

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF ALLEGED ANTI-DOPING RULE VIOLATIONS BY
SHANE JOUBERT (ZIMBABWE) BEFORE A BOARD JUDICIAL COMMITTEE
APPOINTED PURSUANT TO REGULATION 21.20 AND 21.21 CONSISTING
OF

Judicial Committee:

Graeme Mew (Canada – Chair)
Dr. George Ruijsch van Dugteren (South Africa)
Gregor Nicholson (Scotland)

Appearances

Ben Rutherford, for the International Rugby Board

Conducted on a written record. Shane Joubert did not participate although duly notified of his right to do so.

REASONS FOR DECISION OF THE BOARD JUDICIAL COMMITTEE

1. In 2013, two members of the Zimbabwe Rugby Union Under 20 Team, Simbarashe Michael Chirara (“Chirara”) and Dylan Coetzee (“Coetzee”), were found to have committed anti-doping rule violations due to their Use of nandrolone, a Prohibited Substance. Each of them received two year¹ bans from participating in rugby in any capacity.
2. The players admitted the use of products known as “Deca” or “DecaDurabolin” respectively. Each contained nandrolone. Coetzee used a powder that he mixed with water twice a day for about two weeks. Chirara had three injections. Both Players identified Shane Joubert (the “Respondent”) as their supplier. In addition, Chirara states that he received the first of his injections from Mr. Joubert.
3. As a result of the evidence provided by these two players, the International Rugby Board (“IRB”) has asserted that in or about early 2012, the Respondent acquired a quantity or quantities of nandrolone (also known by the brand name Deca or DecaDurabolin) which he purchased, possessed, sold, distributed and/or administered to members of the Zimbabwe Rugby Union Under 20

¹ Six months of Mr. Chirara’s period of Ineligibility was suspended pursuant to IRB Regulation 21.22.6

Team and, in particular, to Chirara and/or Coetzee and/or consumed himself.

4. Specifically, it is alleged that the Respondent may have committed one or more of the following Anti-Doping Rule Violations: Trafficking/Attempted Trafficking (Regulation 21.2.7); Administration/Attempted Administration (Regulation 21.2.8); Use/Attempted Use (Regulation 21.2.2) and Possession (Regulation 21.2.6).
5. By letter dated 5 December 2012 sent to the Respondent care of Zimbabwe Rugby Union (the "Union"), the IRB notified the Respondent of the allegations made against him. He was also informed that he was provisionally suspended from rugby activities, pursuant to Regulation 21.16.3(e), pending consideration of the charges made against him. He was informed of various options open to him under Regulation 21 regarding the disposition of the charges against him. He was provided with 21 days in which to inform the IRB how he wished to proceed.
6. Ms Colleen de Jong of the Union served the documents on the Respondent by email on 13 December 2012. The Respondent confirmed his receipt of the documents orally on the telephone to Ms de Jong on or about 20 December 2012 and again on 14 February 2013. During this time and in subsequent months the Respondent proved difficult to contact and was often unresponsive, something he later apologised for.
7. On 14 August 2013 the IRB wrote to the Respondent (care of the Union) notifying him of his right to a hearing. That notice stated that if he did not respond to the notification of hearing he would be deemed:
 - a. To have waived his entitlement to a hearing to determine whether or not he had committed an Anti-Doping Rule Violation(s);
 - b. To have accepted that he had committed an the Anti-Doping Rule Violation(s) specified in the letter of 5 December 2012; and
 - c. To have seven days in which to make submissions in writing in writing in relation to the sanctions to be applied and that if no such submissions were made, he may be subject to the prescribed sanction under Regulation 21.22, subject to submissions by the IRB in relation to the imposition of an aggravated sanction in accordance with Regulation 21.22.9.
8. On 8 September 2013 the Respondent confirmed in writing that he had received the relevant documentation from the IRB concerning his alleged Anti-Doping Rule Violation(s). His communication included an explanation for what had happened but did not expressly request or waive his right to a hearing.
9. This Board Judicial Committee ("BJC") was appointed to deal with the allegations made against Mr. Joubert. On 14 January 2014, we directed that unless either the IRB or the Respondent specifically requested an oral hearing, the BJC would consider this matter based upon the written record compiled by the IRB and the parties' written submissions.

10. Written submissions were provided by the IRB on 29 January 2014. No written submissions were made by the Respondent despite him being afforded the opportunity to do so.
11. The BJC subsequently convened by telephone conference to deliberate. Our unanimous decision follows.

Facts

12. A fuller account of the cases of [Simbarashe Michael Chirara](#) and [Dylan Coetzee](#) can be found on the IRB's Keep Rugby Clean website: www.irbkeeprugbyclean.com. The record of proceedings in those two cases also formed part of the record of the present case.

Simbarashe Michael Chirara

13. Chirara joined the Zimbabwe Under 20 squad following trials in December 2011. The Respondent was also a member of the squad at the time, although he was subsequently dropped. In one of two statements which he made, Chirara said:

On one of the days of the third week of February 2012, exact date I do not recall, at the Newlands Gym in Harare Zimbabwe, after asking Mr Shane Joubert why he was getting such good gains in the gym, he told me that he was taking some suspension substance and that he could get me some of it as well.

The same day, Mr Joubert told me that if I raised \$130 he would go get them from his supplier who was in Borrowdale, Harare Zimbabwe and he also told me to keep this a secret. This supplier, he said, was in the business of frequently going to South Africa to get the drugs. At this time he had not told me the name of the substance he would bring me.

The following week, which was the end of February, I managed to raise the money and I gave it to Mr Joubert at the Newlands Gym and he said he will get back to me in a few days.

In a few days time, at the Newlands Gym again, he came back with 3 sealed Deca Durabolin packets and a 20 Proviron tablets. Each packet had a syringe and a Nandrolone Decanoate 100 vial. He told me to inject a vial after every week and to take the Proviron tablets after with the dosage for that being a tablet a day.

Mr Joubert then injected me on the buttock in the Gym toilet to show me how to do it and told me to do the same for the rest. The Proviron tablets were to be taken orally.

All the communication I had with Mr Joubert was at the Newlands Gym in Harare, Zimbabwe. Although he sent me a message on facebook 5 days after I was notified of the failed drug test on the 15th of June 2012.

Dylan Coetzee

14. Coetzee had known the Respondent since primary school. They were regular training partners. The Respondent had returned from two and a half months in South Africa and was noticeably bigger. He told Coetzee that he had some "nuclear pre-workout stuff" – a white powder in a bag bearing the brand name "Deca" - and encouraged him to try it. Coetzee and the Respondent shared the substance in conjunction with training sessions at the gym. Coetzee shared in the cost of the Deca (US\$30). Only one bag was purchased. He used three scoops two times a day for approximately two weeks towards the end of March. According to Coetzee, on at least one occasion "[w]e took it by dissolving it in water and drinking it".

15. In a statement provided to the IRB, Coetzee confirmed:

"The name of the substance is Deca and yes Shane provided it for me... I asked Shane to get me a substance to help me in the gym to recover quickly. He got the substance from South Africa from a pharmacy... Yes I paid Mr Joubert..."

The Respondent

16. The Respondent, as a member of the Zimbabwe Under 20 Team for the IRB Junior World Rugby Trophy 2011, had signed the Team Member Consent Form for that Tournament on an undisclosed date in 2011. The Team Member Consent Form was attached to the Participation Agreement in the Terms of Participation (Section 14 of the Terms of Participation). The Player thereby specifically and formally acknowledged the application of the IRB Anti-Doping Regulations and the IRB's jurisdiction over him in relation to anti-doping (in addition to the IRB's overall jurisdiction over all participants in the Game with respect to anti-doping in any event).

17. On 8 September 2013 the Respondent provided a signed statement to the IRB admitting obtaining and using "steroids" and supplying steroids to Coetzee and Chirara.

18. Specifically, the Respondent admitted that he had sought out a "better and quicker option... to achieve the results [he] was looking for [being] to take a steroid. [He] had an idea that it was illegal but [his contact] assured [him] that if [he] took it at that time it would be 'out of [his] system' and therefore undetectable by the time of the World Cup [Junior World Rugby Trophy]... [He] went ahead with his advice and achieved massive results in both size and strength."

19. The Respondent claims, however, that "Mr Chirara and Mr Coetzee then approached [him] and asked how they could obtain the same results... [he] then contacted [his contact] for the second and last time, received the steroids from him and gave them to the above mentioned persons as they had requested... [He] passed on all the information that [his contact] had given [him]."

20. As a participant in the IRB Junior World Rugby Trophy 2011 the Respondent had attended an in-person Outreach education session conducted by an IRB Anti-Doping Officer. He had also received a copy of the IRB Anti-Doping

Handbook and completed the “Real Winner” online education programme. Further, as a member of the training squad for 2012 the Respondent again received a copy of the IRB Anti-Doping Handbook in advance of the Tournament. The Respondent’s statement points to his anti-doping knowledge where he admits "I had an idea that it was illegal but [my contact] assured me that if I took it at that time it would be 'out of my system' and therefore undetectable by the time of the World Cup."

Applicable Regulations

21. Nandrolone is classified as an anabolic androgenic steroid under Section 1a Exogenous Anabolic Androgenic Steroids on the WADA Prohibited List of Prohibited Substances and Methods 2012 (the “WADA Prohibited List”). It is prohibited both In Competition and Out of Competition. The WADA Prohibited List is incorporated into IRB Regulation 21 as Schedule 2.
22. In the absence of the mitigating factors set out in Regulation 21.22, none of which apply in this case, the period of Ineligibility for a first anti-doping rule violation involving the Use or Possession of a Prohibited Substance is two years (Regulation 21.22.1). For violations of Regulation 21.2.7 (Trafficking or Attempted Trafficking) or Regulation 21.2.8 (Administration or Attempted Administration of a Prohibited Substance or Prohibited Method), the period of Ineligibility is a minimum of four years up to lifetime (Regulation 21.22.2(b)).
23. The IRB has the burden of establishing that an anti-doping rule violation has occurred to the comfortable satisfaction of the hearing panel pursuant to IRB Regulation 21.3.1.

Discussion

24. We are comfortably satisfied that the IRB had met its burden of establishing each of the charges laid against the Respondent.
25. On the charge under Regulation 21.2.7 (Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method), it is clear that the Respondent supplied both Chirara and Coetzee. While the Respondent’s unsworn statement suggests that he was approached by Chirara and Coetzee, there is sworn evidence, which we accept, from Chirara to the contrary.
26. It should be further noted that the uncontradicted evidence of Chirara is that the Respondent supplied him with Proviron tablets as well as Deca Durabolin. Proviron is also known as mesterolone, which is an anabolic steroid different from nandrolone.
27. With respect to the charge under Regulation 21.2.8 (Administration or Attempted administration... or assisting, encouraging, aiding, abetting, covering up or any other type of complicity involving an anti-doping rule violation or any Attempted anti-doping rule violation), the uncontradicted evidence of Chirara is that the Respondent injected him with Deca Durabolin. There is also evidence

from Coetzee, Chirara and the Respondent that the Respondent discussed the length of time necessary for the steroids to pass through the players' systems.

28. On the charge of the Respondent's own Use of a Prohibited Substance (Regulation 21.2.2), the Respondent admitted taking a steroid, as a result of which he "achieved massive results in both size and strength". Coetzee's signed statement refers to him and the Respondent taking about 500g of Deca together ("We took it by dissolving it in water and drinking it").
29. The charge of Possession (Regulation 21.2.6) is supported by the Respondent's admissions that he "received the steroids from [his contact]" and the evidence of Chirara and Coetzee that they received nandrolone and (in the case of Chirara) Proviron (mesterolone) from the Respondent.
30. The IRB's submissions addressed the possibility that the BJC might not find the Trafficking or Administration charges proven, in which case there would be aggravating circumstances applicable to the Use and Possession charges which might lead the BJC to impose a period of Ineligibility of more than two years (Aggravating Circumstances are addressed in Regulation 22.22.9 – they do not apply to Trafficking or Administration violations).
31. Given our findings on the Trafficking and Administration charges, the minimum applicable sanction is four years' Ineligibility (which is the maximum sanction that would be available for Use or Possession were there to be Aggravating Circumstances).
32. While Regulation 21.22.2(b) provides for a range from a minimum of four years up to lifetime Ineligibility, no guidance is provided by Regulation 21 or the corresponding provisions of the *World Anti-Doping Code (2009)* on the factors to be considered when determining what sanction is appropriate within that range. The commentary to Article 10.3.2 of the Code (which corresponds with Regulation 21.22.2(b) simply notes "Those who are involved in doping Athletes or covering up doping should be subject to sanctions which are more severe than the Athletes who test positive".
33. Furthermore, although the considerations which inform whether there are Aggravating Circumstances under Regulation 22.22.9 or Article 10.6 of the Code² do not apply to the sanction under Regulation 21.22.2(b), the commentary to Article 10.6 of the Code does note that "the sanctions for these violations [including Trafficking and Administration] (from four years to lifetime

² The Comment to Article 10.6 of the Code reads, in part:

"Examples of aggravating circumstances which may justify the imposition of a period of Ineligibility greater than the standard sanction are: the Athlete or other Person committed the anti-doping rule violation as part of a doping plan or scheme, either individually or involving a conspiracy or common enterprise to commit anti-doping rule violations; the Athlete or other Person Used or Possessed multiple Prohibited Substances or Prohibited Methods or Used or Possessed a Prohibited Substance or Prohibited Method on multiple occasions; a normal individual would be likely to enjoy the performance-enhancing effects of the anti-doping rule violation(s) beyond the otherwise applicable period of Ineligibility; the Athlete or Person engaged in deceptive or obstructing conduct to avoid the detection or adjudication of an anti-doping rule violation".

Ineligibility) already build in sufficient discretion to allow consideration of any aggravating circumstance.”

34. While the evidence does not go as far as establishing that the Respondent's offences formed part of a doping plan or scheme, his seemingly uninhibited willingness to encourage and fuel the anti-doping rule violations of Chirara and Coetzee contributed to the blighting of the rugby careers and the reputations of two young and promising rugby athletes who were seemingly more naïve and less sophisticated than the Respondent (that said, it is not our intention to in any way diminish the personal responsibility of Chirara and Coetzee for their anti-doping rule violations). The Respondent's evidence that he was approached by Chirara and Coetzee (which we do not accept) and his failure to fully participate in this process also weigh against him receiving the minimum possible sanction.
35. An additional factor which weighs in favour of a more substantial sanction is the Possession of multiple Prohibited Substances – in this case nandrolone and mesterolone.
36. There is no place in the Game for people who engage in conduct like the Respondent. He knowingly cheated by his own use of steroids and facilitated the use of steroids by two of his team-mates who, as a result, received substantial bans. His activities sullied the reputation of his country's junior rugby programme. Whilst he accepted responsibility for his actions, and expressed regret at “the end of my rugby” due to being “young, naïve and under pressure to perform (which) affected my ability to make the correct decisions”, he has displayed no remorse for the consequences of his conduct on others (specifically Chirara and Coetzee), his Union and indeed the Game.

Decision

37. Taking into account all of the circumstances, and wishing in particular to send out a strong message of deterrence to anyone connected with the Game who is tempted to supply or otherwise aid and abet the commission of anti-doping rule violations by younger rugby players, we impose a period of Ineligibility of six years on the Respondent, commencing on 13 December 2012 (the date that the Union emailed the notice of provisional suspension to the Respondent) and ending on (but including) 12 December 2018.
38. The Respondent's attention is drawn to IRB Regulation 21.22.13 which provides, inter alia that:
 - “(i) No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a match and/or tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, team management, administration or promotion

of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB.

- (ii) Subject to paragraph (iii) below, no Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in any athletic contest or any activity in any sport (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory [to the Code] or any Signatory's member organisation, or in any athletic contest in any sport authorised or organised by any professional league or any international or national level event organisation.
- (iii) A Player or other Person subject to a period of Ineligibility longer than four years may, after completing four years of the period of Ineligibility, participate in local sport events in a sport other than rugby football, but only so long as the local sport event is not at a level that could otherwise qualify such Player or other Person directly or indirectly to compete in (or accumulate points toward) a national championship or International Event (as defined in the Code)."

39. The full text of Regulation 21.22.13 concerning status during Ineligibility should be consulted.

Costs

40. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr. Ho by 17:00 Dublin time on 2 May 2014 with any responding written submissions from the Respondent to be provided by no later than 17:00 Dublin time on 16 May 2014.

Review

41. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post-Hearing Review Body, including the time within which the process must be initiated.

21 April 2014

A handwritten signature in black ink, appearing to read 'Graeme Mew', with a stylized flourish at the end.

Graeme Mew, Chairman