

Decision of the National Anti-Doping Disciplinary Panel.

Case Ref: NADDP 03/2015

Anti-Doping Commission (Malta)

-vs-

**CLAYTON DARMANIN (Athlete member
of the Ghaqda Regatta Nazzjoni u Qdi
lehor with Maltese Identity Card No
453884M)**

The National Anti-Doping Disciplinary Panel (hereinafter referred to as the 'Panel') consisting of Dr. Maria Azzopardi as Chairperson, and Dr. Aaron Formosa and Dr. Abigail Sciberras as members.

Before the commencement of this proceeding, Dr. Aaron Formosa M.D. and Dr. Abigail Sciberra declared to the Chairperson that they are not subject to any circumstance or conflict that could negatively affect their impartiality in the case under review. The same declaration was made by the Chairperson to the 'Panel'.

1. Preliminaries

Considered the Request by the National Anti-Doping Commission (Ref. No. ITSTBJOCAM-15/1) on the 8th of May, 2015 to the Chairperson of the Panel to schedule a sitting for the hearing of a case concerning the alleged breach by Clayton Darmanin of the Anti-doping Regulations (Legal Notice 17 of 2015, Sports Act, Chapter 455, Laws of Malta).

Took note and reviewed the following documents that were forwarded to the Panel at the initial stage by the Coordinator of the Anti-Doping Programme, namely:

- (i) The request to the Panel to schedule a hearing dated 8th May, 2015 (ADC16b);
- (ii) The request by NADO to the National Association/Federation of the alleged breach by Clayton Darmanin dated 29th April, 2015 (Doc ADC11c);
- (iii) Letter of Notification by NADO to Clayton Darmanin of a possible violation of the Anti-Doping Rules dated 29th April, 2015 (Doc ADC10c);
- (iv) A copy of the Doping Control Officer Report Form filed by NADO following the doping test on the 31st of March, 2015 (Doc ADC4);
- (v) A copy of the Analysis Report dated 29th April, 2015 (Doc ADC7);
- (vi) A copy of the Report of Adverse Analytical Finding (Doc ADC10d).

Took note of the Notice issued by the Panel to Clayton Darmanin to appear before the Panel on the 30th of July, 2015 at 11am and answer to the accusation based on Article 3(2)(a) and (b) of L.N 17 of 2015 of the Laws of Malta:

- “(2) *The following constitute anti-doping rule violations:*
- (a) *the presence of a prohibited substance or its metabolites or markers in an athlete's sample:*



(b) *the use or attempted use by an athlete of a prohibited substance or a prohibited method:"*

Copy of the Notice of hearing was also forwarded to the Anti-Doping Commission, the 'Ghaqda Regatta Nazzjonali u Qdif Iehor' and Malta Sports Council.

2. Merits:

2.1 Present at the sittings - Clayton Darmanin, Dr. Albert Zerafa on behalf of Clayton Darmanin and Dr. Lucienne Attard on behalf of the NADO. Upon agreement between all parties on the 30th of July, 2015 the case was adjourned to the 6th of August, 2015. On the 6th of August, 2015 all parties agreed and declared that since the witnesses who gave evidence under oath on the 30th of July, 2015 during the case against Bjorn Camilleri (ITSTBJOCAM-15/12 & NADDP 04/2015) were needed to testify in relation to the same merits in the case against Clayton Darmanin, the evidence transcribed in the case NADC vs Bjorn Camilleri would form part as evidence in this case. The Chairperson of the NADDP read to all the parties present at the sitting of the 6th of August, 2015 the evidence brought forward during the sitting of the 30th of July, 2015. The Panel heard and took note of the evidence given under oath during the sittings during which:

(a) On the 31st of March, 2015 during the Regatta, Clayton Darmanin was called after the competition by the DCO to provide a urine sample for Doping Tests. The result of the Doping Tests were positive and Clayton Darmanin was called before the NADDP to answer to the accusations that during an "in competition" doping test, his urine tested positive to prohibited substances being Boldenone and Metenolone both classified as Anabolic Steroids under the Prohibited List 2015.

(b) During the sittings the defense counsel Dr. Albert Zerafa claimed that Clayton Darmanin is innocent and he should to be acquitted on the basis of:

(i) The athlete never made use of any substance which may be in violation of Anti Doping Rules;

(ii) The athlete is not responsible for not knowing which substances are enshrined under the Prohibited List because this was not made available to the athletes as requested under Article 5 (1) of the L.N. 17 of 2015;

(iii) The regulations under Article 9.3 of the WADC International Standards Testing and Investigations (2015) regulating transportation and the chain of custody of the samples were not observed.

(c) Upon request of the Panel, Dr. Lucienne Attard Chairperson of the NADO explained the procedure for doping tests whereby she stated that:- From time to time the Anti-Doping Commission decides to test the athletes and it informs the Doping Control Officer with the details of his mission, that is time, place and competition. The DCO identifies the room where to carry out the doping test and identify the athlete who should do the test. The DCO informs the athlete and the athlete signs the form. During the test the athlete chooses the containers and all the materials to be used for storage and identification of the sample and the athlete himself prepares the sample in the A & B container. The DCO is in charge to inspect that the athlete completes the doping test and is present at all the time. The name of the athlete is blacked out on the form and the only identification between the athlete and the sample is a code. The sample containing two containers A & B are sent to the laboratory and the laboratory upon receiving the containers has to confirm that the chain of custody was observed and that the containers reached the laboratory in good state. Dr. Attard explains that the containers which are enclosed in a sealed bag are sent by courier to the laboratory and if any of the containers or bag do not arrive sealed to the laboratory, the NADO will be informed.

(d) Ignatius Zammit, NAD Programme Coordinator gave evidence confirming that he was present on site in order to coordinate the Doping Control Room. The room was an ideal one in the sense that there was a waiting room, an area for the splitting of samples and a toilet. The room was up to standards. Then the athletes were targeted and informed that they had to do the doping test. When the athletes finished to collect the sample, split it and seal the container and bag, these were put in a cooler and I personally took them to the office. The samples were sent with a courier to the laboratory the following day. With respect to the Chain of Custody, the laboratory had noted that the containers arrived at destination in good state and everything was according to the regulations. Mr Zammit explains that the containers are unique and the code is engraved on each container and marked on the form which accompanies the containers as well. The procedure is in accordance with international standards.

(e) Andrea Vannini and Victor Rutter representatives of UPS were requested by the defence counsel to give evidence. They confirmed that the NADO is a client of UPS. The procedure of transportation is the same for all objects which the company transports. The courier collects the object and delivers it to the office. At the office the object is scanned in order to provide traceability and the client can view at which stage the object is. The object is sent by airplane to Cologne where it passes through security checks and then the object is sorted according to its destination. The object passes through various hands, approximately five different persons.

(f) Carmel Fabri as representative of the Kalkara Club Regatta explained that in the past the National Association used to send to the Club a list containing Prohibited substances and the Club used to put it on the Notice Board. This was about seven or eight years ago. Since then we did not receive it and the Club never took the initiative to get a copy of it not even to print it from the internet notwithstanding the fact that the Club has access to the Internet at its offices. Fabri explained that when the athletes ask for information on the substances that are prohibited, he would advise them to speak to a doctor.

(g) Clayton Darmanin explained that he has been taken part in the Regatta since he was 12 years of age. I had already a previous experience with the doping test in 2012. Being questioned by the Chairperson, Darmanin denies taking any substances apart from taking Catafast. I stopped taking the pre-workout which is taken at the gym and which you can also find from Health life. This is a powder which you mix with water such as 'redwhylwer'. Darmanin explained that the last time that he had this pre-workout was a week or three (3) days before the competition.

(h) Johann Pace, the DCO explains that the testing on that day was within the normal procedures for testing. The procedure adopted in the case of Clayton Darmanin was the same as in the case of Bjorn Camilleri who was tested on the same day and during the same competition. The athlete cooperated and there was nothing abnormal. As soon as the athlete finished to collect the sample of urine, split the sample and close the containers and seal the bag, I took care to put the sample in the cooler. The athlete had informed us that he had taken Catafast and this is mentioned in the Doping Control Form. Darmanin cooperated and on that day there was no objection by any of the athlete whatsoever.

(i) Professor Joe Grima, President of the Regatta National Association 'Ghaqda Regatta Nazzjonali u Qdif lehor' who took over the presidency at the beginning of this year. The President explains that when he took over the Association there was the need of an upgrading in the functioning of the Association. In this case at that time there was no information on the notice board about the Prohibited list and it was only recently that the Association created a website with all relevant information.

(j) Dr. Lucienne Attard, Chairperson NADO was called as witness by defense counsel - The courier is selected amongst the various companies in Malta according to the most advantageous quote and reliable service.

The image shows three handwritten signatures or initials in blue ink at the bottom of the page. The first is a large, stylized signature that appears to be 'J.P.'. The second is a smaller signature that looks like 'J.C.'. The third is a set of initials 'A.C.'.

2.2 Dr. Albert Zerafa made reference to the Chain of Custody and argued that according to International Standards, the NADO are to handle the samples from the moment of collection to the laboratory and there is a break in the Chain of Custody the moment the sample is handed over to the courier without there being a representative of the NADO throughout the journey to the laboratory. By analogy Dr Zerafa made reference to a civil case before the Maltese Court referring to the testing of DNA and its transportation to the laboratory for testing - "Carmel sive Charles Cutajar vs Attorney General" (First Hall Civil Court, Citazz. Nru. 23/2006).

2.3 The Panel took note of the evidence produced and the final oral submissions of the parties representatives.

3. Considerations:

3.1 The Panel will deal with each argument raised by the defense counsel separately:

(i) The first claim of the athlete was that he never made use of any substance which may be in violation of Anti-Doping Rules and the result of the testing is very surprising to him. In respect of this claim, the Panel has no doubt about the credibility of the tests carried out by the laboratory and their final results as indicated in the Analysis Report dated 29th April, 2015. The athlete refused to conduct a test on the B Sample and therefore the Panel will rely on the Analysis Report of the Laboratory.

Hence, the Panel is of the opinion that the presence of Boldenone and Metenolone both classified as Anabolic Steroids under the Prohibited List 2015, in the urine sample (A Sample) or Clayton Darmanin was proved in accordance of Article 3 (2) (a) (ii) (aa).

(ii) The second claim whereby the athlete argues that he is not responsible for not knowing which substances are enshrined under the Prohibited List because this was not made available to the athletes as requested under Article 5 (1) of the L.N. 17 of 2015 is not an acceptable argument since the law itself under Article 3 (2) (a) (i) clearly states that: "*it is each athlete's personal duty to ensure that no prohibited substance enters his or her body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples. Accordingly, it is not necessary that intent, fault, negligence or knowing use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under sub-regulation (2) (a).*" This article confirms that every athlete has the responsibility to ensure that any substance that enters his or her body is not a prohibited substance. On the other hand, the National Association has an obligation towards its members to ensure that the Prohibited List and other useful information are available to its members but any lack of diligence and recklessness part of the National Association cannot exonerate the athlete from its responsibilities.

Hence, the Panel is convinced that the athlete failed to his obligation to ensure that no prohibited substance entered his body.

(iii) The third and final issue raised by the defense counsel was that the regulations under Article 9.3 of the WADC International Standards Testing and Investigations (2015) regulating transportation and the chain of custody of the samples were not observed. On this point, the Panel makes reference to Article 6.3.5 of the WADC International Standards Testing and Investigations (2015) which specifies that "*Sample Collection Authority shall develop a system for recording the chain of custody of the samples and sample collection of the documentation which include: confirming that both of the samples and sample collection documentation have arrived at their intended destination*". Moreover, it states that "*information as to how a sample is stored prior to departure from the doping control station may be recorded on for example on a post mission report. When the sample is taken from the doping control station, each transfer of custody for the sample from one person to another, for example from the DCO to the Courier should be documented up until the sample arrives at its destination*".

Therefore, the only obligation on part of the NADC is that the Commission has traceability of the transportation of the sample and its documentation throughout the whole process. The regulation itself recognizes the use of Couriers but it imposes on the Commission the obligation to



follow the movements of the sample from when the sample leaves the DCO until it arrives to its final destination. Therefore, the Panel is satisfied that the Chain of Custody and the WADCI International Standards Testing and Investigations (2015) were fully respected.

4. Decision

Therefore on the basis of the above considerations, the National Anti-Doping Disciplinary Panel rules that:

4.1 Clayton Darmanin has breached the Anti-Doping Regulations, 2015 [Art. 3(2)(a)] and (Art. 2.1) as the presence of a prohibited substance or its metabolites or markers has been found in Clayton Darmanin's urine sample A that had been collected from him on the 31st of March, 2015.

4.2 And therefore the National Anti-Doping Disciplinary Panel as provided under Art 11 (2) (a) of the Anti Doping Regulations, 2015 and Art. 10.2.1 of the WADA Code is imposing on the athlete Clayton Darmanin a suspension of ineligibility from any sports activities for a period of four (4) years commencing from the date of his provisional suspension if there was one. Otherwise the period of ineligibility is to start running from the date of this decision.

4.3 A copy of this decision is to be forwarded to the Malta Regatta Association (Ghaqda Regatta Nazzjonali u Qdif lehor).



Dr. Maria Azzopardi
Chairperson



Dr. Aaron Formosa

Member



Dr. Abigail Sciberras
Member

This 26 day of August 2015

At Cospicua, Malta