

- 1.) MFA 2015 Malta Football Association vs Nigel Rizzo (18 August 2015)
- 2.) MFA 2015 Nigel Rizzo vs Malta Football Association - Appeal (18 September 2015)



MALTA FOOTBALL ASSOCIATION

PATRON: HE Dr. Marie Louise Coleiro Preca, The President of Malta.

THE CONTROL AND DISCIPLINARY BOARD.

18th August 2015

Mr Nigel Rizzo

[...]

Mr Nigel Rizzo
Mr Secretary

The Board:

After the board analysed all the documents including the declaration where it was agreed that this case is to be decided according to the new rules of WADA (2015);

After hearing

The statements of Dr Attard; and Nigel Rizzo

Final verbal submissions of Dr Adrian Camilleri and Dr Keith Borg;

Once the Board took into consideration all of the evidence, it resulted that;

1. There is no doubt that the player Nigel Rizzo made use of marijuana substance;
2. The player however contested the use of cocaine and is alleging that the cocaine substance found in his system was done so “passively” due to him a few days prior to the game, being at a club and private party where cocaine was being consumed by third parties in his vicinity. He stated that the marijuana was consumed that day when the other persons were consuming cocaine;

3. Dr David Attard confirms that it is possible that cocaine may be found in a persons system through passive means. However, the possibility that the player made use of the cocaine substance in a direct way was not excluded;
4. Dr David Attard claimed that the test taken was a qualitative test and not a quantitative one, which is why he was not able to determine the amount of substance, ingested by the player and distinguish whether the player ingested the substance passively or directly;
5. However the Board is not convinced that the cocaine found in the players body was ingested passively, indeed the Board is convinced that the player was in fact making use of the cocaine substance;
6. It appears that there is no evidence that proves that the person made use of the substance as a “performance enhancement.”
7. It is agreed that the Club was not involved in the matter in question in anyway.

Therefore the Board:

1. Finds the player Nigel Rizzo guilty of the charges brought against him;
2. As a punishment the Board decides that due to the circumstances mentioned above, the player is to be suspended for an overall and reduced period of two years from all football activities, and which period is to start from when the player was first suspended therefore from the 4th of May 2015 to 3rd May 2017. The Board also determines that there is no circumstances which warrant a further reduction.
3. Orders, that for the safeguard of the players reputation and position this decision is not to be broadcasted publicly until the case is closed definitely and this according to Article 14.3 of the WADA 2015 regulations.

Mario Axiaq
Board Secretary



Cc. Melita FC



Appell mressaq minn Nigel Rizzo kontra d-decizjoni mehuda mill-*Control and Disciplinary Board* datata t-Tlieta, 18 ta' Awissu, 2015, li permezz taghha huwa gie sospiz ghall-perijodu kumplessiv u ridott ta' Sentejn minn kull attivita' tal-futbol

Il-Bord zamm Seduta nhar il-Gimgha, 11 ta' Settembru, 2015.

Prezenti l-Appellant assistit mill-Avukat Dottor Keith A. Borg.

L-Avukat Dottor Adrian Camilleri ghall-MFA ma setax ikun prezenti u gie skuzat.

Il-Bord

Ra' l-Appell ta' Nigel Rizzo datat il-Gimgha, 28 ta' Awissu, 2015 li gie intavolat fl-istess gurnata.

Ra' d-Decizjoni tal-*Control and Disciplinary Board* datata t-Tlieta, 18 ta' Awissu, 2015 li biha l-Appellant wara li gie misjub hati tal-akkuza migjuba kontra tieghu gie sopiz ghal perijodu kumplessiv u ridott ta' sentejn minn kull attivita' tal-futbol, liema perijodu beda jiddekorri minn meta l-player gie sospiz u cjoe mill-4 ta' Mejju, 2015 sat-3 ta' Mejju, 2017.

Dr. Borg ghall-Appellant qal li l-fatti li taw lok ghal dawn il-proceduri kienu s-segwent. Tlett tijem qabel il-loghba in ezami, l-Appellant kien fil-kumpanija ta' "klikka estiza" kemm gewwa Club f'Paceville u wara gewwa residenza privata. Kien hemmhekk (fir-residenza privata) illi huwa ha u ikkonsma s-sustanza marijuana. Go l-istess residenza kien hemm terzi li jienu qeghdin jassumu (jiehdu) s-sustanza kokaina, liema sustanza kif risaput, tikkonsisti fi trab li jigi assunt mill-mnieher.

L-Appellant jikkontendi li huwa qatt ma kkonsma l-kokaina direttament, u tali sustanza instabet f'gismu wara inhalazzjoni passiva. Infatti skont l-Appellant, Dr. Attard waqt kontro-ezami mill-Avukat tal-Appellant kkonferma illi huwa possibli li f'ambjent maghluq, jekk bniedem jassumi l-kokaina, jista jkun hemm tixrid tas-sustanza fl-arja, li tidhol f'sistemi ta' terzi li ma jkunux fil-fatt assumew direttament din l-istess sustanza.

L-Avukat Borg irrileva illi t-test u r-rizultanza fir-rispett tas-sustanza kokaina huwa kwalitattiv u mhux kwantitattiv u sostna illi kieku t-test kien wiehed kwantitattiv, certament kien ser jirrizulta illi s-sustanza misjuba f'gismu Nigel Rizzo "kienet tali li kienet tindika assunzjoni passiva". Huwa qal li l-Appellant kien issottometa ruhu liberament ghat-test kwalitattiv li sarlu. Huwa allega illi l-*Control and Disciplinary Board* injora ghal kollox kemm it-testimonjanza ta' Dr. Attard li kien ix-xhud principali u kemm tal-istess Appellant. L-Appellant issottometta illi fid-dawl tad-depozizzjoni tieghu u ta' Dr. Attard ma giex sodisfatt it-test tal-"bilanc tal-probabilitajiet" u anqas u anqas dak tal "comfortable satisfaction" illi huwa l-grad ta' prova rikjest f'kazi simili minn Bords ta' gjurisdizzjoni sportiva.

Sussidjarjament l-Appellant issottometta illi nonostanti dak dispost fl-Artikli 10.5.1.1 u 10.5.2 tar-Regoli tal-WADA 2015, il-*Control and Disciplinary Board* deherlu li ma kellux jakkorda riduzzjoni tal-

piena applikabbli kif permess minn dawn l-Artikli wara l-ittehid in konsiderazzjoni tad-*Degree of Fault* tal-Appellant li skont l-Avukat Borg huwa tali li jiggustifika r-riduzzjoni msemmija.

Huwa talab li d-decizjoni tal-*Control and Disciplinary Board* tigi revokata f'dik il-parti taghha fejn sabet lill-Appellant hati ta' tehid tas-sustanzi marijuana u kokaina, filwaqt li issibu hati tat-tehid tas-sustanza marijuana biss liema tehid huwa kien ammetta. In konsegwenza ta' hekk bl-applikazzjoni tal-Artiklu 10.5 tar-Regoli tal-WADA 2015, il-Bord gie mitlub li jimmodifika l-piena erogata billi jimponi piena anqas harxa u fil-parametri tar-riduzzjonijiet permessi mir-Regoli tal-WADA 2015.

In vista ta' dak li intqal fuq ghalhekk il-mertu ta' dan l-Appell qed ikun ristrett ghal jekk il-kokaina li instabet f'gismem l-Appellant hadiex hu direttment u volontarjament jew jekk il-prezenza taghha kenitx rizultat ta' assunzjoni b'mod passiv (*Passive Inhalation of Cocaine*).

Il-Bord ikkunsidra

L-iskop tal-Artiklu 2 (Anti-Doping Rule Violations) tar-Regoli WADA 2015 huwa "*to specify the circumstances and conduct which constitute anti-doping rule violations.....Athletes or other persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included in the Prohibited List*".

L-Artiklu 2.1 (2.1.1) jghid car u tond li huwa **doxor personal** ta' kull atleta li jassigura li "*no Prohibited Substances enters his or her body*" u li ghalhekk l-atleta huma responsabbli ghal dak li jinstab fil-kampjun (Samples). L-istess Artiklu ikompli illi sabiex wiehed jistabbilixxi "*anti-doping rule violation*" ma hemmx b'zonn li wiehed juri l-intenzjoni, l-izball, n-negligenza jew l-użu volut da parti tal-atleta (*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 Article 2.1.*). Dan ifisser ghalhekk illi kif specificat ukoll fl-Artikli 2.1.2 u 2.1.3 ikun hemm prova sufficjenti ta' vjolazzjoni tar-regola tal-anti-doping jekk tigi ippruvata biss il-prezenza ta' "*Prohibited Substance or its Metabolites or Markers*" fl-'A' Sample tal-atleta. Ma hemm l-ebda dubju li f'dan il-kaz l-prova ta' kokaina fil-kampjun mehud mill-Appellant tezisti u ghalhekk f'dan il-kaz l-oneru li jipprova dak li qed jallega jaqa kompletament fuq l-Appellant. F'dan il-kaz qed jigi allegat li din l-prezenza ta' kokaina fis-sistema tieghu hija rizultat tal-hekk imsejja "*passive inhalation of cocaine*", li skond l-Appellant grat meta huwa, wara Party f'Paceville ma uhud, mar f'dar privata mal-istess nies, fejn hu ha l-marijuana. L-ambjent kien maghluq u kien hemm terzi persuni (presumibilmment maghrufa minnu) li kienu qed jinhalaw l-kokaina u minhabba l-istess, b'mod accidental, mhux voluta u b'inalazzjoni indiretta mil-arja maghluqa huwa spicca bi tracci ta' kokaina f'gismu.

Il-Bord ikkonstata illi l-Appellant jipprova jispjega dan li stat ta' fatt u jipprova isib konfort ghalih billi jghid li anki Dr. Attard fix-xhiedha tieghu ma eskcludiex li dan jista jgri (u li ghalhekk ma hemmx prova diretta li huwa ha il-kokaina ghax ried jehodha, haga li huwa cahad). Pero huwa fatt ukoll li fix-xhiedha tieghu Dr. Attard ma eskcludiex illi l-kokaina ma ittehditx volutament. Ghal fini ta' dan l-Appell il-Bord ihoss illi dikjarazzjoni simili bl-ebda mod ma tista tiskolpa lill-Appellant li kif intqal aktar il-fuq ghandu l-oneru li jipprova dak li qed jallega. Sakemm dik il-prova jew provi ma jigux ipprezentati il-gudikant ikollu d-dritt li jigbed il-konkluzjonijiet tieghu abbazi tac-cirkostanzi ezistenti.

L-Artiklu 2 tal-WADA 2015 imsemmi fuq, jitkellem car dwar ic-cirkostanzi li wiehed ghandu jevita u l-kondotta li wiehed ghandu jadotta sabiex ma jkunx hemm vjolazzjoni tar-Regoli anti-doping. Oltre

pju l-istess Artiklu jitkellem fuq l-obbligu u d-dover personali ta' kull atleta li jassigura li l-ebda sustanza proibita ma tidhol fis-sistema ta' dak li jkun. F'dan il-kaz partikolari l-Appellant mhux talli ma ghamilx hekk talli ghal kuntrarju apparti li *ex admissisha* il-marijuana, mar f'ambjent maghruf minnu, fejn terzi (presumibilment maghrufa ghalih ukoll) kienu qed jinhalaw il-kokaina. Il-Bord iħossu komdu jippresumi illi jekk dan kien il-kaz, l-Appellant tant kien jaf x'kumpanija kien qieghed izomm, li hassu komdu ukoll imur f'residenza privata fejn kien qed isir abbuż tad-droga kokaina.

Dawn ic-cirkostanzi li jikkonfermaw ksur lampanti mill-Appellant tad-doveri u l-obbligi tieghu skond il-WADA 2015, huma indikattivi u jissodaw l-opinjoni tal-Bord illi din ma kenitx l-ewwel darba li l-Appellant għadda minn esperjenza simili... certament ma kienx *beginner*. Ic-cirkostanzi jissuggerixxu ukoll illi l-Appellant huwa 'intiz' fin-narkotici u l-logika tissuggerixxi ukoll li huwa kien jaf jew almenu kellu jkun jaf li jekk verament kien hemm inhalazzjoni incidental ta' kokaina din setghet, jekk kien hemm inhalazzjoni kontinwa u konsistenza għal-tul ta' diversi siegħat, tagħti traccia fis-*"sample"* daqs li kieku hadha direttament. U *'all things being equal'* huwa naturali li wiehed jahseb illi la r-rizultat ta' inhalazzjoni u teħid dirett huwa l-istess, huwa u kien fl-interess tal-Appellant li jipprezenta provi li dan ma sehħx. L-Appellant ma għamel xejn minn dan u ma gab l-ebda prova biex jissostanzja dak li qed jallega. L-Appellant ma ta' l-ebda indikazzjoni ta' kemm kien kbir il-'magħluq' fejn suppost kienet qed tittiehed il-kokaina, kemm kien hemm nies qed jabbużaw mil-kokaina, kemm damet tittiehed il-kokaina, x'kwantita ta' kokaina ittiehdet, u hu personalment kemm dam f'dan l-ambjent. Quddiem dan il-Bord ma ingabet l-ebda prova f'dan is-sens, saret biss asserzjoni gratwita u mhux sostanzjata, bħal ma hija gratwita u mhux sostanzjata l-asserzjoni illi kieku t-test kien kwantitattiv *'certament kien ser jirrizulta illi s-sustanza misjuba f'għisem Nigel Rizzo kienet tali li kienet tindika assunzjonipassiva'*.

Hekk per eżempju huwa ben magħruf minn studji u esperimenti li saru minn esperti fis-suggett li mhux la kemm wiehed jgħid li nħala l-kokaina passivament u dina dahlet fis-sistema tieghu. Biex sitwazzjoni bħal din tavvera ruhha, meta u jekk tavvera ruhha, irid ikun hemm certa kwantita' u intensita' u konsistenza għal tul ta' zmien ta' teħid tal-kokaina f'ambjent ristrett fejn jkun qed jsir l-abbuż. Instab li generalment individwi esposti għall-kokaina kemm taht kundizzjonijiet naturali u kemm taht dawn artifizjali jassorbu ammont minimu ta' kokaina li ma huwiex bizzegjed biex jipproducu *"samples"* positivi ta' kokaina fl-urina.

Stante dak li intqal fuq u stante n-nuqqas da parti tal-Appellant li jissostanzja dak li qed jallega, dan il-Bord bħal *Control and Disciplinary Board* qablu, ma huwiex propens li jemmen li l-kokaina li nstabet fis-sistema tal-Appellant kienet rizultat ta' inhalazzjoni passiva. Għall-kuntrarju dan il-Bord huwa konvint sa livell ta' *"comfortable satisfaction"* illi l-Appellant fin-nuqqas ta' provi għall-kuntrarju kien qed jagħmel uzu tas-sustanza kokaina.

In vista ta' dan għalhekk il-Bord iħoss illi r-riduzzjoni possibbli fil-piena, kontemplata fl-Artiklu 10.5.1.1 u 10.5.2 tar-Regoli tal-WADA 2015 u invokati f'dan il-kaz, ma għandiex tigi akkordata lill-Appellant. Il-Bord ma għandu l-ebda dubju li f'dan il-kaz l-Appellant jista' jigi akkollat mingħajr l-ebda diffikulta mhux biss b'*significant fault*' u *"negligence"* izda anki b'kondotta generalment irresponsabbli, inkludenti ksur ta' doveri personali u b'agħir f'cirkostanzi partikolari li manifestament jikkostitwixxu vjolazzjoni tar-Regoli tal-*Anti-doping*.

Għalhekk stante il-premess il-Bord jichad l-Appell u

- (1) jikkonferma d-decizjoni tal- *Control and Disciplinary Board* tat- Tlieta 18 ta' Awissu, 2015 fejn l-Appellant gie misjub hati tat-tehid tas-sustanzi marijuana u kokaina u sospiz ghal perijodu kumplessiv u ridott ta' sentejn minn kull attivita' tal-futbol, liema perijodu beda jiddekorri minn meta l-player gie sospiz u cjoe mill-4 ta' Mejju, 2015 sat-3 ta' Mejju, 2017, u
- (2) l-Bord jordna ukoll li din id-decizjoni tigi komunikata lill-Awtorita kompetenti sabiex din tagixxi ai termini tal-Artiklu 14.3 tar-Regoli tal-WADA 2015.



- (3) Id-depozitu ta' mitejn u ghoxin euro (EURO120) jintilef faur l-M.F.A.

Illum, 18 ta' Settembru, 2015

..... Dr. Ronald Cuschieri (Chairman)

----- Is-Sur Victor Scicluna (Membru)

-----Is-Sur Nick Xuereb (Membru)