

**At the Head Office of the Malta Sports Council
Cottonera Sports Complex, Cospicua, Malta**

Decision of the National Anti-Doping Appeal Panel

Appeal Case Reference: 01/2015 NADDAP

Between

**Steve Camilleri
(ID Card No. 71392M - Athlete Member of the Malta Amateur Athletic
Association) - (Appellant)**

Vs

Anti-Doping Commission (Malta) – (Respondent)


The National Anti-Doping Appeal Panel (hereinafter referred to as the 'Appeal Panel' made up of:

- Dr Carmel Cascun BA FCII MJur LLD as Chairman
- Dr Stephen Zammit MD as Member
- Dr Marisa Cassar BPharm PhD as Member
-

Before the commencement of the proceedings Dr Stephen Zammit and Dr Cassar declared to the Chairman that they are not aware of any circumstance or conflict that could negatively affect their impartiality with respect to any of the parties involved in this appeal. The same declaration was made by the Chairman of the Appeal Panel.

1. Preliminaries

1.1 The Request by the NADO to the National Anti-Doping Appeals Panel was made on the 20th May 2015 following receipt of the Statement of Appeal filed by the Appellant through the advocates Drs Lucio Sciriha, Franco Galea and Joseph Zammit.



1.2 The Appeal Panel took note principally of the following documents which form part of the process file:-

- a. Copy of the Doping Control Officer Report filed by National Anti-Doping Organisation (hereinafter referred as NADO) doping officer Mr Johann Pace following the alleged attempted doping test on the athlete Steve Camilleri at the Marsa Sports Ground;
- b. The Request by the NADO to the Malta Amateur Athletic Association (hereinafter referred as the MAAA) of the alleged breach by the athlete Steve Camilleri of the 16th January 2015;
- c. The Notification of an Anti-Doping Rule Violation issued by NADO to the athlete Steve Camilleri on the 16th January 2015;
- d. The Request dated the 9th February 2015 by the NADO to the National Anti-Doping Disciplinary Panel (hereinafter referred as the 'Panel') to schedule a hearing for an alleged violation by the athlete Steve Camilleri for his alleged "Evading of a Doping Control Test during the mission scheduled on the 15/01/2015" out-of-competition;
- e. Steve Camilleri's 'non-acceptance' of the provisional suspension, and his request on the 30th January 2015 for a Provisional Hearing;
- f. The Decision of the Provisional Hearing held by the Malta Amateur Athletic Association on the 2nd March 2015 whereby it was decided that "the Provisional suspension issued by the MAAA is to stand";
- g. The transcription of the evidence given under oath by various witnesses appearing before the National Anti-Doping Disciplinary Panel during the sittings of the 17th March 2015, 27th March 2015 and 9th April 2015, including the testimony given by Athlete Steve Camilleri, Doping Control Officer Johann Pace, Chaperon Rodney Pisani, NADO Coordinator Ignatius Zammit, and Coach Jivko Jechev.
- h. The Decision handed down by the National Anti-Doping Disciplinary Panel on the 29th April 2015, when the Panel imposed upon the athlete Steve Camilleri 'a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of this decision" due to a breach of Regulation 3(2)(c) of the Anti-Doping Regulations, 2015 as provided under Regulation 11(3)(a) of the Anti-Doping Regulations, 2015 (Legal Notice 17 of 2015).

1.3 AND the Submissions filed by the able defendants appearing for the parties to this Appeal namely:



By Prof Dr Emir Crowne and others for the Appellant:

- The Note of Submissions dated the 22nd June 2015 including the Decision of the National Anti-Doping Disciplinary Panel dated 29/04/2015 (Appendix A), the Statement of Appeal lodged by the Appellant on 20/05/2015 (Appendix B), CAS 2011/A/244 (Appendix C) and CAS 3014/A/3639 (Appendix D), and
- A Counter-reply dated the 29th June 2015 in response to the Respondent's reply of the 26th June 2015.

By Av Dr Clint Tabone for the Respondent:

- A Final reply on the 30th June 2015 to the Counter-Reply filed by the Appellant on the 29th June 2015.

1.4 A hearing was held on the 26th of June 2015 to formally place on record the submission timetables as agreed between the parties. Once the submissions dates have passed during the first week of July 2015 the Appeal Panel adjourned to discuss and decide the Appeal on the 20th July 2015 .

2 The Events as extracted from the evidence given

Hereunder are some extracts from the evidence given which the Appeal Panel consider significant to establish what happened on the evening of the 15th January 2015 at the Marsa Sports:

2.1 On the 15th of January 2015, Johann Pace, DCO, and Rodney Pisani, Chaperone, arrived at the Marsa Sports Grounds at around 5pm in order to test Steve Camilleri and Luke Bezzina. At the time both these athletes were not there. Pace declared that at around 5.45pm he phoned Ignatius Zammit, Coordinator of the Anti-Doping Programme, and informed him that none of the athletes were present at the Marsa Sports Ground at that time and Zammit told them to wait there until 7pm. If none of the athletes were show up by 7 pm, the testing attempt was to be aborted.

2.2 At around 6.20pm, Steve Camilleri, the appellant, arrived at the Marsa Sports Ground in order to return items belonging to fellow athlete Daniel



Saliba. From this point onwards it is not entirely clear, from the evidence available, what exactly was exchanged between the Chaperone Rodney Pisani and the Athlete Steve Camilleri as the versions provided by each of them vary. And therefore the Appeal Panel had to conclude on that version which on the balance seemed to be the more likely within the circumstances that it was said.

2.3 Certainly the appellant was approached by Pisani and according to the latter's evidence "*Jiena mort fuqu u identifikajt ruhi. Huwa staqsini kif kien maghzul u cempilt lil Ignatius u huwa cempel lil xi hadd. Huwa mexa 'l barra lejn il-gate u telaq. Ahna kellimna lil coach biex jikkuntatjah*" (I approached him, and identified myself He asked how he was chosen and I phoned Ignatius and he phoned somebody else. He walked towards the gate and left. We talked to the coach in order to contact him). Subsequently during a confrontation between Pisani and Camilleri before the first Panel, Pisani said "*Jiena infurmajtu li huwa kellu jaghmel it-test u huwa qalli no problem, mbaghad qalli ghaliex intghazilt jien*" (I informed him that he is required to submit to the test and he said it's not a problem, and then asked me why I was chosen).

2.4 According to Steve Camilleri's evidence "*L-atleti bdew training u gie Rodney Pisani u saqsini ghal whereabouts... ..Jien lili hadd ma qalli ser naghmillek doping test*" (The athletes commenced the training and Rodney Pisani arrived and asked me for the whereabouts.....Nobody has told me that I was going to be tested for doping). In a subsequent sitting under cross-examination the appellant said "*Jiena ghidt lil Rodney li jien ma naghtix l-whereabouts fuq is-sistema ghax ma ghandix access. Jien lili saqsewni ghal whereabouts u saqsewni ghal Luke Bezzina. Daqshekk kulma qaluli*" (I said to Rodney that I don't provide the whereabouts on the system because I don't have access. I was asked for the whereabouts, and asked me for Luke Bezzina. That's all I was told). and during the second sitting "*Anti-doping jien naf x'inh. ADAMS ma kontx naf exatt x'inh. izda llum naf ahjar. MAAA u NADO jaghmlu seminars imma jien qatt ma attendejt. Naf li jekk nitlaq u ma noqghodx ghad-doping test hija offiza*". (I know what anti-doping is. I did not know what ADAMS exactly is, but now I know. MAAA and NADO organised seminars but I never attended. I am aware that if I leave and do not submit for the doping test it is a violation).

2.5 According to Ignatius Zammit (the NADO Co-ordinator) "*Ergajt ircivejt*



telefonata minghand Johann Pace li huwa ma riedx jaghmel test ghax ma kienx fuq ADAMS. Jien ghidtlu li xorta jrid jaghmel test.” (Again I received a phonecall from Johann Pace that he did not want to submit to the test because he was not on ADAMS. I told him that he must submit to the test just the same).

2.6 It is undisputed that it was the Chaperone Rodney Pisani, (who said he was wearing the tag at the time) and not the DCO Johann Pace who approached the Steve Camilleri on that latter’s arrival at the Marsa Sports Ground. Pace in his testimony said “ *...Rodney Pisani mar jinnotifikah u Steve kien qed jikkomplejna*” (...Rodney Pisani proceeded to notify him, and Steve was complaining) and “ *Jiena nikkonferma li jien qsamt fejn Rodney. Jien x’qallu lil Rodney ma nafx. Jien ma identifikajtx ruhi ma’ Steve u lil Steve qatt ma kellimtu.*” (I confirm that I crossed over near Rodney. I don’t know what Rodney told him. I did not identify myself with Steve and I never spoke to Steve.).

2.7 Mr Jivko Jechev gave evidence during the sitting of the 17th March 2015. He said “*I’m Steve Camilleri’s coach. 2 men came to the stadium and they asked for Luke Bezzina and told them that he wasn’t there. Then later on I understand that they came for Steve Camilleri. Steve came and left. The official told me that if he didn’t turn up he had serious consequences. Steve didn’t reply to the mobile. I phoned him twice. I saw Steve Camilleri speaking to the officials*”. The appellant confirmed that the coach did phone him and this is what he said “ *Jien il-kowc cempilli imma ma ndunajtx dak il-hin u wara ma cempiltlux*”(The coach phoned me but at that time I didn’t notice and thereafter I did not phone him back). Later on he added that he did not notice the couch’s call on his cellphone because he was driving and thereafter the cellphone switched off because its battery was flat. According to Camilleri’s testimony, he left the Marsa Sports Ground because he had to pick up his girlfriend and collect football tickets from Mellieha for he was travelling abroad on the following day.

3. The Grounds for the Appellant’s Appeal

3.1 On Whereabouts Information

The Appellant claims that ‘The Respondent had no systematized process for collecting whereabouts information’. The Appeal Panel



is of the view that the alleged lack of systematized process for collecting whereabouts information is not an issue here. Apart from the fact that the appellant was not on the ADAMS system as he did not form part of the testing pool, once an athlete is approached (whether 'in-competition' or 'out-of-competition') and is notified to submit to a doping test he must comply, even if the athlete does not form part of the testing pool as in the case of the appellant. According to the definition of "athlete" in the Anti-Doping Regulations, 2015 (LN 17 of 2015) means ***"any person who competes in sport at the international level as defined by each international federation or at the national level as defined by each national anti-doping organisation"*** Moreover it further says ***"The ADC has discretion to apply anti-doping regulations to an athlete who is neither an international-level nor a national-level athlete, and thus to bring them within the definition of "Athlete." In relation to athletes who are neither international-level nor national-level athletes, the ADC may elect to: conduct limited testing or no testing at all; analyse samples for less than the full menu of prohibited substances; require limited or no whereabouts information; or not require advance TUEs."*** And therefore this ground of appeal of the appellant is being rejected.

3.2 Notification

The Appellant claims that 'The next breach is the improper identification of the impugned Doping Control Officers' including the absence of evidence that the Collection Personnel possessed authorisation letter and identification documents .

As gathered from the transcripts of the evidence examined in particular the testimony cited in para. 2 above, it is not entirely clear what was exactly exchanged between the Chaperone Rodney Pisani and the athlete Steve Camilleri during their encounter at the Marsa Sports Ground in the evening of the 15th January 2015. The Appellant insists that he was asked about his whereabouts and that he was not asked to submit for a doping test. On the other hand the Chaperone Pisani said that when he approached the athlete Camilleri, and after identifying himself to him, the athlete enquired how he was chosen. The Appeal Panel are not inclined to accept the Appellant's version that he was not



requested to submit to the doping test because this is incompatible with his query as to why he was chosen notwithstanding he did not form part of the testing pool, and which must have prompted the Doping Control Officer to check the position with the Co-ordinator Ignatius Zammit. The Appeal Panel is comfortably satisfied that Steve Camilleri was duly requested by the Chaperone Pisani to submit to the doping test at the material time.

According to the WADA's International Standard of Testing (Art 5.4.1) the notice to the athlete to submit to a doping test can be done by the NADO, DCO or Chaperone, and thus there is no need for both the DCO and the Chaperone to inform the athlete that he is to undergo a sample collection. In the case under review it was the Chaperone Rodney Pisani who actually approached and advised the Appellant to submit to the doping test. The Appeal Panel holds that even though the International Standards of Testing (IST) may not have been communicated exactly in the format as stated in International Standard of Testing, probably because of the athlete's sudden departure as and when the DCO was on the phone, the Appeal Panel is satisfied that substantially the Chaperone complied with the notification requirements of the IST for the athlete at that point seemed to have queried only the reason as to why he was chosen, rather than the authority and/or the person requesting him to submit to the doping test.

The Appeal Panel also considered:

- Regulation 4(2)(c) of LN 17/2015 which provides that "*departures from any other international standard or other anti-doping rule or policy set forth in the Code or in these regulations which did not cause an adverse analytical finding or other anti-doping rule violation shall not invalidate such evidence or results.*"
- Regulation 3(2)(c) which contains the following proviso "*'evading sample collection' shall also be achieved if it is established that an athlete was deliberately avoiding a doping control official to evade notification or testing*".

Furthermore the Appeal Panel observes that this was the third time that Steve Camilleri was being requested to submit to a doping test, and in the previous two tests Mr Pisani was present. In this instance the Appeal Panel is satisfied that there were no serious departures in the procedures which had caused an



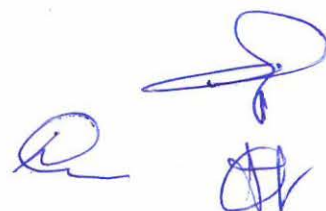
adverse analytical finding or other anti-doping rule violation. And therefore this ground of appeal of the appellant is also being rejected.

Having said this, the Appeal Panel emphasises that the NADO should ensure and insist that the Doping Control Officers and Chaperones it appoints, strictly adhere with the 'Notification of Athletes' procedures as provided in the WADA International Standard for Testing. Also the DCO and Chaperone should be more knowledgeable and assertive in their execution of the duties entrusted to them by the NADO. The Appeal Panel questions the need (and perhaps the time lost) when the DCO opted to check with the Coordinator, when he should have proceeded with the test as authorised. Also the Chaperone, as is his duty, should not have allowed the athlete to depart and disappear out of his sight, when he was obliged to stay with him at all times till the test procedure is finalised. These acts of apparent indecisiveness on the part of the DCO and Chaperone on the ground, could have confused or sent the wrong signal to the appellant, (who was not training on that day and was in a hurry for reasons mentioned above), to make him think that he can avoid (rather than evade) the doping test.

3.3 Lex Mitior

The appellant also submitted that in this case the principle known as 'Lex Mitior' requires that any violation which may have been performed by the Appellant ought to be measured against the WADA Code 2009 version [which as per Art 10.3.1. provides for a period of ineligibility of two (2) years], and not against The Anti-Doping Regulations, 2015 (LN 17 of 2015 – Laws of Malta Chapter 455) [which as per Regulation 11(3)(a) provides for a period of ineligibility of four (4) years which can be reduced to two (2) years if the athlete can establish that the commission of the anti-doping violation was not intentional].

In the Appellant's submission the able defending lawyer quoted the following from CAS 2009/A/2019 says "*This principle applies to anti-doping regulations in view of the penal or at the very least disciplinary nature of the penalties that they allow to be imposed. By virtue of this principle, the body responsible for setting the punishment must enable the athlete convicted of doping to benefit from the new provisions, assumed to be less severe, even*



when the events in question occurred before they came into force."¹

This principle is also accepted in Maltese Penal Law. However the Appeal Panel cannot agree to the applicability of this principle in the case subject to this appeal because the event giving rise to these proceedings occurred on the 15th January 2015 that is after the publication of the Anti-Doping Regulations, 2015 (LN 17 of 2015) in the Malta Government Gazette on the 9th January 2015 and therefore prior to the commission of alleged breach by the athlete Steve Camilleri. Therefore the Appeal Panel holds that it is the law prevailing on the date of the occurrence of the event giving rise to these proceedings, (i.e. LN 17 of 2015) which should apply to this case and not the WADA Code, 2009 as submitted by the Appellant.

3.4 Period of Ineligibility

As an alternative, the Appellant's defence lawyers, also pleaded that should the Appeal Panel not find any breaches by the NADO officials of the WADA International Standards of Testing, the Appeal Panel should consider a relief in the period of ineligibility imposed by the National Anti-Doping Disciplinary Panel in their decision of the 29th April 2015 and that in any event any ban which may be imposed on the Appellant should start on the 15th of January 2015.

The National Anti-Doping Disciplinary Panel has found that the athlete Steve Camilleri has breached Regulation 3(2)(c) of the Anti-Doping Regulations, 2015 (LN 17 of 2015) by evading sample collection 'out-of-competition' on the 15th January 2015, and as a result the National Anti-Doping Disciplinary Panel had imposed on Steve Camilleri "*a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of this decision*".

This Appeal Panel agrees with the finding of the National Anti-Doping Disciplinary Panel that athlete Steve Camilleri did breach Regulation 3(2)(c).. However this Appeal Panel is of the view that the element of hesitation and/or indecisiveness, which seemingly prevailed at the time of notification, may have led the Appellant to believe that he could decide not to submit for the

¹ Submission by appellant's representative, pg. 9

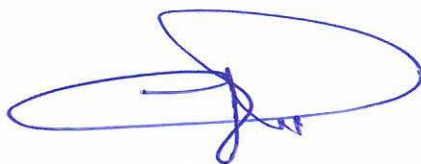


doping test. The Appeal Panel considers Steve Camilleri's conduct as 'negligent' and excludes any intention on the part of the athlete Steve Camilleri to cheat. Yet this Appeal Panel has no doubt that Steve Camilleri breached Regulation 3(2)(c) by his action on the 15th January 2015 for as an athlete he was expected to respect the authority even if this required self-control and some patience on his part. Therefore, taking into account all the circumstances including the Appellant's previous clean anti-doping record, in this instance the Appeal Panel is of the view that Regulation 11(2)(c) should be applied to Regulation 11(3)(a) of LN 17 of 2015 thus reducing the period of ineligibility of athlete Steve Camilleri from four (4) years to two (2) years.

4. Decision:

Therefore on the basis of the foregoing considerations the National Anti-Doping Appeal Panel determines this appeal:

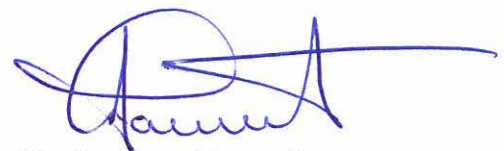
- By confirming the findings of the National Anti-Doping Disciplinary Panel of the 29^h April 2015 that the athlete Steve Camilleri violated Regulation 3(2)(c) of the Anti-Doping Regulations, 2015 (LN 17 of 2015- Sports Act Chapter 455, Laws of Malta);
- By reforming the period of ineligibility imposed on the athlete Steve Camilleri by the National Anti-Doping Disciplinary Panel in their decision of the 29^h April 2015 by reducing the period of ineligibility of the athlete Steve Camilleri from any sports activities from a period of four (4) years to a period of two (2) years in terms of Regulations 11(3)(a) and 11(2)(c) of LN 17 of 2015 and
- By ordering that the period of ineligibility of two (2) years from any sports activities of the athlete Steve Camilleri is to commence from the 2nd March 2015 this being the date of the Provisional Hearing decision.



Dr Carmel Cascun



Dr Marisa Cassar



Dr Stephen Zammit

Dated: 31st day of July 2015

At Cospicua, Malta