Appeal Hearing
before the
Jamaica Anti- Doping Appeal Tribunal
between

Allison Randall **Appellant**

and

Jamaica Anti- Doping Commission **Respondent**

Dr Lloyd Barnett and William Panton instructed by DunnCox for Appellant
Mr. Lackston Robinson for Respondent

1. This appeal was heard on the 1st and 2nd October 2014 at the end of which the Tribunal handed down its decision which affirmed the conclusion of the Jamaica Anti-Doping Disciplinary Panel (The Panel).

2. The sanction imposed by the Panel was that of two years ineligibility commencing as of June 21st 2013.

3. The appellant now challenges the decision of the Panel. The burden of this challenge is that the Panel did not properly apply the balance of probability test in determining whether or not the appellant had satisfactorily discharged the burden of establishing how the prohibited substance had entered her body. This is the critical issue in this appeal. Accordingly only a succinct background is necessary.

4. The appellant has represented Jamaica at the senior level in the discus event (CAC Games, Olympics). At the time of the hearing before the Panel she was pursuing a Master's Degree in Physical Education.

5. On June 21st 2013 the appellant participated in the JAAAs National Senior Championship held at the National Stadium, Kingston, Jamaica.

6. A urine sample was taken from her which after analysis consonant with the mandated procedural regime revealed the presence of Hydrochlorothiazide (HCTZ) in her body. Analysis of a "B" sample was to the same effect.

7. HCTZ is classified in the category of "Diuretics and other masking agents" on WADAs 2013 list of prohibited substances. HCTZ is a specified substance.

8. The appellant relied on 10.4 and 10.5.2 of the JADCO Anti-Doping Rules. These are now set out below:

9. **10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances Under Specific Circumstances**

Where an *Athlete* or other *Person* can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the *Athlete's* sport performance or mask the use of a performance-enhancing substance, the period of *Ineligibility* found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility*.

To justify any elimination or reduction, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criteria considered in assessing any reduction of the period of *Ineligibility*.

10. **10.5.2 No Significant Fault or Negligence**

If an *Athlete* or other *Person* establishes in an individual case that he or she bears *No Significant Fault or Negligence*, then the period of *Ineligibility* may be reduced, but the reduced period of *Ineligibility* may not be less than one-half of the period of *Ineligibility* otherwise applicable. If the otherwise applicable period of *Ineligibility* is a lifetime, the reduced period under this section may be no less than 8 years. When a *Prohibited Substance* or its *Markers* or is detected in an *Athlete's Sample* in violation of *Code* Article 2.1 (Presence of *Prohibited Substance*), the *Athlete* shall also establish how the *Prohibited Substance* entered their system in order to have the period of *Ineligibility* reduced.

11. It is clear that before either of these Rules can be utilized the charged athlete has to establish how the prohibited substance entered "his or her body" (10.4) or "entered their system" (10.5.2). This is a mandatory pre-requisite and that obligation is to be determined on a balance of probability.

12. Dr. Barnett contends before us that the Panel did not demonstrate in their decision that they applied the balance of probability test in coming to their adverse verdict. It is failure of the Panel to appreciate the substance of the stance of the appellant which resulted in their erroneous decision. In our view, the Panel clearly

demonstrated that the correct test was that of establishing on a balance of probability how the prohibited substance entered her body.

13. The Panel accepted that the correct test was on a balance of probability. As to this, there was no issue as between counsel. (*See paragraph 62 and 72 of the Panel's Decision*). Further, the authorities cited as their decision makes it clear that at all times the Panel was operating within the ambit of balance of probability test.

14. We now turn to the critical issue as to whether or not the Panel misapplied the balance of probability test.

15. The appellant posited three positions as to how the prohibited substance entered her body/system.

    a) I have no idea how I could have ingested the banned substance.
    b) Through contamination
    c) Mislabeling of her usual supplements

16. As to 15 (a) (Supra) the appellant so said in paragraph 15 of her witness statement.

17. As to 15 (b) (Supra) the appellant contention was that the company from which she obtained her regular supply of Animal Pak and Animal Omega also produced Animal Cut. Animal Cut contained a diuretic complex. Therefore she said,

    > "It is possible that my supplement may have been contaminated being that all three products are made by the same company. That is the only way I could have inadvertently taken the substance". *(See letter dated September 17, 2013 to the Panel)*

    In cross-examination on 5th December 2013 the appellant confessed at page 35 of the transcript that her assertion of contamination was,

    > "An assumption that based on the fact that there was a diuretic in this (Animal Cut)".

    The label on Animal Cut does not reveal the presence of HCTZ. Further, it is the evidence of Professor McLaughlin called on behalf of the appellant that none of the ingredients listed on the label produced HCTZ

18. As to 15 (c) (Supra) in paragraph 16 of her witness statement she stated,

    > "Alternatively it is possible that one or more of my regular supplements may have been mislabeled by the manufacturer resulting in me ingesting Animal Cut instead".

Firstly, as observed in paragraph 15 (Supra) Animal Cut is not a source of HCTZ.

19. It was submitted before us, although not before the Panel, that there was the possibility of environmental contamination. This submission can be disposed of shortly in that no circumstances were demonstrated to ground it.

20. The Panel found that the appellant failed to satisfy as to how the prohibited substance entered her body/system. Can the Panel be faulted in so finding? Resolution of this crucial issue can be arrived at by subjecting to analysis the appellant's varied contentions within the context of the governing law as it pertains to the obligation of an athlete who seeks to establish how the prohibited substance entered his/her body/system.

21. In CAS 2006/A/1067 IRBV/KEYTER at paragraph 6.10 it was declared that for the purpose of establishing how the prohibited substance entered the body/system.

> "A speculative given or explanation uncorroborated in any manner was of no probative value".

22. In INTERNATIONAL TENNIS FEDERATION V M CHARLES IRIE dated 13th October 2008. The Chairman Tim Kerr, QC (sitting alone), after examining a number of authorities said at paragraph 31,

> "These authorities establish that the player must show by positive evidence, not merely speculation or deduction from a protestation of innocence how the substance entered the player's system; and must show that the innocent explanation advanced is more likely than not to be the correct explanation. To discharge that burden the player must show the factual circumstances in which the prohibited substance entered his system".

The Irie case appears to be one of first instance. However, we accept that the exposition as to the applicable law as correct.

23. The appellant's endeavour to establish how HCTZ entered her body/system can be categorized as no higher than mere speculation. In her words her contention of contamination was an "assumption" (see paragraph 15 [Supra]). She has not put forward factual circumstances in which the prohibited substance entered her body. None of the three positions she adopted have any probative value. She has put nothing in her scale which merits weighing. Therefore the Panel cannot be faulted in its conclusion that neither 10.4 nor 10.5.2 of the JADCO Rules can avail the appellant.

24. In conclusion, the sanction of two years ineligibility must stand since there can be no relief from sanction under 10.4 or 10.5.2 of the JADCO Rules.

By THE JAMAICA ANTI-DOPING APPEALS TRIBUNAL

17th day October, 2014

Hon. Mr. Justice Howard Cooke (Ret'd) C.D.
Chairman

Hon. Mr. Justice Algernon Smith (Ret'd) C.D.
Vice Chairman

Dr. Charlesworth Roberts
Member

Mrs. Edith Allen
Member