

**PCB Anti-Doping Tribunal**

**D E C I S I O N**

rendered by

**THE ANTI-DOPING TRIBUNAL**

sitting in the following composition

**Chairman: Mr. Shahid Karim (Lawyer)**

**Member: Mr. Wasim Bari**

**Member: Mr. Ucksy Mallick**

in the adjudication proceeding between

**Pakistan Cricket Board (PCB)**

**Represented by: Taffaz ul Haider Rizvi & Haider Ali Khan, Advocates,  
Salman Naseem, Manager Legal, PCB**

- and -

**Umaid Asif (Cricketer)**

**Represented by: Sheikh Muhammad Ali and Barrister Haaris  
Ramzan, Advocates**

1. An Anti-Doping Tribunal (the Tribunal) has been appointed under The Pakistan Cricket Board's Anti-Doping Rules (The Rules) to sit and hear the case of Mr. Umaid Asif (the Cricketer). This was done in conjunction with the Anti-Doping Manager of Pakistan Cricket Board (PCB), (the National Cricket Federation) by the President of the Anti-Doping Panel (Article 8.1.3). The Tribunal has the following three members:

**Shahid Karim (Lawyer)** (Chairman)

**Wasim Bari** (member)

**Dr. Ucksy Mallick** (member)

2. The appointment of the Tribunal was a development set in motion when PCB alleged that the Cricketer had committed an anti-doping rule violation (see Notice of Charge dated 25 March 2014, under Article 7.2.3 of the Rules) and the Cricketer denied the allegation (by responding to the Notice of Charge on 8 April 2014) and requested for exercise of his right to a hearing under Article 7.7.1. The request stated how the Cricketer responds to the Charge and explained (in summary form) the basis of such response.
3. In terms of Article 8.1.4 of The Pakistan Cricket Board's Anti-Doping Rules, the Chairman convened a preliminary hearing with the PCB and its legal representative and with the Cricketer. Meanwhile, since the Cricketer's A sample resulted in an Adverse Analytical Finding for a prohibited substance, that was not a specified substance, and a review in accordance with Article 7.1.2 did not reveal an applicable Therapeutic Use Exemption (TUE) or departure from the International Standard for Testing or the International Standard for laboratories that caused the Adverse Analytical Finding, the PCB was obligated in terms of Article 7.6.1, to Provisionally Suspend the Cricketer on 24 March 2014. The Provisional Suspension entailed that the Cricketer was temporarily barred from participating in the sport of cricket pending a decision on the allegation that he had committed an anti-doping rule violation. Article 7.6.5 further elaborates upon the consequences that flow from Provisional Suspension.

4. The Cricketer declined an opportunity for a Provisional hearing (Article 7.6.3) on a timely basis after imposition of the Provisional Suspension. In its stead, he opted for an opportunity for an expedited hearing in accordance with Article 8 on a timely basis.
5. The Notice of Charge had clearly spelt out the Cricketer's rights in respect of the analysis of the B sample (as mandated under Article 7.2.3.3). The Cricketer has not made a request for the B Sample analysis to go ahead and is deemed to have waived his right to the B sample analysis and to have accepted the accuracy of the Adverse Analytical Finding in respect of the A sample. (The Rules by its Article 7.2.3.3(b) lends to this inference by its deeming clause).
6. Dates were established in advance for submission of briefs and documents by the parties. PCB submitted its opening brief on 19 April 2014 and the Cricketer, its answering brief, on 15 May 2014. PCB declined to exercise its discretion to submit reply brief to the answering brief. The parties were also required to submit, in advance, the witness statements.

**A. Facts:**

7. Umaid Asif (the Cricketer) is a professional Cricket player and plays for Khan Research Laboratories in the Pakistan ~~is~~ First Class domestic league.
8. Pakistan Cricket board (PCB) is the National Cricket Federation of Pakistan. It is a member of and is recognized by the ICC as the entity governing the sport of cricket in Pakistan.

**B. The Events leading to Hearing before the Anti-Doping Tribunal.**

9. The factual grounds for this Anti-Doping Tribunal (ADT) hearing originated at the Faysal bank T20 cup (2013) held at Lahore during the KRLV SBP match.
10. On 29 November 2013, a urine sample was taken from the Cricketer, In-competition. The urine sample was shipped from Pakistan to the National Dope Testing Laborating (WADA-accredited), New Delhi, India, for analysis.

11. On 10.01.2014, the laboratory issued its analytical report which identified the presence of Prohibited substances. The Report specified:

*Adverse Analytical finding for prednisolone and prednisone  
Glucocorticosteroid.*

12. Upon report from the laboratory, the matter was referred to the Review Board of the Anti-Doping Organization of Pakistan under the Rules. The Review Board executed the review in respect of the A-urine sample specimen no. 2235280 and concluded that:

*2. After receiving and going through the lab documentation package of sample no. 2233818 (LC-136401) & sample no. 2235280 (LC-136412) we conclude as follow:-*

- a. There has been no apparent departure for the International Standard for Testing and International Standard for Laboratory that caused the A-typical Adverse Analytical Findings. Therefore "Notice of Charge" be issued to both the cricketers and their copies be sent to WADA, ICC and Anti-Doping Organization of Pakistan.*
- b. If the player desires to get his "B" sample tested, ADOP should be informed within seven days of receipt of this letter. The player shall have the right: (i) to have the laboratory analyses the B sample to confirm the Adverse analytical Finding in respect of the A sample; and (ii) to attend at the laboratory (personally or through a representative, but at his own cost) to witness the opening and analysis of the B sample.*

### C. LAW

13. The applicable rules are the Pakistan Cricket Board's Anti-Doping Rules, 2012.

14. The PCB Rules, provided at the material time and provide, so far as material, as follows:

*Art. 1 Doping is strictly forbidden as a violation of PCB Rules.*

*Art. 2.1 The offence of doping occurs when*

*(a) a banned substance is found to be present within a cricketer's body tissue or fluids.*

*Art. 3.2.3 Any departure from the procedures set out in these Rules and the Guidelines shall not necessarily invalidate a finding that a banned substance was present in a sample, ... unless such departure was such as to cause genuine doubt on the reliability of such a finding.*

*Art. 2 BANNED SUBSTANCES*

*Art. 4.1 Banned substances include those listed in Appendix 2 to the Rules*

*Art. 2.1.1 It is a cricketer's duty to ensure that no banned substance enters his body ... fluids. Competitors are responsible for any substance detected in samples given by them.*

*Art. 5 UNANNOUNCED TESTING*

*Art. 5.1.1 PCB may designate any Member, governmental agency or any other third party that is deemed suitable to collect samples in accordance with these Rules. Such designee shall be referred to in these Rules as a Sampling Agent ("SA").*

*Procedural and administrative rules for the conduct of unannounced testing are as set forth in the Rules. It is understood that unannounced testing may occur at any time, including at the time or locale of any competition; it is also understood that it is preferred that unannounced testing be unannounced to the Cricketer.*

*Art. 8 DUE PROCESS*

*Art. 3.2.2 Analysis of all samples shall be done in laboratories accredited by WADA. Such laboratories shall conclusively be deemed to have conducted tests and analyses of samples in accordance with the highest scientific standards and the results of such analyses shall conclusively be deemed to be scientifically correct. Such laboratories shall be presumed to have conducted custodial procedures in accordance with prevailing and acceptable standards of care; this presumption can be rebutted by evidence to the contrary, but there shall be no burden on the laboratory in the first instance to establish its procedures.*

*Art. 7.5.6 If there is an adverse report on a sample for a banned substance, PCB shall notify the Cricketer the ICC, WADA and the NADO of the Cricketer. Arrangements for testing the B sample shall be made as soon as possible.*

*Art. 7.6.1 A Cricketer for whom there is adverse report on the A sample may be provisionally suspended by the PCB without a hearing until a hearing before the Tribunal can be made following the test of the B sample.*

*Art. 7.7.1 When a Cricketer is notified that there is a case to answer under Art. 2 and a doping offence has taken place, the cricketer shall also be informed of his or her right to a hearing. If a cricketer does not request a hearing within fourteen (14) days of being so informed, the cricketer will be deemed to have waived the right to a hearing.*

*Art. 8.2 If a Cricketer is found to have violated a doping rule as set forth in these Rules, ... the Anti-Doping Tribunal ... that has heard the evidence shall impose sanctions in accordance with Art. 10.*

**D. Burden of Proof and Standard of Proof:**

15. The burden of proof lay upon PCB to establish that an offence had been committed. This flows from the language of the doping control provisions. The presumption of innocence operates in the Cricketer's favour until PCB discharged that burden. The standard of proof required of PCB is high: less than criminal standard, but more than the ordinary civil standard.

It is the presence of a prohibited substance in a competitor's bodily fluid which constitutes the offence under the PCB rules, irrespective of whether or not the Cricketer intended to ingest the prohibited substance.

If the presence of a prohibited substance is established to the high degree of satisfaction required by the seriousness of the allegation, then the burden of proof shifts to the Cricketer to show why the maximum sanction should not be imposed. It is only at the level of sanction, not of finding of innocence or guilt, that the concept of shifting burden becomes relevant at all. And it is only at this juncture that questions of intent become relevant.

**E. Findings As to Whether any Anti-Doping Rule violation has been committed:**

16. The defence put forth by the Cricketer is elaborated upon in paragraph 5 of the written submissions filed on his behalf. It is a reiteration, in most part, of the initial defence taken in his written reply filed in response to the Opening brief of PCB. Some of the grounds, however, do take a new complexion in view of the witness statements recorded. The Tribunal will deal with all of those grounds, in *seriatim*, in the following terms:

(The similar grounds have been treated together for brevity).

**C-E :**

17. It is the assertion in these paragraphs that the Testing was not In-competition but was out-of-competition and this has different consequences. This, we are afraid is fallacious. We have no doubt in our mind that the Testing was conducted In-competition and in connection with a Match. Article 5.2.2 is reproduced for reference:

*5.2.2 A Cricketer may be notified that he/she has been selected for Testing in connection with a Match in which he/she is participating at any time from 0600 local time on the first day of the Match in question until one hour after its completion or abandonment for whatever reason (including rain) irrespective of whether there has been any play whatsoever in the Match at the time of abandonment. Such periods (and only such periods) shall be deemed "In-Competition" periods for purposes of the Rules, so that, by way of example only.*

The periods which are deemed in-competition periods for purposes of the Rules are clearly given in Article 5.2.2 and the sample of the Cricketer was taken within those periods, which fact is not denied. The issue regarding service of notice too is clearly misconstrued, in that the Cricketer has to be 'notified' and no formal notice has to be served on him. The term has been used as a verb rather than as a noun. He can be notified of Testing by any means and Testing can then proceed in accordance with

Paragraph 1 of the Cricketer Testing Protocols, set out at Appendix 3. Further this is not an objection taken in the answering brief or the written request submitted by the Cricketer.

18. **F-L** :

The grounds of defence taken in these paragraphs form the bedrock of the Cricketer's case. These constitute the mainstay of his arguments against any conviction for the offence of doping under the Rules. Paragraph 'K' encapsulates the nub of his defence in this regard. It is reproduced as under:

K. *The statement of PCB Witness as to requirement of notification is not well founded because (i) as explained above and admitted by said Witness that "this fact that the player has to notify that he was taking life saving medicines is not yet incorporated in the Rules"; (ii) the medicines were administered in emergency by the recognized, renowned RMP without knowledge or suspicion of the Cricketer of any banned substance; (iii) the Certificate, as per requirement of PCB Guidelines were available; and (iv) the TUE is to be obtained 30 days **before** the need thereof (Rule 4.4.2.2) which does not cover the instances of Emergency.*

These grounds have already been urged in the answering brief of the Cricketer submitted under Article 8.1.5.2(b) of the Rules. The relevant ones for our purposes have been reproduced in the paragraph relating to the parties contentions above. They will all be read cumulatively and squared against each other to arrive at a decision however unpalatable that may be. But in order to give some actuality to the analysis, we must ask the right question. The nub of the parties' case revolves around TUE. It is asserted by PCB (and denied by the Cricketer) that a TUE was necessary to be obtained by the Cricketer once he had a medical condition which required emergency treatment with life saving drugs. The case has boiled down to this issue for the reason that the facts are largely not in dispute. That the Cricketer suffered from a medical condition which required the taking of life saving drugs, (which, in turn contained



prohibited substances), that he consulted a doctor on 24.11.2013 who administered him these drugs (and who, while giving evidence before the Tribunal, was not challenged for his veracity) are facts which can be considered to have been established. The PCB does not seriously challenge the veracity of the Cricketer's claim with regard to his medical condition (paragraph 4-6, opening lines, [opening brief]). Although in paragraph 10 of the written arguments submitted by PCB an attempt has been made to label the 'story' as a concoction, yet that is perhaps too late in the day and must be perceived as intuitive rather than anything else. We must therefore deal with the issue of TUE in the first instance.

19. The relevant portions of Article 4.4 (which relates to Therapeutic Use Exemptions) are being reproduced for assistance:

**4.4 Therapeutic Use Exemptions**

**4.4.1 Scope and Effect of TUEs**

**4.4.1.1** *Cricketers may be granted permission to Use one or more Prohibited Substances or Prohibited Methods for therapeutic purposes in the circumstances set out in the International Standard for Therapeutic Use Exemptions. Where such permission (a Therapeutic Use Exemptions, or "TUE") has been granted, the presence in a Sample of a Prohibited Substance or its Metabolites or Markers (Article 2.1), Use or Attempted Use of a Prohibited Substance or a Prohibited Method (Article 2.2), Possession of Prohibited Substances or Prohibited Methods (Article 2.6) or administration or Attempted administration of a Prohibited Substance or Prohibited Method (Article 2.8) shall not amount to an anti-doping rule violation provided that such presence, Use or Attempted Use, Possession, or administration or Attempted administration is consistent with the provisions of the TUE.*

*4.4.1.3 Subject only to Article 4.4.1.2 (which provides that a TUE granted by another Signatory, such as the ICC, may be recognized under the Rules) and the International Standard for Therapeutic Use Exemptions (which identifies limited circumstances in which a TUE may be granted retrospectively), the following Cricketers must obtain a TUE in accordance with Article 4.4.2 prior to Use or Possession or administration of the Prohibited Substance or Prohibited Method in question.*

This article delineates the circumstances under which TUE has to be applied and granted by Cricketers. Article 4.4.1.1 says simply that Cricketers may be granted permission to Use one or more Prohibited Substances or Prohibited Methods for therapeutic purposes in the circumstances set out in the International Standard for Therapeutic Use Exemptions. Article 4.4.1.3 specifies the Cricketers who must obtain a TUE in accordance with Article 4.4.2 prior to use or Possession or administration of the Prohibited Substance. It is not in dispute that Umaid Asif is included in the category of those cricketers. It is important to note here that the process for TUE has to be in accordance with the International Standard for Therapeutic Use Exemptions while those standards do not form part of the PCB Rules, as an Appendix.

20. Article 4.4.2 deals with grant of TUE and the process to be complied with by a Cricketer in order to be granted a TUE. A reading of Article 4.4 as a whole, and a purposive construction, having been applied to it, leads one to the ineluctable conclusion that the Article and grant of TUE deals with specific situation where a Cricketer 'must obtain a TUE in accordance with Article 4.4.2 PRIOR to use or Possession or administrative..... A cricketer REQUIRING a TUE must apply to the TUE Committee .....,', and the application must be made as soon as possible after the relevant DIAGNOSIS and no less than thirty (30) days before he/she needs the approval..... There is a provision for ex post facto grant of TUE but that does not apply here.

21. The above words, PRIOR, REQUIRING and DIAGNOSIS are significant and refer to a situation where the Cricketer has been diagnosed with a medical condition for which he must Use Prohibited Substances or Prohibited Methods and therefore prior to such Use, he must apply for and be granted a TUE. The said Article, therefore, takes care of a situation in which, upon examination of a Cricketer, the doctor diagnoses a medical condition which would involve Use of Prohibited Substances as a treatment. It does not cater for a situation of the kind that we are confronted with where, in an emergency, the Cricketer uses or is administered life saving medicines containing Prohibited Substances. Article 4.4 is silent as to obligations cast upon a Cricketer when he undergoes a situation of this nature and the steps that he is required to take. The Tribunal is of the opinion that no procedure is prescribed in Article 4.4 for the grant of TUE in such a situation for the said Article, and the intent underlying it, contemplate a TUE prior to taking Prohibited Substance and not after it has been administered already in a emergency situation in which the Cricketer was caught. Particularly when the Cricketer was not advised treatment for an extended period of time for which he would have to initiate steps for the grant of a TUE. It follows therefore that the Cricketer in this case was not required to obtain a TUE as his case is not covered by the mischief of Article 4.4 and thus nothing turns on the fact that he should have applied for the grant of TUE in his case. Having concluded that a TUE was not necessary under the peculiar circumstances of this case, we will proceed to analysis whether the Cricketer is still culpable under the Rules for an offence under Article 2.1.
22. At the hearing, PCB, on the basis of witness statement and the documents submitted, was very clear that the case against the Cricketer stands established. The Cricketer denied that he was guilty of doping offences. In summary, he submitted:
- That he had not taken the prohibited substance
  - He admitted to having been administered certain life saving medicines on 24.11.2013 by Dr. Izhar Ahmad Chattha for severe allergic reactions and produced prescriptions from other hospitals on previous occasions, too. The last

such reaction occurred on 13.11.2013. And that he did not know that the use of said medicines was prohibited under law.

- He asserted that that medicine was potentially the source of what appeared to be positive reading.
- He asserted, alternatively, that there was no fault or negligence on his part in respect of the anti-doping rules violation. The presence of prohibited substance in his body was not intentional or deliberate and the use of prohibited substance was not for enhancement of performance. (See the Cricketer's answering brief)

23. The Cricketer filed written submissions and appeared as his own witness. He also produced Dr. Izhar Ahmad Chattha who examined him on 24.11.2013 and further produced medical certificates and prescriptions issued by the doctors. PCB on the other hand, besides the oral testimony of Dr. Sohail Saleem, submitted the following documents:

1. *Sport drug test identification no. 601 of 29.11.2013 (SS 1)*
2. *Report dated 10.01.2014 (SS 2)*
3. *Review Board finding dated 05.03.2014 (SS 3)* 21.2.2014 and 21.3.2014
4. *Notice of charge dated 25.03.2014 (SS 4)*
5. *PCB Anti-Doping Rules (SS 5)*
6. *The 2013 prohibited list, international standard. (SS 6)*
7. *Doping Awareness programme 2011/2012 in which Kashif Siddique was in attendance (SS 7)*
8. *TUE (therapeutic Use Exemptions) form (SS 8)*
9. *Cricketers Doping Guide in Urdu. (SS 9)*

24. The Cricketer did not dispute the conclusion of the analysis of his urine sample taken at the Faysal bank T20 tournament in 2013 i.e. the presence of prednisolone and prednisone Glucocorticosteroid in his body. He has not challenged the Adverse Analytical Finding in respect of an A sample by waiving his right to B sample analysis. A referral to Review Board in terms of Article 7.2.1 did not reveal that: (a)

the Adverse Analytical Finding is consistent with an applicable TUE; or (b) there has been an apparent departure from the International Standard for Testing or the International Standard for laboratories that caused the Adverse Analytical Finding. The Cricketer was made well aware that his waiver of B sample analysis will be deemed that he has accepted the accuracy of the Adverse Analytical Finding in respect of the A sample.

25. The rules as to burden of proof, intent, presence of a prohibited substance etc. which govern such cases have been spelt out in the PCB Rules and were summarized in an earlier decision of the Tribunal (In the matter of Kashif Siddique, ADT1/2014, decision of 26 April, 2014) and we can do no better than to reiterate them here:

- “1. The Tribunal starts with a recognition of the seriousness of the matter from the Cricketer’s standpoint. The fight against doping is no excuse for the conviction of innocent persons (see CAS 92/70 N.V.FEI). The law that the Tribunal has to apply is that of the doping control provisions of PCB anti-doping rules in their present incarnation.*
- 2. We are in no doubt that the burden of proof lay upon PCB to establish that an offence has been committed. This flows from the language of the doping control provisions. The presumption of innocence operates in the Cricketer’s favors until PCB discharges that burden.*
- 3. We are equally in no doubt that the standard of proof required of PCB is high: less than criminal standard, but more than the ordinary civil standard (Art. 3.1.1). Ingredients must be established to the comfortable satisfaction of the Tribunal having in mind the seriousness of the allegation which is made. We must bear in mind that this is the private law of an association we are*

*dealing with. The further question of what fact has to be proved to this standard requires to be disentangled.*

4. *It is the presence of a prohibited substance in a Cricketer's bodily fluid which constitutes the offence under PCB anti-doping rules, irrespective of whether or not the Cricketer intended to ingest the prohibited substance. This flows from the language of the doping control provisions (Art. 2.1.1) and the perceived purpose of strict liability, which eliminates the need to investigate more difficult questions of motive, intent and the like (see e.g. CAS 95/141 C.V. FINA: 'indeed if for each case the sports federation had to prove the intentional nature of the act (i.e. to improve one's performance) in order to be able to give it the force of an offence, the fight against doping would become practically impossible')."*

26. We have further made observations in that decision regarding shifting of burden of proof and its discharge, which equally apply to the instant case, too. They are:

- “1. *If the presence of a prohibited substance is established to the high degree of satisfaction required by the seriousness of the allegation, then the burden shifts to the Cricketer to show why the maximum sanction should not be imposed. Under the PCB rules, it is only at the level of sanction, not of finding of innocence or guilt, that the concept of shifting burden becomes relevant at all. And it is only at this juncture too that questions of intent become relevant.*
2. *The analysis of A sample showed and confirmed the presence of a banned substance in the Cricketer's bodily fluids. The burden of proof which lay on PCB was therefore prima facie discharged. Some of the provisions of the rules, so far as they are relevant in the context of burden of proof, state as under:*

*Art. 2.1.1: It is each Cricketer's personal duty to ensure that no Prohibited Substance enters his/her body. A cricketer is responsible for any Prohibited Substance or its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Cricketer's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.*

*Art. 2.1.2: Sufficient proof of an anti-doping rule violation under Article 2.1 is established by either of the following (unless the Cricketer establishes that such presence is consistent with a therapeutic use exemption granted in accordance with Article 4.4): (a) the presence of a Prohibited Substance or its Metabolites or Markers in the Cricketer's A Sample, where the Cricketer waives analysis of the B Sample and the B Sample is not analyzed.*

*Art. 3.2.1: Compliance with an International Standard (as opposed to another alternative standard, practice or procedure) shall be sufficient to conclude that the procedures addressed by the International Standard were performed properly.*

*Art. 3.2.2: Wada-accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Cricketer or other Person who is asserted to have committed an anti-doping rule violation may rebut this presumption by establishing that a departure from the International Standard for Laboratories occurred that could reasonably have caused the Adverse Analytical Finding.”*

27. The Cricketer has not denied the presence of prohibited substance in his sample. Nor that it was his personal duty to ensure that no prohibited substance enters his body. He has pleaded lack of intent but in the context of sanctions/ineligibility which we shall deal shortly. There is no therapeutic use exemption (TUE) granted in accordance with Article 4.4 and he has waived analysis of the B sample. He has further not challenged the conduct of sample analysis and custodial procedures in accordance with the International Standard for laboratories. He has chosen not to rebut the presumption by establishing that a departure from the International Standard for laboratories occurred that could reasonably have caused the Adverse Analytical

Finding. He merely submitted that the medicines were administered by a medical practitioner in an emergency which struck the Cricketer and was done in a life threatening situation.

28. The Tribunal concludes therefore that the Cricketer has committed an offence under PCB Anti-doping rules. He has failed to establish why he should not be sanctioned. Whether the sanction should be to the full extent is a question to be dealt with in the proceedings part of the decision. We find him guilty of the offence under Article 2.1 of the Rules.

**F. Consequences:**

29. The Cricketer submits that he did not know that the ingestion of the medicine viz. Selucortif and Deltacortel, to deal with severe allergic reaction, was a source of a prohibited substance. Paragraph 7-8 of his Answering brief brings forth his precise contention:

*“As mentioned above in detail that the Respondent was never aware of the fact that a drug administered in life threatening situations may fall within the prohibitory list and hence he was unable to specifically inform PCB.”*

30. The violation of an anti-doping rule (Art. 2.1 in this case) is visited by sanctions of Disqualification of Individual Results in a PCB Event (during which an anti-doping rule violation occurs) (Art. 10.1) and Imposition of a Period of Ineligibility (Art. 10.2). These are, cumulatively, the Consequences (Appendix 1 – definitions, to the Rules), of the violation.
31. In other words, the Cricketer invites the Tribunal to believe that he did not know or suspect, or could have reasonably known or suspect even with the exercise of utmost caution, that the medicine he was taking or used could result in the presence of prednisolone and prednisone Glucocorticosteroid in his body. (the definition of No Fault or Negligence in Appendix 1 to the rules).



32. If the Cricketer establishes that he bears *No Fault or Negligence* for the violation, he, in case of Disqualification, takes benefit of Art. 10.1.1 and, in case of Ineligibility, that under Art. 10.5.1 (Ineligibility is eliminated). The burden of proof at this stage shifts to him to bring home the fact and is on the basis of balance of probability. To qualify for any elimination or reduction, the Cricketer was obliged to produce corroborating evidence in addition to his word that establishes, to the comfortable satisfaction of the Tribunal, his claim to No Fault or Negligence.
33. The parties, as adumbrated, have built their case primarily around the grant or otherwise of TUE. PCB however asserts that an offence is made out on a bare reading of Article 2.1 yet the Cricketer, contrarily, asserts that he did not require a TUE (as Art. 4.4 did not envisage such a situation) and so nothing more was required to be done on his part. He was, in other words, not obligated by Rules to take any steps in furtherance therefore and so was absolved of his duty of any kind. His culpability, according to him, would be erased and would evaporate in the air. This, the Tribunal thanks, is too simplistic a view of the scheme and the intent which permeates the length and breadth of these Rules. Article 4.4 merely deals with a handful of situations in which a TUE is required or can be granted. This does not mean at all that in other medical conditions, not so contemplated by Article 4.4, and in which a TUE has not been granted, the Cricketer will go scot free by merely taking refuge behind the fact that Article 4.4 does not cover that situation. We must bear in mind that if an act comes within the ambit of Article 2.1, it is an offence, and a TUE granted under Art. 4.4 is a defence which can be put forth by a Cricketer. Nothing more or nothing less. If the aspect of TUE is taken out of consideration (as is the case here), he will still need to establish the elimination of ineligibility visited by the commission of offence under Article 2.1. This, in the opinion of the Tribunal, is the true construction of the Rules, read as a whole.
34. The offences under the Rules are strict liability offences. The Rules cast obligations on Cricketers to acquaint themselves of the Rules and to fulfill the responsibilities that they must bear in respect of the Rules and it does not lie in their mouth to turn around and say that they were caught unawares and feign negligence and lack of

intent and knowledge. The Rules, amongst others, are anathema to any view being harbored by the Cricketer to the effect that 'the Respondent was never aware of the fact that a drug administered in life threatening situations may fall within the prohibitory list and hence he was unable to specifically inform PCB' or 'Indeed the results have shown presence of the banned substance which is not being refuted by the respondent but what is more disturbing is the attribution of guilt without retorting to establishing the ulterior intent or motive'. The question here is normative and the sooner the Cricketers get themselves integrated in the new anti doping regime, the better. There is no room for traditional defences like lack of intent, ulterior motive or mere negligence. They have been consigned to the oblivion when it comes to the implementation of the Rules. As an illustration, the following Rules bring home the point:

*1.4 It is the personal responsibility of each Cricketer (which may not be delegated to any other Person):*

*1.4.1 to acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of the Rules, including (without limitation) being aware of what constitutes an anti-doping rule violation and what substances and methods are prohibited; and*

*1.4.2 to comply with the Rules in all respects, including:*

*1.4.2.1 taking full responsibility for what he/she ingests and uses;*

*1.4.2.2 ensuring that any medical treatment he/she receives does not infringe the Rules;*

*1.4.2.3 making him/herself available for Testing at all times, whether In-Competition or Out-of-Competition;*

*1.4.2.4 when included in a National Registered Testing Pool, providing accurate and up-to-date whereabouts information for purposes of Out-of-Competition Testing; and*

*1.4.2.5 cooperating fully with any investigation into a potential anti-doping rule violation under the Rules.*

**2.1 *The presence of a Prohibited Substance or its Metabolites or Markers in a Cricketer's Sample.***

*2.1.1 It is each Cricketer's personal duty to ensure that no Prohibited Substance enters his/her body. A Cricketer is responsible for any Prohibited Substance or its Metabolites or Markers found to be present in his/her Sample. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Cricketer's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1; nor is the Cricketer's lack of intent, fault, negligence or knowledge a valid defence to a charge that an anti-doping rule violation has been committed under Article 2.1.*

35. In order to examine whether the Cricketer was at fault i.e. has acted with intent or with negligence regarding the presence of a prohibited substance, one must determine the standard of care to be observed by him in such a situation and the knowledge to be expected from him. Conversely, if he has failed in that standard of care and acted with intent or with negligence, then he will have failed to establish that he bears No Fault or Negligence in respect of the anti-doping rule.
36. The Cricketer has been a professional Cricket player participating in the Pakistan domestic Cricket (and abroad, in England, by his own assertion) since long. As a professional athlete he must be considered to be highly sensitive and alert to issues of doping. The concept of strict liability has been applied consistently by International

sports federations, CAS panels and prescribed in the World Anti-doping Code as well as echoed in most anti-doping regulations of sports federations and now of the PCB. The principle of strict liability means that a cricketer is responsible for whatever substances is in his body, without having regard to the reasons for such presence and the degree of any respective fault of the cricketer. While there are exceptions to this principle under the anti-doping rules, every cricketer must be considered to be aware of the fact that he is responsible for any substance found in his body. This also means that every cricketer must be concerned about substances he is ingesting, in particular if this is done for a medicinal purpose. That the Cricketer was aware of his Obligations in this regard can well be gauged by the portion of his witness statement viz. "In season 2011/12 we were given the first anti doping lecture and were educated about doping. Since then I have kept a close watch on the prohibited list and my medications. Any medication I was prescribed I looked it out in the prohibited list and then used it."

37. The tribunal is of the opinion that in the light of these circumstances, the duty of care in the present situation and with the presumed knowledge of the Cricketer should have led him, at the very least, to enquire about the medicines he was ingesting and to have informed PCB promptly. We must bear in mind that this was not an isolated incident of an allergic reaction. He has built his case on the basis that he routinely suffers from such allergic reactions and so needs emergency medical treatment. All the more reason that he should have applied for a TUE long ago and that too while he had all the guidance at hand at PCB and was invited to make use of it at all times. It is not denied by him that he did not inform the PCB regarding any of those incidents and it did not occur to him to seek help. The Tribunal is well within its right to draw an adverse inference from his conduct. It is not his case that he was unaware as to where to go for guidance when it is required or that it was not forthcoming from PCB. The following extract from his cross examination betrays his utter apathy and audacity;

*' I know Dr. Sohail Saleem. He is available most of the time and travels with the team as well. He has given us lectures at different times and dates*

*on the subject of Anti doping ..... I do recall that I had to proceed for Champions League being held at South Africa and I consulted him about medicines which I intended to take for flu and cold and he advised me against taking it.....’*

It is evident from the above that he was careful about a Match in a foreign tour and so it can be inferred that he was well aware of the anti doping regime yet he threw caution to the winds in his own first class tournament completely disregarding the consequences. It is incredulous to think that the Cricketer was cautious to the degree of consulting Dr. Sohail Saleem on relatively milder medical issues like cold and flu yet criminally negligent in doing so with regard to life threatening situations. This behavioral pattern of the Cricketer is hard to reconcile and flies in the face of his entire defence.

It has come in evidence that the Cricketer was lectured extensively on various issues of doping with the aid of videos and pamphlets, and at the heart of those lectures was one crucial theme; to consult Dr. Sohail Saleem (General Manager Sports medicine) compulsorily before taking any medicine (and he chose to follow it selectively) lest it may either be a prohibited substance or may be a provenance for it. The Cricketer has not denied the imparting of such education and has admitted to attending those lectures. He has further admitted to failure to contact Dr. Sohail at any time prior to, or after, taking those medicines.

Another fact which assumes significance is the column relating to the Declaration of medications used by the competitor in the Urine Collection form. This was an opportunity for the Cricketer to come out with the whole truth about his history of allergic reactions but the Cricketer was woefully reticent in doing so to his utter disadvantage. He was very carefree and nonchalant about the entire affair.

The Cricketer has admitted in his cross examination that ‘I agree, that it is correct that negligence is not a defence. It is also true that under the Rules what I ingest is my responsibility’. This virtually takes care of his defence regarding No Fault or

Negligence and that it should be thrown out. The Tribunal therefore finds that the Cricketer did not comply with his duty of care and thereby acted negligently.

38. In conclusion, the Cricketer cannot be considered as bearing no fault or negligence in the sense of Rule 10.5.1 of the Rules. An elimination of the sanction under said rule is therefore not possible.

**G. Regulations:**

Grounds L-N:

39. The Cricketer, in his written submissions, has relied on the PCB Anti Doping Regulations, 2010 (The Regulations) to advance his case. This should receive a short shrift at the Tribunal's hand in that this has never been the basis of his case as submitted at any stage earlier. The issue has come up for the first time in the written submissions though a question was put to Dr. Sohail in his Cross-Examination and so the Tribunal will not allow it to be raised and relied upon at this belated stage. Be that as it may, PCB's case against the Cricketer has been founded on the Rules and not the Regulations and so they will not be considered by the Tribunal for the purposes of this adjudication. The Tribunal has serious doubts whether the Regulations are still in field ever since the Rules have been made effective. We will however refrain from passing a judgment on this aspect.

**H. No Significant Fault or Negligence;**

40. Though the Cricketer has not relied upon No Significant fault or negligence as an alternate ground for reduction of period of ineligibility based on exceptional circumstance, the Tribunal, in its discretion and considering the aspects of fairness, will proceed to consider whether the said condition applies to the facts of the Cricketer's case. The Tribunal feels that the period of ineligibility in the Cricketer's case must be reduced on the basis of No Significant Fault or Negligence. The following are the reasons in support thereof:

- i) The Cricketer has a history of allergic reactions in which condition he has been administered life saving drugs. This is not disputed. It is also not disputed that those life saving drugs could be a potential source of the presence of prohibited substances in his body. He has not been recommended any treatment on a regular basis for this condition which would perhaps set him into thinking that TUE was necessary as a permanent arrangement.
  - ii) There was little time between the administering of those medicines and the Match in which he was tested and he was perhaps precluded by paucity of time to inform PCB about it. To his misfortune, he was selected for a dope test soon after that and the rest is history.
  - iii) There is an ambiguity in the PCB anti doping regime. The Regulations and not the Rules form a part of PCB's website and the current status of those Regulations remains unclear. Although we have held that the rules shall prevail, yet to an untrained eye, this could be misleading. The Regulations do refer to such a situation to arise yet stop short of laying clearly the next steps to be taken.
  - iv) These and other aspects establish that the Cricketer's fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria of No fault or Negligence, was not significant in relationship to the anti-doping rule violation.
41. As a result of the reasons above, the following consequences are imposed upon Umaid Asif, the Cricketer:
- i. A first Doping Offence has occurred under Art. 2.1 of the Rules. The Doping Offence involved the use of a Prohibited Substance found in the Prohibited List set out at Appendix 2 of the Rules.
  - ii. Under Art. 9 read with 10.1 (since it was an In-competition test), the individual results obtained by the Cricketer's individual performance in the Match (KRL V SBP, Faysal Bank T 20 tournament, 2013) be disqualified. As

a consequence, individual medals or other prizes awarded and any ranking points achieved are forfeited.

- iii. Under Art. 10.1, in addition to (ii) above, all individual results and performance statistics obtained by the Cricketer in the other matches that he participated in the Faysal bank T-20, 2013, be disqualified, with all resulting consequences, including forfeiture of any individual medals, individual ranking points, individual prizes obtained, and the non-inclusion of his performance statistics in those matches towards any official individual averages or records.
- iv. Under Article 10.2, since the Tribunal has held that the condition for reducing the period of ineligibility under Article 10.5.2, is met, a reduced period of ineligibility of one year is imposed for a First Offence.
- v. The status of the Cricketer during Ineligibility shall be as spelt out under Art. 10.10 of the Rules.

**I. Date that such consequences shall come into force and effect pursuant to Art. 10.9.**

- 42. The period of ineligibility, except as provided in Art. 10.9, commences on the date that the decision imposing the period of Ineligibility is issued. However, in circumstances delineated in Art. 10.9.1, 10.9.2 and 10.9.3, the period may be back-dated.
- 43. Art. 10.9.1 is triggered where substantial delays in the hearing process or other aspects of Doping Control not attributable to the Cricketer have taken place. This provision was not invoked in aid by the Cricketer yet in all fairness it is the duty of the Tribunal to consider this aspect. In this case substantial delays in the hearing process, not attributable to the Cricketer, did take place. The Tribunal is of the considered opinion that a delay of two months should be remitted to the Cricketer's account. The period of Ineligibility will be deemed to have started two months earlier to the date of the issue of this decision.



44. Art. 10.9.2 has no relevance in the case as no admission of the anti-doping rule violation was forthcoming on the part of the Cricketer.
45. In the Tribunal's opinion, Art. 10.9.3 will be engaged in the matter and the period of suspension shall be credited against the total period of Ineligibility to be served. We thus order that the Ineligibility period shall come into force and effect on 23 March 2014, the date he was provisionally suspended. (subject to paragraph 43 above)

**J. Right to Appeal**

46. The Cricketer has a right of appeal against this Decision as set out in Article 13 of the PCB Rules. The appeal has to be filed within Fourteen (14) days of the data of receipt of the reasoned decisions of this Tribunal. It is made clear that this decision shall remain in effect while under appeal unless the appellate body orders otherwise.



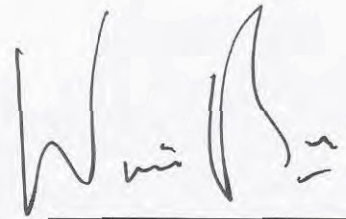
---

CHAIRMAN  
(SHAHID KARIM)



---

MEMBER  
(Dr. Ucksy Mallick)



---

MEMBER  
(Wasim Bari)