

NATIONAL ANTI-DOPING PANEL

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER THE ANTI-DOPING RULES OF
THE DARTS REGULATORY AUTHORITY**

Before:

Mr Matthew Lohn (Chairman)

Ms Carole Billington-Wood

Professor Peter Sever

B E T W E E N:

UK ANTI-DOPING

National Anti-Doping Organisation

- and -

RICHARD BURNETT

Respondent

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. This is the final decision of the Anti-Doping Tribunal ("the Tribunal") convened pursuant to Article 5.1 of the 2010 Rules of the National Anti-Doping Panel ("the NADP Rules"), to determine a charge brought against Mr Richard Burnett ("Mr Burnett" or "the Athlete") by UK Anti-Doping ("UKAD"). This decision has been published in a redacted form following an agreement reached by both parties and with the consent of the Tribunal in order to protect the confidentiality of personal information submitted to the Tribunal.
2. A hearing was convened on 19 May 2015 ("the Hearing") to determine a charge for the alleged commission of an Anti-Doping Rule Violation ("ADRV") contrary to Article 2.1 of the Anti-Doping Rules, which provides that the presence of a prohibited substance or its metabolites or markers in an athlete's sample constitutes an ADRV, unless the athlete establishes that the presence is consistent with a Therapeutic Use Exemption ("TUE").
3. A urine sample provided by Mr Burnett on 3 November 2014 at the Professional Darts Corporation ("PDC") Grand Slam Qualifier at Robin Park Sports Centre, Wigan ("the Event") tested positive for benzoylecgonine, a metabolite of cocaine. This is a prohibited substance under the World Anti-Doping Agency ("WADA") 2014 Prohibited List ("the List"). Mr Burnett did not have a TUE. The substance can be found in section S6.a in the list of "Non-Specified Stimulants".
4. At the Hearing, UKAD was represented by Mr Jamie Herbert of Bird & Bird LLP. Mr Burnett was represented by Mr Daniel Saoul of 4 New Square who in turn was instructed by Lipman Karas LLP.

Jurisdiction

5. Mr Burnett is a professional darts player who has been a regular competitor on the darts circuit organised by the PDC for a number of years. He is a registered member of the Darts Regulation Authority ("DRA") by virtue of the fact that he competes in PDC registered tournaments. He is also subject to the DRA Rule

Book, which incorporates the UK Anti-Doping Rules. The rules in force at the time of Mr Burnett's urine sample test derive from the 2009 Anti-Doping Rules ("ADR"). As per Article 5.28.1 of the DRA Rule Book, the *"anti-doping rules of the DRA are the UK Anti-Doping Rules published by the Drug-Free Sport Directorate of UK Sport (or its successor). As amended from time to time. Such rules shall take effect and be construed as rules of the DRA"*.

6. Under Article 1.2.1 of the ADR, the rules apply to:
 - (a) all Athlete and Athlete Support Personnel who are members of the National Governing Body ("NGB") and/or of member or affiliate organisations or licensees of the NGB (including any clubs, teams, associations or leagues); and
 - (b) all Athletes and Athlete Support Personnel participating in such capacity in Events, Competitions and other activities organised, convened, authorised or recognised by the NGB or any of its member or affiliate organisations or licensees (including any clubs, teams, associations or leagues,) wherever held.
7. Mr Burnett is a member of the DRA and was a participant in the Event. He is therefore subject to the ADR and indeed the issue of Mr Burnett's jurisdiction has not been in dispute between the parties.
8. Under Article 7.1.2 of the ADR, it follows that UKAD is the relevant results management authority to investigate Mr Burnett as the conduct in question as per Article 7.1.1 of the ADR:
 - (a) was identified by Testing conducted pursuant to the rules or otherwise arose in relation to these rules;
9. It therefore fell to UKAD to investigate this matter and for this Tribunal to make an appropriate finding based on the evidence brought before it.

The Facts

10. Mr Burnett is a 48 year old professional darts player who has competed in major tournaments for over 20 years. He became professional in 1994 and in 1995 won the BDO World Darts Championship.
11. On the day of the Event, Mr Burnett was selected for an In-Competition test. He provided a urine sample to a UKAD-accredited doping control officer, which was assigned reference number 1109848 and split into two samples. Mr Burnett was given the opportunity to disclose on the doping control form any prescription and non-prescription medications or supplements that he had taken in the preceding 14 days, but he only indicated that he had taken gout tablets and pain killers. The samples were taken to the Drug Control Centre at King's College London and received on 5 November 2014. They were analysed in accordance with the procedures prescribed by WADA's International Standard for Laboratories. The analysis returned an Adverse Analytical Finding ("AAF") for benzoylecgonine, a metabolite of cocaine which is classed as a Specified Substance and is listed in the Non-Specified Stimulants List at section S6.a of the 2014 WADA Prohibited List. Cocaine is listed as a substance which is prohibited In-Competition.
12. On 19 November 2014, UKAD Medical Education Officer, Anne Sargent, affirmed that Mr Burnett did not hold an applicable TUE permitting his use of cocaine. On 21 November 2014, UKAD Results Officer Paul Ouseley reported that there had been *"no departure from the WADA International Standard for Testing that undermines the validity of the Adverse Analytical or Atypical Finding"*. As a result, Mr Burnett was charged with the commission of an ADRV, pursuant to ADR 2.1, by letter dated 21 November 2014. Mr Burnett was provisionally suspended from participation in all competitions, events and other activities that are organised, convened, authorised or recognised by the DRA in accordance with ADR Article 7.7.1.
13. On 29 April 2015, Mr Burnett filed a range of evidence in support of his case, including a witness statement from himself as well as other documents.

The Tribunal's Decision

14. Counsel on behalf of Mr Burnett cited a number of cases at the Hearing which he submitted were analogous to this one in order to provide guidance to the Panel as to how to approach and resolve the issues before it. The Panel concluded that the facts in the present case were sufficiently distinct so as to render the findings set out in the other cases of no real relevance when reaching its decision. It focused on the test set out in the ADR and applied it to the facts of the instant case accordingly.
15. Mr Burnett accepted that he was at all relevant times subject to the ADR and that he had committed an ADRV. The matter for the Panel to determine was whether Article 10.5.2 ADR applied to this case. The starting point for a ban under Article 10.2 ADR is two years and so the question was whether the Panel was prepared to reduce this under Article 10.5.2 ADR.
16. The Panel carefully deliberated to determine if there were circumstances that could justify the application of Article 10.5.2 ADR.
17. The Panel was certain that Mr Burnett should take a degree of responsibility for his ingestion of cocaine. The Panel was also mindful that it has a fundamental role to protect the integrity of the sport and also to ensure that it deters other athletes from taking banned substances, performance enhancing or otherwise.
18. For the reasons outlined above, the Panel determined that it would be justifiable to apply the provisions at Article 10.5.2 ADR. The exceptional circumstances of this case have caused the Panel to allow Mr Burnett a small reduction in his period of ineligibility, namely six months. As such, the period of ineligibility imposed on the Athlete is 18 months.
19. The Panel was taken to a number of cases by Counsel for Mr Burnett as to the legal basis for the Panel to allow a greater period of discount from that provided for in Article 10.5.2 ADR. In view of the finding made above, it was not necessary to consider the relevance of the material to this case. The Panel did not consider that a reduction of greater than half the period could in any way be justified on the facts of this case.

20. In accordance with Article 10.9.3 ADR, the period of ineligibility is backdated to start on the date that the ADRV occurred, which as per Article 10.9.2 ADR is the date that the sample is collected as it is an Article 2.1 violation. This therefore is 3 November 2014.

Summary of the Tribunal's Decision

21. In summary, the Tribunal decides as follows:

- (i) the ADRV under Article 2.1 ADR has been established;
- (ii) in the circumstances of this case, the Tribunal is satisfied that Mr Burnett is not at significant fault for the ADRV, such that Article 10.5.2 ADR is engaged;
- (iii) the period of ineligibility is 18 months, commencing on 3 November 2014 and ending on 2 May 2016; and
- (iv) the Athlete's results at the Event are automatically disqualified in accordance with Article 9.1 ADR, and any prize money obtained by the Athlete in Event is forfeited in accordance with Article 9.3 ADR.

Rights of Appeal

22. In accordance with Article 13.4 ADR and Article 12 of the NADP Rules, Mr Burnett, UKAD and the other parties named in Article 13.4 ADR have the right to appeal against this decision to the NADP Appeal Tribunal.
23. Pursuant to Article 13.7 ADR and Article 12.5 of the NADP Rules, any party who wishes to appeal must file a Notice of Appeal with the NADP Secretariat within 21 days of receiving this decision.

Signed on behalf of the Tribunal



Matthew Lohn, Chairman

10 June 2015

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