairman gave directions, without objection from either party, that the appeal should be heard on 1 May 2014, and that skeleton arguments should be exchanged and filed a week beforehand. The hearing then took place on 1 May 2014. The Tribunal did not hear oral evidence.

## 4. THE TRIBUNAL'S CONCLUSIONS, WITH REASONS

4.1 A preliminary issue arose as to whether the Appeal Tribunal should conduct a *de novo* hearing, as Mr Hone contended on the basis that one was "required in order to do justice" (Article 12.4.1 of the Procedural Rules), or whether, as Mr Arthur contended, we should limit ourselves to "a consideration of whether the decision being appealed was erroneous", applying Article 12.4.2.

4.2 However, it was common ground that if we drew a different conclusion from the undisputed facts, which were the same facts as those available to the Tribunal below, it was open to us to conclude that the Tribunal's conclusion was "erroneous" without conducting a *de novo* hearing. Conversely, the only witness in any *de novo* hearing would be Mr Kolasa (none of the witnesses who made written statements being present); whose evidence would no doubt be the same as below, confirming his written statements and the admissions he made in interview.

4.3 We therefore declined to conduct a *de novo* hearing and adopted the approach provided for in Article 12.4.2 of the Procedural Rules, which is to consider whether the decision of the Tribunal was erroneous or correct. The documentary evidence before us was the same as that which was before the Tribunal. The only witness heard by the Tribunal was Mr Kolasa, who (we were told) merely confirmed his admissions recorded in the documents. We are therefore able to assess from the documentary record whether we consider the Tribunal's decision was correct or not.

4.4 As to the substance of the appeal, Mr Hone, for Mr Kolasa, contended that until he made his admissions in interview on 16 October 2013, the case against him was not unanswerable and that on the basis of the evidence available to UK Anti-Doping before the interview, he might well have been able to raise defences, such as that:

(1) he was not the person seen leaving on a moped; he might, for example, have left before the testers arrived, which would account for his absence;

(2) that the person seen leaving might have been a "ringer" impersonating Mr Kolasa (as in *UK Anti-Doping v. Danso and Offiah*, decision of the Anti-Doping Tribunal of 20 July 2012);

(3) that he had a compelling justification for leaving, and that this meant, on the true construction of the rule, that he would not be guilty of "otherwise evading Sample collection"; or

(4) that he was not guilty of that violation, or bore no fault for it, because he was not considered eligible for testing having only just joined the squad, as Mr Mbu had noted in writing that day.

4.5 Mr Arthur, for UK Anti-Doping, did not argue strongly that Article 10.5.4 of the RFL Anti-Doping Rules was necessarily excluded from application. In his oral submissions, he contended that there was no good reason to disturb the decision of the Tribunal founded on the reasons given by it in its paragraph 7 (see in particular, paragraphs 7.3-7.9), and he supported the Tribunal's decision.

4.6 However, he added that if the Appeal Tribunal took a different view, it would be open to the Appeal Tribunal to decide that given the state of the evidence before the admissions were made on 16 October 2013, this was a case to which Article 10.5.4 can be applied. This reflected UK Anti-Doping's written submissions, which included the following:

> *If Mr. Kolasa had said nothing about the circumstances associated with the Squad Test, **but simply provided a Sample (which was 'clean') and declined to comment further**, the evidence might have been sufficient for a hearing panel to draw an adverse inference against Mr. Kolasa (ADR 8.3.3 and 8.3.8 are relevant in this regard). UKAD concedes though that it might not have had enough evidence at that time to charge Mr. Kolasa with having committed and anti-**doping rule violation in connection with an apparent 'evasion'**, because that evidence might not have been sufficient for a hearing panel to be comfortably satisfied as to the commission of such a violation. The admission **'perfected' the case** against Mr. Kolasa … [emphases in original]*

4.7 We turn to our reasoning and conclusions on the substance of the appeal. The first question is as to the correct interpretation of Article 10.5.4 of the RFL Anti-Doping Rules, which is founded on the equivalent provision in the World Anti-Doping Code ("the Code"). The drafting of the two provisions is different (the drafting of the Code provision is less clear, perhaps due to translation issues) but they are intended to have the same effect.

4.8 Both provisions cover two distinct situations in which an admission is made: the first, where the anti-doping rule violation is the presence of a prohibited substance in the body

and the admission is made before sample collection in a case where an athlete is about to be tested; and the second, where the violation is something other than presence of a prohibited substance in the body, and the admission is made before notice of the alleged violation is given to the athlete.

4.9 The commentary to Article 10.5.4 of the Code states as follows:

> *This Article is intended to apply when an Athlete or other Person comes forward and admits to an anti-doping rule violation in circumstances where no Anti-Doping Organization is aware that an anti-doping rule violation might have been committed. It is not intended to apply to circumstances where the admission occurs after the Athlete or other Person believes he or she is about to be caught.*

4.10 The commentary annotating provisions of the Code "shall be used to interpret the Code"; see Article 24.2 thereof. Similarly in relation to the RFL Anti-Doping Rules, "…. These Rules shall be interpreted and applied at all times … in a manner that is consistent with the Code. The comments annotating various provisions of the Code shall be used where applicable to assist in the understanding and interpretation of these Rules" (Article 1.5.4).

4.11 The Anti-Doping Tribunal in *UK Anti-Doping v. Anderson*, at first instance, made *obiter* observations on the status of the commentary on provisions in the Code (see paragraphs 4.12-4.18 and the CAS case law there cited), and noted at paragraph 4.17 that it is "very difficult to treat as having binding normative effect statements which are mostly factual examples of hypothetical cases, given that every case is different"; but (at paragraph 4.18) saw force in the suggestion that where a case is genuinely on all fours with a factual example given in the commentary, the Tribunal would be very likely to reach the same result.

4.12 In the present case, there was some debate about whether the commentary should be considered as an aid to interpretation adverse to Mr Kolasa, on the basis that he made his admissions when he was about to be caught. In our view, the commentary has no application to the situation here and is mainly relevant to cases where an athlete makes an admission after it has become apparent to the athlete that he or she will be tested shortly, but before having been given actual notice of sample collection.

4.13 This frame of reference, in our view, explains the passage in the commentary referring to the intention that Article 10.5.4 can apply where no anti-doping organisation is "aware that an anti-doping rule violation might have been committed." We do not think those words, and the commentary as a whole, are directed to a case where, as here, the RFL and UK Anti-Doping knew very well from 22 August 2013 that an anti-doping rule

violation might have been committed, but wanted further and better evidence of who committed it, and in particular whether the prime suspect had the necessary *mens rea*.

4.14 Against that background, we turn to consider the meaning of Article 10.5.4 of the RFL Anti-Doping Rules. We do not need to consider its application to cases where the anti-doping rule violation admitted consists of presence in the body of a banned substance. We are aware of at least two such cases, but we regard them as qualitatively different from the present case, because such a violation is one of strict liability, where presence of the substance in the body alone completes the violation, and the accused's state of mind does not matter.

4.15 So far as we are aware, the only other case in which the application of Article 10.5.4 has been considered outside the context of presence of a prohibited substance in the body, is *UK Anti-Doping v. Danso and Offiah*, cited above. Mr Offiah was found entitled to rely on Article 10.5.4 in circumstances where his admission led to clarification that he was guilty of tampering which requires fraudulent intent, because he admitted not only mis-identifying a "ringer" but doing so fraudulently, and not merely innocently (see paragraphs 4.31-4.35 of the decision).

4.16 The facts were very different in *Danso and Offiah*; for present purposes, it shows only that Article 10.5.4 can apply where what is supplied by an admission is the *mens rea* necessary to establish the anti-doping rule violation. The violation of "otherwise evading Sample collection", like that of tampering, is an offence of specific intent, in that there must a deliberate intention to avoid being tested. That is inherent in the verb "evading". The Tribunal described this requirement as one of "bad faith", which we regard as another way of saying the same thing.

4.17 A very strict and narrow interpretation would be that Article 10.5.4 cannot apply where some "evidence of the violation", however slight, exists at the time of the admission, and that evidence is "reliable", even if taken alone it is manifestly insufficient comfortably to satisfy a tribunal of the guilt of the person making the subsequent admission. On such an interpretation, the word "reliable" would be understood to refer only to the quality of whatever evidence exists, and not to its sufficiency to support a conviction.

4.18 Neither party contended for such a narrow interpretation. If it were correct, Article 10.5.4 would have little application in practice. It would mean that a weak case which was unlikely to be charged unless the accused made an admission, would not allow the application of Article 10.5.4 where the accused's subsequent admission cured the weaknesses in the case against him. That interpretation would also undermine the policy

underlying Article 10.5.4 which, it was common ground (and we agree) is to reward candour, save resources and make charging decisions easier, by encouraging pre-charge admissions, particularly in borderline cases.

4.19 At the other end of spectrum, the requirement of "reliable evidence" might be considered to refer to the sufficiency of the evidence to support a conviction, rather than only to the quality of the evidence. On that interpretation, a case founded on circumstantial evidence, even if quite strong, could still permit the application of Article 10.5.4 where the accused's subsequent pre-charge admission makes the difference between a case where conviction is merely likely to one where conviction is inevitable.

4.20 We are inclined to adopt the second interpretation rather than the first. The interpretation of Article 10.5.4 should not be too strict; a measure of generosity towards the person making the admission is appropriate. Such an approach promotes the policy mentioned above. It seems to us that where a person is confronted with a circumstantial case for conviction, even if strong, and is then interviewed before charge, Article 10.5.4 ought to apply if the contents of the interview are such that they may well decisively affect the chances of a conviction.

4.21 In short, we think the appropriate interpretation of Article 10.5.4 is that the requirement that the admission must be "the only reliable evidence of the violation at the time of the admission", should be read, in their context and in light of the policy underlying the Article, as bearing the meaning that the admission must be "the evidence which ensures the outcome will be conviction not acquittal." We recognise that this is a purposive interpretation not a literal one, and that it is relatively broad and generous to the athlete who makes the admission; but we think that is appropriate for the reasons just given.

4.22 We return to the facts of the present case and consider the application of Article 10.5.4, applying the interpretation set out above. We have to consider the position on the state of the evidence available to UK Anti-Doping before the admissions were made on 16 October 2013. We adopt the hypothesis that Mr Kolasa could have been not merely silent, as posited by Mr Arthur, but could have vehemently denied the facts and the charge or sought to advance credible defences to explain the facts. We ask ourselves whether if that had happened, UK Anti-Doping nevertheless had an overwhelming case before the admissions were made and therefore did not need to interview him.

4.23 We start with the identification evidence. It seems to us that it was very clear to UK Anti-Doping on 22 August 2013 that it would be able to prove that the person who left the building was Mr Kolasa, even though he was wearing a crash helmet when seen. There

was written evidence in Mr Mbu's own hand to that effect, corroborated by admissible hearsay evidence of Mr Taylor and Mr Sutherland that Mr Mbu had verbally identified Mr Kolasa as the person leaving.

4.24 Next, we discount the possibility that Mr Kolasa could have been a "ringer" or could have left earlier, before the testers arrived. That explanation was already convincingly excluded by 22 August 2013. Mr Mbu had confirmed that Mr Kolasa was a member of the squad, and had written down the names of all the squad members, including Mr Kolasa's. There was no scope for Mr Mbu later to disavow that evidence; the membership of the squad was a matter of record at the RFL, as was subsequently confirmed before any admissions were made.

4.25 We conclude that the evidence against Mr Kolasa that he had committed the *actus reus* of "otherwise evading Sample collection", i.e. the act of avoiding a test by leaving the scene, was overwhelming before any admission was made, and that Mr Kolasa's later admission in interview that he was the person who left was superfluous and unnecessary to prove the *actus reus* of the violation.

4.26 However, the violation of "otherwise evading Sample collection" also requires *mens rea*, as we have already observed. There must be a deliberate intent to avoid being tested. What evidence of such a deliberate intent could UK Anti-Doping have deployed before Mr Kolasa's admissions in interview? The answer is that a tribunal would be invited to be comfortably satisfied he had the requisite intent based on the circumstantial evidence of the circumstances in which he left the scene.

4.27 More particularly, the case as to intent would be founded on the haste with which he left the premises, the unusual route he took, the presumed concern that he might test positive for cannabis as revealed by his remarks to Mr Garside two days later, his presumed ignorance of the fact that cannabis in his body would not be an anti-doping rule violation and would not be detected, his concern to conceal his identity with a crash helmet, his failure to respond when challenged before riding away and his failure to respond to a text message sent to his mobile telephone.

4.28 We have reached the clear conclusion that this was not a case that was so overwhelming that his subsequent admission to Mr Myers was superfluous and unnecessary. In our view, the case on intent just described had possible weaknesses in it and might not have been charged or, if charged, might well not have succeeded. Potential defences were available to Mr Kolasa, as Mr Hone correctly pointed out. They were not necessarily particularly strong defences that were bound to succeed, but they could have succeeded.

He is a man of good character with no criminal record and therefore had a reasonable chance of being believed.

4.29 Mr Kolasa could have defended against the charge along the following lines. He could have said, first, that he did not understand that he was required to undergo testing. This assertion, had he made it, would have found support in Mr Mbu's contemporaneous note written against Mr Kolasa's name. Secondly, he could have said that his haste to leave the building was nothing to do with a desire to avoid being tested. He could have said that he did not know he would even be in the draw for a test; that he was late for an appointment; that he needed to visit a sick relative in hospital; that he was concerned about his girlfriend, and so forth.

4.30 Next, he could have argued that he had no discernible motive for avoiding being tested because the only relevant substance that could be in his body was cannabis from second hand inhalation of smoke, as he informed Mr Garside two days later. But, he could have said, he had nothing to fear from cannabis in his body, because it is only banned in competition and would not even be detected on analysis of an out of competition sample. This assertion of his would no doubt be attacked in cross-examination because of what he said to Mr Garside, but he could have tried to explain that away.

4.31 As for the crash helmet, he could have said that, far from donning it to avoid being recognised, he did so to comply with the legal requirement, on pain of a criminal penalty, to wear one when riding a moped. As to his failure to respond when challenged: there were inconsistencies in the contemporary evidence available to UK Anti-Doping; it was unlikely to be proved that anyone actually challenged Mr Kolasa by name. And he would be able to say (as he later did in interview) that he was prevented by the crash helmet from hearing what was said.

4.32 As for the alleged text message, he could plausibly deny that he received it, if indeed it was ever sent which would be impossible to prove on the mere assertion of Mr Taylor unsupported by any further evidence that it was sent, and if so to what telephone number and how that number was obtained.

4.33 For those reasons, we are not surprised to find that in this case, UK Anti-Doping was concerned to interview Mr Kolasa and in particular to obtain his assurances that he did not deny fleeing the scene and that he did so in order to avoid being tested. It was only when he gave those assurances that possible defences along the lines suggested above became wholly untenable. This was not a case where the interview was a superfluous

waste of time. It transformed a reasonably strong circumstantial case into an unanswerable one.

4.34 That is sufficient to enable Mr Kolasa to rely on the application of Article 10.5.4, and in consequence we have discretion to reduce the otherwise mandatory two year period of ineligibility by up to half. We therefore turn to consider the exercise of that discretion.

4.35 Mr Kolasa is a very young man who has had a successful start to his sporting career. He is a man of good character. He was aware that he was trying to avoid being tested. He acted foolishly on the spur of the moment and accepts that he must face a ban of at least one year as a result. He did not commit any anti-doping rule violation involving ingestion of a banned substance, even if there was cannabis in his body at the time.

4.36 He pleaded guilty to the charge and cooperated fully once he was confronted in interview with the facts known to UK Anti-Doping. His admissions saved UK Anti-Doping from proving the case against him from circumstantial evidence, a case that might have failed for reasons already given. His youth and inexperience are of some relevance. Nevertheless, this is not a case in which we feel able to reduce his ban by the maximum amount of one year. In all the circumstances, we have come to the conclusion that the appropriate period of ineligibility is 15 months.

## 5. SUMMARY: THE TRIBUNAL'S DECISION

5.1 Accordingly, for the reasons given above, the Tribunal allows the appeal to the following extent:

(1) The Appeal Tribunal accepts the contention of the appellant that he is entitled to rely on Article 10.5.4 of the RFL Anti-Doping Rules.

(2) The period of ineligibility imposed by the Tribunal is replaced by a period of ineligibility of 15 months from 1 September 2013.

## 6. RIGHTS OF APPEAL

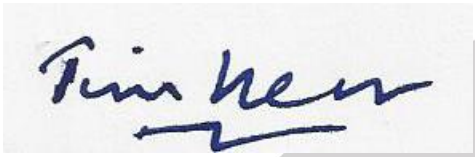
6.1 In accordance with Article 13.6 of the RFL Anti-Doping Rules and Article 13.1 of the Procedural Rules, the Rugby League International Federation and the World Anti-Doping Agency may appeal this decision to the Court of Arbitration for Sport, subject to the time limits in Article 13.7 of the RFL Anti-Doping Rules.

**Tim Kerr QC**

**Dr Neil Townshend**

**Dr Terry Crystal**

**Signed on behalf of the Tribunal:**



**Chairman**

**Dated: 22 May 2014**

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