

IRISH SPORT ANTI-DOPING DISCIPLINARY PANEL
IN THE MATTER OF ATHLETICS IRELAND AND IS-3457

DECISION

1. Mr. IS-3457 is a track and field athlete. On [...], 2014 Mr. IS-3457 was subjected to out of competition testing and provided samples of urine and blood.
2. By letter dated 17th June, 2014 the Irish Sport Anti-Doping Disciplinary Panel (“the **Panel**”) was notified by the Irish Sports Council that an alleged violation of the Irish Anti-Doping Rules (“the **Rules**”) had occurred by virtue of the presence of a prohibited substance or its metabolites or markers, namely, Erythropoietin (“**EPO**”) in the A sample of urine collected from Mr. IS-3457 .
3. Mr. IS-3457 has denied the alleged violation and called for the analysis of the B urine sample. That analysis was carried out by the same laboratory that conducted the analysis on the A sample (Deutsche Sporthochschule Köln Institut Für Biochemie), a WADA-accredited laboratory, which apparently confirmed the findings of the A sample.
4. On 19th September, 2014 Mr. IS-3457 , through his solicitors, C , sought various directions pursuant to Article 8.6.7 of the Rules. That Article provides:

“The hearing panel at the request of one of the parties to the proceedings or on its own initiative, may direct one or more parties to the proceedings to make any property, document or thing in that party's possession or under its control available for inspection by the hearing panel and/or any other party and that party shall comply with that direction.”

5. On receipt of that request for a direction the Panel by letter dated 25th September, 2014 directed:
- (a) that C provide details of the specific “*property, document or other thing*” of which inspection was sought and the reasons for such inspection by 2nd October, 2014;
 - (b) the solicitors for Athletics Ireland and the Irish Sports Council (which had indicated its intention to participate in the proceedings) respond to any request by 9th October, 2014; and
 - (c) any further response from C was to be made within seven days of receipt of any response from the solicitors for Athletics Ireland and/or the Irish Sports Council.

These time limits were subsequently extended by the Panel.

6. On 2nd October, 2014 C sought disclosure of certain information and documentation the extent of which was clarified in a letter dated 10th October, 2014 as being:
- “(a) *details of collection times for other athletes tested in the five day period before and after the date that IS-3457 gave his sample;*
 - (b) *confirmation as to the whether those other samples taken were blood and/or urine?*
 - (c) *confirmation as to whether those individuals engaged by the Irish Sports Council to take samples from IS-3457 were the same people who took the samples from other athletes in the five day period*

before and after IS-3457 was tested. Additionally we also request that your Panel direct that the Irish Sports Council make available to our client the B sample of blood and urine taken on the [...] , 2014 from IS-3457 .”

7. The reasons put forward by C for the need for direction are set forth in C's letters of 19th September and 2nd October. These reasons can be summarised as follows:

- (a) There may be an anomaly in the results of the urine samples bearing in mind the blood samples taken from Mr. IS-3457 proved negative;
- (b) The documentation furnished suggests that the blood sample was taken in advance of the urine sample whereas Mr. IS-3457 insists that the urine sample was taken first. This apparent anomaly in collection times is the basis put forward for the information sought in respect of other athletes tested (as set out above); and
- (c) Mr. IS-3457 's insistence that he is innocent of any wrongdoing.

It is understood that the B urine sample is required for DNA analysis to establish if it is Mr. IS-3457 's sample.

8. DAC Beachcroft, on behalf of the Irish Sports Council responded to Mr. IS-3457 's application. Among the points made by DAC Beachcroft are the following:

- (i) Under the Rules (8.5.2) the Cologne laboratory, being a WADA accredited laboratory, is presumed to have conducted sample analysis and custodial procedures in accordance with the applicable International Standard for Laboratories;

- (ii) Mr. IS-3457 has not alleged any departure from those International Standards;
- (iii) The Irish Sports Council have been informed by the Cologne laboratory that the B blood sample could not be frozen and was therefore not suitable for long-term storage and had been disposed of;
- (iv) The blood sample taken was not tested for EPO;
- (v) The order of the taking of the blood and urine samples is not prescribed by the Rules or the International Standards and the “*apparent anomaly*” in the collection times between the Doping Control Form and the instructions of Mr. IS-3457 do not amount to a departure from any of the International Standards.
- (vi) Mr. IS-3457 expressed satisfaction with the taking of the samples on [...] , 2014;
- (vii) There is no provision in the World Anti-Doping Code or the Rules for a third test of a sample;
- (viii) Reference is made to a decision of the Court of Arbitration for Sport dated 4th March, 2013 in which it is stated that DNA testing on a sample is complex and expensive;
- (ix) The disclosure of information in relation to other athletes tested would contravene the Data Protection Acts, 1988-2003.

9. By letter dated 8th October, 2014 O’Brien Dunne solicitors, on behalf of Athletics Ireland, stated that they did not intend replying to the request on the assumption that it would be dealt with by DAC Beachcroft.

10. On 3rd November, 2014 C informed the Panel that no useful purpose would be served by further correspondence. In particular, it is to be noted C did not challenge any of the factual assertions in DAC Beachcroft's letter.
11. The Panel notes that to date no irregularity in relation to the taking of the urine sample, other than an assertion that the urine sample was taken before the blood sample (contrary to what the documentation suggests), has been asserted on behalf of Mr. IS-3457 . Indeed, on the basis of the information available to the Panel at present, Mr. IS-3457 expressed satisfaction with the manner in which the samples were taken and attended at the analysis of the B urine sample during which he confirmed that the code numbers of the A and B urine samples and the corresponding forms were identical and that the Berlinger bottle containing the B sample was correctly closed and sealed. It has not been alleged by Mr. IS-3457 that the B sample was tampered with.
12. The alleged violation of the Rules is the alleged presence of recombinant EPO in the urine samples. Mr. IS-3457 has not identified or demonstrated how the sequence in which the blood and urine samples (and the apparent discrepancy between the sequencing according to the documentation and Mr. IS-3457), could have any impact on the analysis of those samples.
13. The Panel cannot see how the testing of other athletes within a five day period before or after the taking of the samples from Mr. IS-3457 , or indeed for any period, could have any bearing on the taking or analysis of Mr. IS-3457 's urine samples, and Mr. IS-3457 and his advisors have not sought to identify any such connection. It is also to be noted that Mr. IS-3457 has not seen fit to respond to the assertion made on behalf of the Irish Sports Council that the disclosure of information in relation to other athletes would constitute a breach of the Data Protection Acts, 1988-2003. Even if Mr. IS-3457 could show some relevance pertaining to the testing of other athletes within the identified time frame, on the basis of the information put before the Panel, the Panel is of the view that such disclosure would constitute an authorised disclosure under the Data Protection legislation. In the circumstances, the Panel does not

consider that it is appropriate to make any direction in relation to the disclosure of any information of the nature sought on behalf of Mr. IS-3457 in respect of the testing of other athletes.

14. Reference has been made by DAC Beachcroft to the CAS decision in CAS 12/A/2696 **Steve Mullings v Jamaican Anti-Doping Commission** and, in particular, to the following passage:

“Such [DNA] testing is complex and expensive, and it cannot be ordered whenever an athlete requests it. Rather, the athlete should first be required to present some reasonable basis for questioning the lab results to justify any DNA testing.”

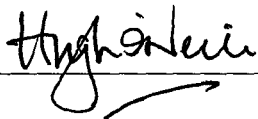
It is to be noted that under Article 6.2 of the Rules analysis of samples is to be undertaken only in WADA accredited laboratories selected by the Irish Sports Council or as otherwise approved by WADA.

15. The Panel is of the view that some reasonable basis for challenging the analysis conducted by the Cologne laboratory of the urine samples must be put forward in order to justify DNA testing of the urine samples, or either of them, a further analysis which must in any event be conducted by a WADA accredited laboratory and which would presumably require further testing of Mr. IS-3457 to identify his DNA. Mr. IS-3457 has not challenged the assertion that such DNA testing is costly and complex. In the view of the Panel no basis for challenging the analysis of the urine samples has been put forward by or on behalf of Mr. IS-3457. In the circumstances, the Panel does not consider that Mr. IS-3457 has made out a case for the production of the B urine sample to enable DNA analysis thereof.
16. While the same considerations apply to the production of the B blood sample, DAC Beachcroft have asserted that no testing for EPO was undertaken in respect of the blood samples, an assertion which is not challenged by or on behalf of Mr. IS-3457. Moreover, the B blood sample has been destroyed and thus is not available for

(further) testing. In the circumstances, the Panel refuses to make an order for the production of the B blood sample.

17. In reaching its determination the Panel has proceeded on the basis of facts and information presented to it to date. This Decision is not to be taken as a determination of those facts by the Panel. Where relevant, those facts require to be proved at the hearing of the alleged violation of the Rules.
18. The Panel refuses to make any of the directions sought.

Dated this 12th day of November, 2014

Signed:  _____

on behalf of the Panel by Hugh O'Neill, SC

Chairman