WORLD RUGBY

IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY **MAHLATSE ('CHILIBOY') RALEPELLE** CONTRARY TO WORLD RUGBY REGULATION 21 BEFORE A BOARD JUDICIAL COMMITTEE

Board Judicial Committee:
Christopher Quinlan QC, Chairman, (England)
Gregor Nicholson (Scotland)
Dr Margo Mountjoy (Canada)

Appearances and Attendances:
World Rugby
Susan Ahern, Senior Counsel, World Rugby
David Ho, Anti-Doping Manager, World Rugby
The Player
Mahlatse ('Chiliboy') Ralepelle
Daniel Saoul, Counsel
Mike Morgan, Solicitor
Richard Martin, Solicitor

Heard: 2 June 2015

DECISION OF THE BOARD JUDICIAL COMMITTEE

I. INTRODUCTION

1. The International Rugby Board ('IRB') commenced these proceedings following a sample taken from Mahlatse ('Chiliboy') Ralepelle ('the Player') in March 2014.

2. In November 2014, during these proceedings the IRB changed its name to World Rugby. Both names are used, as appropriate, in this Decision.

3. World Rugby allege that the Player committed an anti-doping rule violation ('ADRV') as a result of an adverse analytical finding ('AAF') for the presence of drostanolone metabolite, namely 2alpha-methyl-5alpha-androstan-3alpha-ol-17-one. Drostanolone is an exogenous anabolic steroid and is listed in Category S1.1a (Anabolic Androgenic Steroids) of Schedule 2 to Regulation 21 and in WADA's 2014 List of Prohibited Substances.

4. The Player is and was at all material times a player and thereby a member of the South Africa Rugby Union ('SARU'). There was no issue that he was subject to the jurisdiction of the IRB and World Rugby. He denied committing the alleged ADRV.

5. The substantive hearing took place in Dublin on 2 June 2015. At the conclusion thereof we reserved our decision. This document constitutes the Board Judicial Committee's ('BJC') final reasoned Decision, reached after due consideration of the evidence, submissions and Arbitral Awards and authorities placed before it. Each member of the BJC contributed to it and it represents our unanimous conclusions.

II. FACTS

A. The Doping Test and A Sample

6. At all material times the Respondent was a professional rugby union player for Stade Toulousain ('Toulouse'). On 15 February 2014, the Respondent sustained a serious knee injury in a match between Toulouse and Biarritz for which he had to undergo surgery. In short, he had a surgical reconstruction of an anterior cruciate ligament ('ACL') days later. The operation was performed by Dr Jean-François Potel.

7. On 19 March 2014 the Player submitted to an out-of-competition doping control in Toulouse, France. The doping test was sanctioned by the IRB. In the usual way the sample was split into A and B samples. They were sent to the WADA accredited laboratory in Paris, France ('AFLD').

8. The A sample was tested in accordance with WADA's International Standards for Laboratories ('ISL'). The analysis returned a positive test for a metabolite of drostanolone. The concentration of the drostanolone metabolite was an estimated 5ng/ml.

9. Drostanolone (2α-methly-5α-androstan-3α–ol-17-one) is an exogenous anabolic steroid and is listed in Category S1.1a (Anabolic Androgenic Steroids) of Schedule 2 to Regulation 21 and in WADA's 2014 List of Prohibited Substances. Metabolites are the product of metabolism. Metabolites of drostanolone found in urine are the result of ingestion and subsequent metabolism of drostanolone.

10. The Player does and did not at the material time have a Therapeutic Use Exemption ('TUE') for this prohibited substance.

11. By letter dated 8 April 2014, emailed to the SARU on 10 April, the IRB notified the Player, *inter alia,* that (a) the analysis of his sample had returned an AAF for drostanolone; (b) he was provisionally suspended from playing rugby; and (c) the alleged ADRV was to be treated as a second anti-doping rule violation. He was informed that according to IRB records, there was another ADRV recorded against him and that accordingly, if this matter was proved or admitted (see below) then he will be subject to the sanctions specified in Regulation 21.22.

12. As was his right, the Player asked for the B sample to be tested.

B. The B Sample

13. The B sample was tested at the same WADA accredited laboratory (AFLD) as the A sample. The BJC heard a good deal of evidence as to what happened before, during and after that process. At this stage it is necessary only to summarise the undisputed facts.

14. An attorney (M. Christian Chevalier) was appointed to and did represent the Player as a witness at the B Sample analysis, which took place on 27 May 2014.

15. The B sample was frozen in a bottle. The bottle was placed into a Berlinger machine so as to remove the sealed lid. A photograph of the machine used in this case is appended hereto (Appendix 1). The glass sample bottle was placed into the receptacle and force applied by twisting the dial on the side of the said receptacle. As that was done, the B sample bottle broke.

16. The largest portion of the frozen sample was recovered. It was put into a container, defrosted and analysed. The analysis returned an AAF for the drostanolone metabolite. The concentration of the drostanolone metabolite was in a range 4.2-5ng/ml.

III. REGULATORY SCHEME

A. Regulation 21

17. These proceedings commenced before the coming into force of WADC 2015 (1 January 2015). The relevant provision is the edition of Regulation 21 in force at the appropriate time, which derives from and incorporates into IRB/World Rugby 'law' the WADC 2009. That is subject to any issue of *lex*

mitior that may arise. All references to Regulation 21 herein are to that edition of IRB Regulation 21, other indicated otherwise.

18. Regulation 21.2.1 provides:

"The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample
(a) It is each Player's personal duty to ensure that no Prohibited Substance enters his body. Players 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 Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1.
(b) Sufficient proof of an anti-doping rule violation under Regulation 21.2.1 is established by either of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Player's "A" Sample where the Player waives analysis of the 'B' Sample and the 'B' Sample is not analysed; or, where the Player's 'B' Sample is analysed and the analysis of the Player's 'B' Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Players' 'A' Sample…"

19. Given the issues at the heart of this case, it is necessary to set out the relevant parts of Regulation 21.3.2 as to the methods of establishing facts and the applicable presumptions:

"Facts related to anti-doping rule violations may be established by any reliable means, including admissions. The following rules of proof shall be applicable in doping cases:
(a) WADA accredited laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the International Standard for Laboratories. The Player or other Person may rebut this presumption by establishing that a departure from the International Standard occurred which could reasonably have caused the Adverse

Analytical Finding. If the Player or other Person rebuts the preceding presumption by showing that a departure from the International Standard occurred which could reasonably have caused the Adverse Analytical Finding, then the Board or its Union or Tournament Organiser shall have the burden to establish that such departure did not cause the Adverse Analytical Finding.
(b) Departures from any other International Standard or any other anti-doping rule or policy which did not cause an Adverse Analytical Finding or other anti-doping rule violation shall not invalidate such results or findings. If the Player or other Person establishes that a departure from another International Standard or anti-doping rule or policy which could reasonably have caused the Adverse Analytical Finding occurred, then the Board or its Unions or Tournament Organiser shall have the burden to establish that such departure did not cause the Adverse Analytical Finding or the factual basis for the anti-doping rule violation…"

20. Where the player has asked for the B sample to be analysed, Regulation 21.20.8 is relevant:

"If the "B" Sample analysis does not give rise to an Adverse Analytical Finding, which discloses the same Prohibited Substance(s) or Use of a Prohibited Method detected in the main "A" Sample the entire Doping Control shall be considered negative. The Player who provided the Sample and/or his Union shall be notified and no further action will be taken. Any Provisional Suspension imposed shall be lifted."

21. As for sanction, Regulation 21.22.10 states:

"21.22.10 Multiple Violations
A. Second Anti-Doping Rule Violation
For a Player's or other Person's first anti-doping rule violation, the period of Ineligibility is set forth in Regulation 21.22.1 and 21.22.2 (subject to elimination, reduction or suspension under Regulation 21.22.3 or 21.22.4, 21.22.5, 21.22.6, 21.22.7 and/or 21.22.8 or to an increase under Regulation

21.22.9). For a second anti-doping rule violation the period of Ineligibility shall be within the range set forth in the table below.

Second Violation / First Violation	RS	FFMT	NSF	St	AS	TRA
RS	1-4	2-4	2-4	4-6	8-10	10-life
FFMT	1-4	4-8	4-8	6-8	10-life	life
NSF	1-4	4-8	4-8	6-8	10-life	life
St	2-4	6-8	6-8	8-life	life	life
AS	4-5	10-life	10-life	life	life	life
TRA	8-life	life	life	life	life	life

22. It defines the abbreviations RS (reduced sanction), FFMT (filing failure and/or missed test), NSF (no significant fault or negligence), St (standard sanction), AS (aggravated sanction) and TRA (trafficking or attempted trafficking and administration or attempted administration).

B. International Laboratory Standards

23. The applicable ISL were approved by WADA Executive Committee on 19 November 2011 and were effective as of 1 January 2012. The Preamble thereto provides:

"*The World Anti-Doping Code International Standard for Laboratories is a mandatory level 2 International Standard developed as part of the World Anti-Doping Program."*

24. The Introduction starts thus:

"*The main purpose of the International Standard for Laboratories (ISL) is to ensure laboratory production of valid test results and evidentiary data and to achieve uniform and harmonized results and reporting from all Laboratories.*

The ISL includes requirements for obtaining and maintaining WADA accreditation of Laboratories, operating standards for laboratory performance and a description of the accreditation process."

25. 5.2.3 deals with sampling and preparation of aliquots for sampling and states:

"5.2.3.1 The Laboratory shall maintain paper or electronic Laboratory Internal Chain of Custody procedures for control of and accountability for all Aliquots and other subsamples and transfers from preparation through disposal. The procedures shall incorporate the concepts presented in the WADA Technical Document for Laboratory Internal Chain of Custody.
5.2.3.2 Before the initial opening of a Sample bottle, the device used to ensure the integrity of the Sample (e.g., security tape or a bottle sealing system) shall be inspected and the integrity documented.
5.2.3.3 The Aliquot preparation procedure for any Initial Testing Procedure or Confirmation Procedure shall ensure that no risk of contamination of the Sample or Aliquot exists."

26. The Player alleged a breach of section 5.2.3.3 occurred in relation to his B sample.

IV. PROCEEDINGS BEFORE THE BJC

A. Background

27. Dr Preston Wiley (Canada) undertook a preliminary review of the case on 7 April 2014. He determined that an anti-doping rule violation ('ADRV') might have been committed in contravention of IRB Regulation 21.2.1 ('Regulation 21').

28. World Rugby notified the Player of his AAF by letter emailed on 10 April 2014. The notification contained the supporting evidentiary documentation together with confirmation of the Player's provisional suspension, with immediate effect.

29. Analysis of his B Sample took place on 27 May 2014. World Rugby informed the Union on 5 June 2014 that the B Sample analysis had confirmed the finding of the Player's A Sample, namely that it contained the Prohibited Substance 2α-methly-5α-androstan-3α–ol-17-one, a metabolite of drostanolone.

30. The Player notified his wish to proceed to a hearing in person by letter dated 12 June 2014. Following the appointment of the BJC, a Directions Hearing was held on 7 August 2014. Further Directions were issued on 17 September 2014 following a second Directions Hearing.

31. Thereafter the Player changed his legal representation and sought further time in which to prepare his case. That further time was granted and World Rugby supplied further material concerning the B Sample analysis and translations thereof on 24 September.

32. A further Directions Hearing was held on 9 October 2014. The Player sought and was granted yet further time to, *inter alia*, analyse supplements he said he had been taking at the time of the sample was collected. Given the protracted nature of the proceedings, the Chairman ordered that a further Directions Hearing take place, which was held on 15 November 2014. Thereafter he issued further Directions.

33. Defence Submissions were submitted on the Player's behalf on 16 January 2015 and a written response thereafter from World Rugby dated 19 March 2015.

34. The hearing took place at the offices of World Rugby in Dublin on 2 June 2015. At the start the Player denied the ADRV. The hearing was audio recorded and what follows is necessarily a summary.

B. World Rugby's Case

(1) The Anti-Doping Rule Violation

Evidence

35. World Rugby called evidence from Adeline Molina and Christine Galatola. Mme Molina is now the Director of AFLD and was working there at the time; Mme Galatola was the analyst who dealt with the B sample. Neither provided a report or statement in advance of the hearing. World Rugby submitted that "*material in connection*" with their evidence was contained in its written submissions. Indeed it was: see the letters from AFLD appended hereto at Appendix 2 and 3. Mr Saoul did not object. Both gave evidence by way of telephone conference call, as did the third witness Word Rugby relied upon, Dr Eichner.

36. Mme Molina told us that the laboratory has been WADA-accredited for some years. The accreditation is reviewed at least once annually. The Berlinger machine used to open the Player's B sample is reserved for and only used to open B samples. She did not know of another B sample bottle breaking on opening. The laboratory has not had another B sample test positive for drostanolone, though it has detected it in many A samples. She also said reference samples are stored in a separate room (room 106) from where the B bottle was opened (room 002) and analysed (room 103).

37. She agreed with the content of the AFLD letters from her predecessor dated 20 June 2014 and 24 July 2014. The letter of 20 June is important, as to

what happened on the day, the result of the analysis and the significance thereof. As to what happened:

"While the operator was turning the wheel of the compressor, the glass bottle suddenly broke so that the block of frozen urine and the rest of the glass bottle remained in the stand of the tool. Both were immediately taken out from the stand by the operator (wearing clean gloves) and put into a clean glass container (chosen by the representative of the athlete) to separate the block from the glass splinters. The representative of the athlete was invited to choose a disposable plastic container. The block of frozen urine was then transferred into this container by the operator and thawed. The analysis was then performed in the same manner as for the corresponding A sample".

38. As to the significance of the results:

"The result of this analysis totally corroborated the result previously obtained with the A sample and showed the presence of Drostanolone metabolite at an estimated concentration of 4.2ng/ml (estimated concentration of the A sample: 5 ng/ml)".

39. As to the possibility of contamination of the B sample:

"*Our opinion is that on no account, a contamination of the block of urine used for the analysis could be responsible for the result obtained in the B sample*" and the B Sample analysis "*totally corroborated the result previously obtained with the A sample...Such a contamination (from the stand of the opening tool to the block of frozen urine) would have required that the stand was tainted by a high concentration of Drostanolone metabolite. In fact, the stand of the apparatus is kept clean and dry.*

This tool is reserved for the opening of sealed B bottles. We re-examined all B results from May 2014 until 2003. As shown by the enclosed document, none of the B samples opened with this tool contained Drostanolone metabolite."

40. The letter of 24 July 2014 proves that the second analysis of the B sample established that no other prohibited substance was detected therein.

41. Mr Saoul emphasised that there was no suggestion of negligence or a mistake by any member of AFLD's staff. The Berlinger machine is not labelled and is portable. Such a machine is not used to open A samples and it is the only one in the laboratory used for urine samples. Though working in the laboratory on the day the B sample was tested, she was not present for the majority of the analysis. Drostanolone is kept, in solution, on the premises, but not in room 002. The concentration of drostanolone in the B sample was not, in her opinion, at the low end of such concentrations.

42. She told the BJC that the concentrations were both estimates and were more an "estimation" than "quantification".

43. Mme Galatola conducted the analysis of the B sample but not the A sample. She has been an analyst since 2004. M. Chevalier (in French) wrote this entry on p32 of the B sample document package, reproduced (in English) below (emphasis not added by the BJC):

Page 32
Deviation in the process relating to Samples n. 27-2014 Report completed by the person who witnessed the deviation Other: (handwritten) The urine of sample B was in contact with the receptacle used for the opening of all the Berlinger flasks of the AFLD laboratory, not allowing to guarantee the non-contamination of the tested sample [which means contamination of the sample checked cannot be ruled out].

The highlighted part represented M. Chevalier's view, not the laboratory's.

44. When the B bottle broke, she said the sample was in one (frozen) piece. There may have been some ice left in the receptacle, once the large piece was removed. She transferred the large piece of the frozen sample to a clean container. M. Chevalier selected the container from a shelf in a room

where all glass items are stored. She said there was no lid on that container, it was not disposable, but had been sterilised in a machine. She was wearing the new disposable gloves she put on just before she attempted to open the B sample. Some of the broken glass came into contact with the frozen sample. Once the sample was defrosted, it was placed into a new container which was sealed, before and after the sample was put into it. This container is disposable, used only once and M. Chevalier chose it. It was then analysed.

45. The sample was opened in room 002 at 09.35; it was taken to room 103 for analysis. She said there was no opportunity for the B sample to come into contact with a contaminant. On the question of concentration she said she would ordinarily expect to see consistency between A & B samples.

46. She told Ms Ahern she thought it would be necessary for contaminant the size of a grain of salt to have come into contact with the sample to produce the result in the B sample. She could not recall when the laboratory last had a positive drostanolone sample before the Player's B sample analysis. She said the laboratory is cleaned every evening and she was the first person to use room 002 that day.

47. Mme Galatola could not recall when AFLD last handled a drostanolone case before the Player's. However, evidence presented on the Player's behalf was that the most recent drostanolone case handled by the AFLD laboratory prior to his was from a sample analysed on 29 October 2013.

48. Questioned by Mr Saoul, she explained her movements with the B sample bottle before it was placed into the receptacle on the Berlinger machine. She agreed that the B sample concentration could have been produced by contaminant "*a lot smaller*" than a grain of salt. She said she prepared the drostanolone control sample at 10.20, namely after handling the B sample. She wore the same laboratory coat throughout and accepted her gloved

hands could have come into contact with it. She did not accept that the B sample concentration was consistent with contamination.

49. Ms Ahern also called Dr Eichner, Executive Director of the WADA-accredited laboratory in Utah, USA. He spoke to and expanded upon his statement dated 26 January 2015. In that report he opined that there are several important findings that "*strongly suggest*" that the B bottle sample was not contaminated when the bottle broke during opening:

    a. The A bottle screened adverse and confirmed the presence for drostanolone metabolite. It is extremely rare for a B bottle to not confirm the A finding.
    b. The receptacle that held the B bottle was only used for B bottle openings and the laboratory had not declared any other B bottles breaking prior to the instant one.
    c. The concentration of the drostanolone metabolite found in the A bottle was very similar to that found in the B bottle. In order for the receptacle to contaminate the frozen urine, the residual concentration of the drostanolone metabolite would have been extremely high.
    d. The laboratory had not conducted a B bottle analysis for drostanolone (or metabolite) at least since 2003.
    e. The laboratory reanalysis of the B sample did not reveal any other prohibited substances. Dr Eichner described this as "significant" since it revealed that the laboratory's procedures "do everything to prevent contamination by any means".

50. In evidence he confirmed the five points set out in his report and the preceding paragraph. He told us that WADA laboratories screen by mass spectrometry, which sets them apart from other laboratories. It is more expensive and takes longer but the results thereby are more reliable. That means A sample results are "very strong"; it is "very rare" that a B sample does not match the A results. It is "unbelievably rare" in the case of exogenous steroids. He had never known a B sample bottle break. He said that we are here dealing with a metabolite of drostanolone, which means

the drostanolone must first have been metabolised (in urine) or from a certified reference material. As to the latter and the risk of contamination, he repeated the five points in his report and set out in the preceding paragraph.

51. As to the similarity in the concentrations of the A and B samples, he said the chances of getting "*a large amount of contaminant on that frozen urine or frozen piece of urine that almost exactly matched the A concentration is astronomical*". It was "*so remote*" that while scientists do not talk in terms of 100 per cent certainties, the chances were in the same parish as that of the "*sun not coming up tomorrow*". As to the physical amount of drostanolone metabolite, which would be needed to produce that result, he said it was difficult to quantify as it is a very fine powder but it would cover the end of a finger.

52. When questioned by Mr Saoul he was asked whether there was a "*risk of contamination however small*" in this case. He said it was the laboratory's responsibility to put in place procedures to ensure there is no risk of contaminations. He described the placing of the receptacle on the Berlinger machine (which he said is not a standard fitting) as such a procedure to deal with a broken bottle.

53. On the issue of the risk of contamination, he said this case could not be compared with a DNA case, which would be different. He emphasised that
    a. Such a contaminant is not "*floating in the air*" (as he put it).
    b. The reference materials are expensive and not left lying around or sloshed about.
    c. This was a WADA-accredited laboratory: spillages are cleaned up, samples and reference samples are scrupulously kept apart, and they are not "*sloppy enough*" to have it on door handles and bannisters.
    d. In the context of the last point, the absence of any other prohibited substance in the B sample is "*so important*": was it only drostanolone

metabolite that the laboratory was "*sloppy enough to leave on door handles, banisters?*" he asked.

Submissions

54. Ms Ahern submitted that taking into account (i) the strict liability principle (ii) the 'A' and 'B' Sample results which both documented the presence of the anabolic androgenic steroid drostanolone metabolite (iii) the absence of a TUE and (iv) what she described as "*the absence of any departures from an International Standard which could reasonably have caused*" the AAF, World Rugby succeeded in satisfying the BJC to the level of comfortable satisfaction that the Player committed an ADRV. She submitted that the BJC could be satisfied as to the integrity of the B sample, which confirmed the results of the A sample.

55. On behalf of World Rugby she did not accept that there had been any departure from the ISL. In fact she submitted that there had not been.

56. She did not accept that there was any extra-regulatory standard (our expression) so fundamental to the fairness of the doping control regime that any departure from which led automatically to invalidation of the testing or doping procedure. She did not accept that the CAS decisions supported the 'fundamental departure argument' advanced by Mr Saoul. The only relevant law was contained in Regulation 21, she submitted.

(2) <u>Sanction</u>

57. World Rugby's case was that the Player has a previous ADRV following a sample collected as an in-competition test during the Autumn Internationals November 2010. The test was conducted under the administrative auspices of the Six Nations Committee. The case was remitted for consideration by the Player's own Union (SARU) pursuant to

Section 2.3(b) of the Disciplinary Rules and Anti-Doping Programme Applying the Autumn Internationals, the equivalent of which is Regulation 21.14.10. The Player was charged along with another and the cases of both players were heard together in Bloemfontein on 25 January 2011.

58. The SARU Judicial Committee decision is dated 27 January 2011. It was not appealed. The Judicial Committee reprimanded the Player. However, World Rugby pointed to the Judicial Committee's observations that *"the Players have already suffered the ignominy of being sent home early from the overseas tour, provisionally suspended for nearly three months and having their doping charges made public with the concomitant embarrassment..."* (para 29 of its decision). It made the point that the sanctions for a specified substance in January 2011 in circumstances where Regulation 21.22.3 was satisfied, for a first violation ranged *"At a minimum, a reprimand and no period of Ineligibility; and at a maximum, two years*". It submitted that the Player received what it described as a "*bottom end*" sanction under Regulation 21.22.3.

59. Addressing the fact that in its written decision the SARU Judicial Committee recorded that "*there was no fault on the part of the Players for the purposes of section 21.22.4*" (para 28), Ms Ahern submitted that the provisions of Regulation 21.22.4 are clear and provide that *"If a Player...establishes in an individual case that he bears No Fault or Negligence, the otherwise-applicable period of Ineligibility shall be eliminated*..." This is mandatory language (emphasis added) which if applied would not have resulted in a reprimand (which is a sanction under Regulation 21.22.3). So she argued the Judicial Committee must have concluded that the Player, notwithstanding the language it used, did bear some responsibility.

60. Accordingly this was the player's second ADRV and therefore he fell to be sanctioned pursuant to Regulation 21.22.10.

C. The Player's Case

(1) Anti-Doping Rule Violation

Summary

61. The Player denied the ADRV. He asserted that he has not knowingly or deliberately taken Drostanolone. The BJC was told that "*exhaustive investigations*" on the Player's behalf failed to reveal the source of the drostanolone metabolite.

62. Enquires with his surgeon – who conducted the operation on his damaged ACL – established – the BJC was told - that Dr Potel expressly asserted that the Player was not administered with drostanolone during the course of surgery and that his clinic did not even stock it.

63. The BJC was told the details of nutritional supplements the Player said he had been taking in the weeks leading up to the doping test. The BJC was told that the Player had all of his supplements analysed by an independent laboratory, LGC. LGC did not detect any drostanolone, although it noted as follows regarding two of these supplements:

> Please find attached the certificate of analysis for the samples analysed under proposal LGC273832. Please note, whilst for the majority of samples were able to determine the absence of both drostanolone and drostanolone propionate at or above 10 ng/g, due to matrix interferences this level was raised for two products as detailed below:
>
> 723190 – Curcuma – Negative for drostanolone at 50 ng/g and negative for drostanolone at 100 ng/g
> 723191 – Restor - Negative for drostanolone and drostanolone propionate at 50 ng/g

64. Having examined the timing of the ingestion of Curcuma and Restor and the quantity ingested, the BJC was told that those supplements could safely be ruled out as possible sources of the drostanolone.

65. His case was founded on events during the analysis of the B sample, and what he submitted were the consequences thereof. He argued that the integrity of the B sample had been so comprised that the result of that analysis must be dismissed. He argued that the invalidity of the B sample analysis automatically leads to the invalidity of the entire test since an A sample has no evidentiary value on its own. Therefore World Rugby's case must fail.

Evidence

66. The Player elected not to give evidence to the BJC; his counsel, World Rugby or the BJC, did not question him.

67. He relied upon a written statement from M. Christian Chevalier, his witness present at the opening and testing of the B sample. M. Chevalier gave evidence to the BJC by way of telephone conference call. In general terms he agreed with the evidence of the staff as to what happened at the laboratory. However, he said the sample broke with a large bang into several pieces, one large and several smaller ones. He said the analyst was wearing the same gloves before and after the glass bottle broke into many pieces. He confirmed that he was the author of the manuscript entry on p32 of the B sample documentation package (above para 43).

68. The Player also relied upon a report dated 29 May 2015 from Paul Scott ('PS'), President and Chief Science Officer of Scott Analytics, a Californian company specialising in "the provision of sports anti-doping analytical services". PS gave evidence to the BJC by telephone conference call and was questioned.

69. PS identified a number of possible opportunities for and sources of contamination of the frozen B sample. They included contact between the frozen sample and fragments of glass from the outside of the bottle, surfaces of the instruments used, the analyst's gloves, her laboratory coat,

work surfaces from spillages and/or from the reference sample. He opined that on the basis of information and documents concerning the B sample, which he considered, it was impossible to rule out of the possibility that it could have been contaminated.

Submissions

70. In opening and closing submissions Mr Saoul spoke to and expanded upon the written submissions prepared by Mr Morgan and Mr Martin. This Decision seeks to do justice to those oral and written submissions. It is necessarily a summary of those arguments.

71. First, he invited the BJC to have regard to what he called the wider context. When tested the Player was a month into his post-operation rehabilitation. He had, he submitted, little to gain by taking performance-enhancing substances. Having been through the process once before (2010-2011) he submitted that the "*idea that [he] would knowingly breach the rules is highly unlikely*."

72. He submitted that the laboratory acting on behalf of the IRB was required to adhere with fundamental procedural safeguards mandated by the ISL. Those are intended to protect the integrity of samples. Though he was anxious to underline that no fault was attributed to any individual, Mr Saoul submitted that it failed to do so. It was now impossible to guarantee the integrity of the analytical results of the B sample analysis and so the results must therefore be declared invalid and inadmissible as evidence. In the absence of a valid B sample analysis, he argued the A sample had no evidentiary value.

73. The moment the Player requested analysis of the B sample, the requirements of Regulation 21.2.1 were triggered. Thus Mr Saoul argued proof of a "*presence*" ADRV could only be proved (where the B sample was analysed) if the analysis of the B sample confirmed the presence of the

prohibited substance found in the athlete's A sample. He argued that the absence of valid B sample results therefore meant that an ADRV could not be established.

74. He submitted that it "*was difficult to imagine a more serious procedural error*" than the breaking of the bottle. He submitted that it was now impossible – for the Player, AFLD or the IRB - to determine whether or not the sample may have been contaminated or otherwise compromised in some manner. Therefore the B sample results must be deemed invalid and inadmissible.

75. In careful submissions, Mr Saoul illuminatingly considered a number of Arbitral Awards listed in Appendix B, including *Veronica Campbell-Brown v JAAA & IAAF*[1], *Tchachina v International Gymnastics Federation, USA Shooting v Quigley* and *USADA v Jenkins*. He submitted that those cases reflect a position whereby certain IST or ISL requirements are considered so fundamental to the just and effective operation of the doping control system that fairness demands that any departure should automatically invalidate any results ('the fundamental departure argument'). In other words, certain IST or ISL departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred. He submitted that what happened in this case was such a departure (from the ISL).

76. He submitted that the departure from the ISL was so egregious that it undermined the fairness of the testing process such that it was unnecessary for the BJC to consider the two-stage test in Regulation 21.3.2. However, if the BJC was against that submission, he submitted that the Player had comfortably shifted the burden onto World Rugby. On the facts

[1] Full authority citations in Appendix 4

of this case, he argued, World Rugby could not shift that burden and satisfy the BJC that the departure did not cause the AAF.

(2) Sanction

77. The Player's case was that the ADRV could not be proved. However, if the BJC found against him, he submitted that his first ADRV (in 2010) was a "*No Fault or Negligence*" violation. That being so, the current alleged ADRV would have to be treated as a first violation for sanctioning purposes. In that event, he submitted that any period of ineligibility imposed on him would necessarily have to be limited to a maximum of two years since there are no aggravating circumstances.

78. He pointed to and relied upon the words of the SARU Judicial Committee's decision. He submitted that it clearly found that there was "*No Fault or Negligence*" on the Player's part in relation to that 2010 ADRV.

V. MERITS

79. We have considered all the material put before us, both orally and in writing. That includes the written and oral evidence and submissions and the Arbitral Awards listed in Appendix 4.

80. We were much assisted by the written and oral submissions for which we repeat our gratitude.

A. Anti-Doping Rule Violation

(1) Regulation 21.3.2 (a)

Approach

81. Regulation 21 sets out the World Rugby Anti-Doping Regulations, which adopt the mandatory provisions of the WADC 2009. Regulation 21 establishes the framework under which players can be subjected to doping control and the procedures for any alleged infringements of those Regulations.

82. Regulation 21 and the WADC are based on the principles of personal responsibility and strict liability for the presence of prohibited substances or the use of prohibited methods.

83. Under Regulation 21.2.1, the "*presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*" constitutes an ADRV. Liability for breach is strict. It does not require intent, fault, negligence or knowing use on the part of the Player.

84. The burden of proving the ADRV is upon World Rugby. The standard of proof is comfortable satisfaction, greater than a mere balance of probability but less than sure (Regulation 21.3.1).

85. Pursuant to Regulation 21.3.2 facts related to an ADRV may be established by "*any reliable means*" including admissions. Regulation 21.3.2 then details four specific rules of proof applicable in doping cases. The first of those concerns proof of doping where there has been a departure from the ISL. Deconstructing it into its consistent parts it provides:

a. There is a presumption that WADA-accredited laboratories have conducted sample analysis and custodial procedures in accordance with the ISL.
b. However the player or other person may rebut this presumption by establishing
    i. There was a departure from the ISL which
    ii. Could reasonably have caused the AAF.
c. If the Player or other Person rebuts that presumption, then the Board or its Union or Tournament Organiser shall have the burden to establish that such departure did not cause the AAF.

86. The authorities cited to us support the proposition that the shift in the burden of proof under Regulation 21.3.2 is a quid pro quo for the imposition of strict liability for violations of anti-doping regulations. In *USADA v Jenkins*, the American Arbitration Association Panel stated (para 136):

"In view of the grave implication for athletes...who are held strictly to account for any transgression of applicable anti-doping rules, testing laboratories must also be held strictly to account for any non-compliance with those same rules...The strict liability regime which underpins the anti-doping system requires strict compliance with the anti-doping rules by everyone involved in the administration of the anti-doping system in order to preserve the integrity of fair and competitive sport."

87. If needed, there is further support for the proposition in *Devyatovskiy and Tsikhan v International Olympic Committee*, where the CAS Panel stated (para 6.10-6.11):

"Doping is an offence which requires the application of strict rules. If an athlete is to be sanctioned solely on the basis of the provable presence of a prohibited substance in his body, it is his or her fundamental right to know that the Respondent, as the Testing Authority, including the WADA-

accredited laboratory working with it, has strictly observed the mandatory safeguards.

Strict application of the rules is the quid pro quo for the imposition of a regime of strict liability for doping offenses. This fundamental rule which has formed the anchor for CAS rulings for more than two decades of anti-doping arbitrations was laid down eloquently in USA Shooting & Q./ International Shooting Union already in 1995:

'The fight against doping is arduous, and it may require strict rules. But the rule-makers and the rule appliers must begin by being strict with themselves.'"

88. We note also the observation of the CAS Panel in *Campbell-Brown v JAA & IAAF* that there is "*considerable force*" in the proposition that, in order to justify imposing a regime of strict liability against athletes for breaches of anti-doping regulations, testing bodies should be held to an equivalent standard of strict compliance with mandatory international standards for laboratories and for testing. This is particularly important in view of the main purpose of the ISL, namely "*to ensure laboratory production of valid test results and evidentiary data and to achieve uniform and harmonized results and reporting from all Laboratories*".

89. However, WADC Article 3.2 does not impose absolute standards from which any deviation will result in an annulment of the process or of proceedings. It is a question of balance, between strict liability and the rights of athletes. WADC Article 3.2 (and its derivatives) seeks to strike that balance.

90. Regulation 21.3.2(a) (derived from WADC Article 3.1) requires a shift in the burden of proof whenever a player establishes that it would be reasonable to conclude that the ISL departure could have caused the AAF. In other words, the player must establish facts from which a BJC could rationally infer a possible causative link between the ISL departure and the presence of a prohibited substance in his/her sample. As the CAS panel put it in

Campbell-Brown v JAA & IAAF. "*the suggested causative link must be more than merely hypothetical, but need not be likely, as long as it is plausible"* (para 155). As a explanation for this approach, we cannot (with respect) improve on what that CAS Panel said (para 157):

"*Since there is no mens rea requirement for anti-doping violations, a finding that an athlete's sample contains a prohibited substance is ipso facto a finding that the athlete has committed an anti-doping violation (see IAAF Rule 33.2). In these circumstances, any reasonable possibility that the positive finding could be the result of sample contamination rather than ingestion of a prohibited substance must be subjected to the most anxious scrutiny. The mandatory IST are designed to eliminate the possibility of contamination affecting the outcome of anti-doping tests. To ensure that anti-doping bodies strictly adhere to those standards, and to ensure that athletes are not unfairly prejudiced if they failed to do so, IAAF Rule 33.3(b) must be interpreted in such a way as to shift the burden of proof onto the anti-doping organisation whenever a departure from an IST gives rise to a material – as opposed to merely theoretical – possibility of sample contamination*."

91. Given the shared WADC derivation and the similar objectives of both the ISL and IST, the principles apply by parity of reasoning to breaches of the ISL. If support were needed for that approach, or its applicability to ISL, we find it in the CAS decision of *WADA v Chernova & RUSADA*. In paragraph 85 of its decision the panel opined:

"*However, the Panel emphasises that the current wording of Article 3.2.1 of the WADC refers to the standard of reasonableness when establishing a correlation between the departure from the rules of the ISL and an adverse analytical finding (misreading of the analysis' results) ("Adverse Analytical Finding"). This should be contrasted to the previous wording of the Article 3.2.1 contained in the World Anti- Doping Code 2003, which preceded the adoption of the WADC in 2009: "The Athlete may rebut this presumption by establishing that a departure from the International Standard occurred."*

Therefore, the Panel deems a mere reference to a departure from the ISL insufficient, in the absence of a credible link of such departure to a resulting Adverse Analytical Finding. In other words, in order for an athlete to meet his/her burden and thus effectively shift the burden to an anti-doping organization, the athlete must establish, on the balance of probabilities, (i) that there is a specific (not hypothetical) departure from the ISL; and (ii) that such departure could have reasonably, and thus credibly, caused a misreading of the analysis. Further, the Panel remarks that such athlete's rebuttal functions only to shift the burden of proof to the anti-doping organization, which may then show, to the Panel's comfortable satisfaction, that the departure did not cause a misreading of the analysis."

92. It is this approach we have adopted in examining the submissions made in relation to Regulation 21.3.2, to which we now turn.

Was there a departure from ISL?

93. Ms Ahern did not accept that had been any departure from the ISL. Indeed she submitted that there was none. We must first examine that issue.

94. Section 5.2.3.3 of the ISL requires the laboratory to ensure that no risk of contamination of the B sample existed. The evidence before us is to this effect (on our analysis of it):
    a. The B sample bottle broke.
    b. The frozen B sample therein fell into the Berlinger machine receptacle.
    c. There, it mixed with pieces of glass, which had comprised the bottle.
    d. It was the picked up by the gloved hands of the analyst before being placed into a clean container, which was not sealed.
    e. Thereafter it was taken elsewhere and ultimately it was analysed.
    f. Notwithstanding the opinion in AFDL's letter of 20 June 2014, in those circumstances, the independent experts opined:

i. Paul Scott said it was impossible to rule out of the possibility that it could have been contaminated.
ii. Dr Eichner did not entirely rule it out as a (very remote) possibility.

95. Section 5.2.3.3 states that there "*shall*" be "*no risk*" of contamination of the sample. On the evidence we are satisfied that the Player has established that there probably was a breach of or departure from section 5.2.3.3 of the ISL.

Could the departure from ISL reasonably have caused the AAF?

96. As a preliminary point, we note that it is likely to be relatively rare for an ISL departure itself to directly cause an AAF. Instead, it appears that the rule is principally intended to tackle situations where an ISL breach creates the opportunity (for example) for accidental contamination or deliberate sabotage to compromise the integrity of the sample. It was accidental contamination which was the opportunity contended for in this instance.

97. The suggested causative link must be more than merely hypothetical. It need not be likely but it must be more than fanciful; it must be plausible. We appreciate we are concerned with risk but to evaluate that risk one needs to look at the evidence of what happened in this case and the scientific findings. The question is whether the departure from the ISL could be the cause of the drostanolone metabolite in the B sample.

98. Having considered with care the evidence we are emphatically of the view that the Player has failed to discharge this aspect of the presumption. On the evidence, he did not satisfy us (on the balance of probabilities) that the said departure could reasonably have caused the AAF. Indeed we would go so far as to conclude that we are comfortably satisfied that it did not cause the AAF.

99. In reaching those conclusions we have particular regard the following evidence.

100. First, the Berlinger machine could not have been the source of contamination:
    a. No B bottle sample containing drostanolone could have broken on the Berlinger machine used to open the Player's B sample:
    b. The receptacle that held the B bottle was only used for B bottle openings.
    c. No other B sample bottles had broken on that machine or otherwise braking prior to the instant one.
    d. The laboratory had not conducted a B bottle analysis for drostanolone (or metabolite) at least since 2003.

101. Second, we are satisfied that Mme Galatola's handling of the intact B sample bottle and thereafter frozen sample could not be the source of any possible contaminant, such as by her contact with the or any other drostanolone reference sample, door handles, her coat and/or spillages or some other unspecified environmental method:
    a. The sample was frozen, not liquid.
    b. Evidence presented on the Player's behalf was that the most recent drostanolone case handled by the AFLD laboratory prior to his was from a sample analysed on 29 October 2013. Therefore (on the available evidence) the drostanolone metabolite reference material was last used for the purpose of a positive control sample almost five months before the A sample was tested and a further two months prior to the B sample analysis.
    c. Mme Galatola made up the reference sample (for use with the B sample) after the bottle broke. Therefore, she came into contact with it, only after she handled the intact B bottle and then the frozen sample. We are satisfied that the process of so doing could not be the source of any possible contaminant.
    d. This is and was a WADA-accredited laboratory.

i. It operates to the highest (ISL) standards.
ii. The laboratory is cleaned every evening. That includes door handles and banisters.
iii. Spillages are cleaned up.

e. The reference materials
i. Are expensive.
ii. Are not left lying around.
iii. Are not slopped about.
iv. As PS said, reference materials are carefully handled and stored.
v. The reference materials were stored in a separate room from room 002 where the bottle broke.
vi. The contaminant does not float in the air.

102. Third, the containers:
a. The frozen sample was immediately placed into a sterilised container. That container could not therefore have been the source of any possible contaminant.
b. Thereafter it was placed into a disposable container that is used only once. It was sealed before being used for that sample. That container could not therefore have been the source of any possible contaminant.

103. Fourth and significantly, when considering generally the issue of risk of contamination, the 'concentration match' between the A and B samples:
a. The A sample confirmed the presence for drostanolone metabolite.
b. The concentration of the drostanolone metabolite found in the A sample (estimated at 5ng/ml) was very similar to that found in the B bottle (estimated range of 4.2-5ng/ml). That is what the analyst said she would expect from matching samples, taken from the same source.
c. Therefore if the B sample result was or may have been caused by contamination it must have been in an amount very similar to that in the A sample.

d. Further that contaminant would (on the evidence before us) have been visible to the naked eye (albeit very small) but must – if the contamination theory might be right - have been missed by Mme Galatola.

104. Fifth and also of significance in this context is the fact that the laboratory reanalysis of the B sample revealed no other prohibited substances. If it was contaminated it must have been (1) only by drostanolone metabolite and (2) by an amount (2) very similar to the A sample.

105. In light of that and all the evidence, we agree with Dr Eichner's opinion that the chance of contamination being the cause of the B finding was very remote, akin to the chance of the sun not rising tomorrow. Another way of characterising that is to say that it is theoretical, implausible or fanciful. According, the Player failed to discharge the burden in Regulation 21.3.2(a) and his submission based upon that provision failed.

106. The consequence is that subject to the 'fundamental departure argument' examined below, the Player has failed to rebut the presumption in Regulation 21.3.2(a).

(3) <u>The 'Fundamental Departure Argument'</u>

107. Ms Ahern did not accept there is any such principle, which stands alone and cuts across WADC 3.2.1 and Regulations (such as 21.3.2) and Rules derived therefrom. She argued that the only relevant test to be applied was that set out in Regulation 21.3.2. That is the issue we must consider first.

Existence and scope of the principle

108. The CAS Panel in *Campbell-Brown* noted (para 148) the CAS jurisprudence

"that recognises the existence of certain international standards which are considered to be so fundamental to the fairness of the doping control regime and so central to ensuring the integrity of the sample collection and testing process that any departure from them will result in the automatic invalidation of the outcome of the testing procedure".

109. Mr Saoul understandably placed great reliance on this passage and the authorities analysed in *Campbell-Brown* (and cited to us), namely *Tchachina v International Gymnastics Federation, Varis V IBU* and *Wen Tong V IJF* in support of his 'fundamental breach argument'. Having reviewed those authorities, the *Campbell-Brown* CAS Panel summarised the position thus (para 152):

"These cases reflect a position whereby, notwithstanding Rule 3.2.1, certain IST requirements are considered to be so fundamental to the just and effective operation of the doping control system that fairness demands that any departure should automatically invalidate any adverse analytical finding. In other words, certain IST departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred."

110. Rule 3.2.1 is Article 3.2.1 of WADC 2009, from which Regulation 21.3.2(a) derives. In the next sentence, that CAS Panel concluded:

"In the light of the Panel's conclusion (see below) that the IAAF cannot rely on Rule 3.2.1, it is unnecessary to consider whether the appeal should be allowed on this basis as well."

111. It is also clear that if such principle or "position" exists, it does so "notwithstanding" or put another way, despite (in this case) Regulation 21.3.2 or (its mother provision) WADC Article 3.2.1. Therefore its operation

or application is not determined by reference to the said Article or any Regulation or Rule derived therefrom.

112. However, that begs a number of questions: First, how can it exist over and above or separate from WADC Article 3.2.1 or any Rules or Regulations derived therefrom? Second, what departure from the IST or indeed ISL will be so fundamental to the just and effective operation of the doping control system so as to guillotine the process? To seek answers we must return to the authorities from which it is said to spring.

113. *Tchachina v International Gymnastics Federation*:

a. On the basis of what has been placed before us, this would appear to be the origin of the "position". Though the Award is dated 23 January 2003, the case preceded the 2003 WADC.

b. The athlete was deprived of the right to observe the opening and testing of the B sample because she was not invited. The CAS Panel observed that the athlete's right to verify the integrity of the seal on the sample bottle, and to inspect the sample for any apparent variations or irregularities,

"*is completely taken away from the athlete when the analysis of the B-sample is conducted without the athlete or his/her federation being given due notification of the relevant date and time. The athlete is then simply treated as the object of the doping test procedure and not its subject*" (para 29).

c. The Panel found that an IST departure of that nature is incapable of being remedied in the course of the arbitral process (at para 33) but was only "inclined the view" that such a procedural error compromised the athlete's rights such that the urine test should be disregarded (para 34). However, it was still satisfied, on other evidence, that the ADRV was established (para 35).

114. *USADA v Jenkins*

a. This Award is dated 25 January 2008. It is not really part of the *Tchachina* line at all for the 'principle' did not feature. But it fits chronologically at this point and is illustrative as it (also) concerned alleged breaches of the ISL. The athlete established those departures. The case was decided not by application of any alleged fundamental departure argument but application of WADC 3.2.1-dervied regulations.
b. Of particular note in understanding why the case was decided in the way it was, is that the Panel concluded that USADA had "*not met its burden of proving to the Panel's comfortable satisfaction that the…Laboratories violations of ISL 5.2.4.3.2.2 did not undermine the validity of the Respondent's adverse analytical finding"* (para 158).

115. *Varis v IBU*:
a. The Award is dated 13 March 2009. The athlete was deprived of the right to observe the opening and testing of the B sample. Therefore, she was deprived of the right of having a representative present to ensure the integrity of the sample and the testing process.
b. The CAS Panel referred to *Tchachina*, and explained (para 32) that: *"An athlete' s right to be given a reasonable opportunity to observe the opening and testing of a "B" sample is of sufficient importance that it needs to be enforced even in situations where all of the other evidence available indicates that the Appellant committed an anti-doping rule violation."*
c. The CAS Panel upheld Varis's appeal. It held that in those circumstances the evidence of the B sample was inadmissible and so there was no evidence to corroborate the finding of the A sample. Absent that, the ADRV allegation must and did fail (para 29-30).
d. We note the express reference in the decision to Article 3.2.2 WADC 2003 (at para 20). Having done so, it described the issue thus: "*In our view, the issue is not whether the IBU can prove that presence of the Appellant's representative would have made no difference to the outcome. The issue is whether the IBU's failure to follow the applicable*

rules by failing to make reasonable attempts to accommodate the Appellant's request for a different testing date invalidates the "B" sample result" (para 24).

116. We interpolate *Devyatovskiy v IOC; Tsikhan v IOC:*
    a. The CAS Award is dated 10 June 2010. Like *Jenkins* and for the same reasons, it does not really form part of *Tchachina* line but it is also informative.
    b. It is a complex case. But in summary, the athletes established departures from the ISL. The case was decided not by application of any alleged fundamental departure argument but application of WADC 3.2.1.

117. *Wen Tong v IJF*:
    a. The Award is dated 23 February 2011. The case is factually similar to *Varis*. The CAS Panel stated:
    "*It is now established CAS jurisprudence that the athlete's right to attend the opening and analysis of her B sample is fundamental and, if not respected, the B-sample results must be disregarded*" (para 16).
    b. It cited both *Tchachina* and *Varis* as support for that proposition. The Panel went on to explain that:
    "*[the] Appellant had a fundamental right to be present whenever her B sample was analysed, regardless of who asked for it... Violation of this essential right renders the B-sample analytical results invalid*" (para 29–30).
    c. Therefore it followed that the results of the B sample analysis could not be relied upon to confirm the A sample analytical results. In the absence of such necessary corroboration the ADRV could not be established.

118. Led by the Player, that historical trail would lead us to *Campbell-Brown,* an Award dated 10 April 2014. However, that would be to omit a further CAS Panel decision brought to our attention by Ms Ahern, namely *WADA v*

Chernova & RUSADA. That Award is dated 16 January 2014 and appears not to have been cited to or considered by the *Campbell-Brown* CAS Panel for it makes no mention of it in its Award.

119. Paragraph 85 of the *Chernova* Award is repeated in full above (para 91). The case concerned, *inter alia*, alleged departures from the ISL. The Panel found as a fact that there were no such departures. However, it is of note that its approach to such issues was by reference to Article 3.2. WADC and the relevant Russian Federation Anti-Doping Rule. It did not make any reference to the *Tchachina* 'fundamental departure' line of decisions. It may be that they were not cited to it. It may be that the alleged ISL departures were of a different nature; more akin to what happened here – laboratory issues - than a denial of an athlete's right enshrined in the WADC and as occurred in those cases. Save for *Campbell-Brown,* which concerned failings in the sample collection and in any event was decided by application of WADC Article 3.2.

120. We were invited to consider *NADA* v *Kumar,* 24 September 2014 as an example of the said principle. The B sample seal was broken and before it was analysed. There was apparently no evidence as to when or the circumstances in which the seal was broken. The athlete's witness then left and the B sample was not analysed. The report is very short and does not refer to any authorities. Absent any test of the B sample, and any other evidence to confirm the A sample, it is no surprise that the ADRV was not established. It does not, in our view, support the existence, nor is it an example of the application, of the said principle.

Application to the facts of this case

121. We recognise the authority of the CAS Panels. However the decisions are not all one way. Even if the 'fundamental departure argument' exists independently of or as part of the ambit of WADC 3.2.1 (and the Rules and

Regulations derived therefrom) it does not, in our judgment, assist the Player. The basis of that decision is an understanding of "fundamental".

122. The closest we have found as to the meaning of "fundamental" is in the penultimate sentence of paragraph 152 in the *Campbell-Brown* decision*:*

"…In other words, certain IST departures will be treated as so serious that, by their very nature, they will be considered to undermine the fairness of the testing process to such an extent that it is impossible for a reviewing body to be comfortably satisfied that a doping violation has occurred".

123. Of course this does not state what departures will be so serious as to undermine the fairness of the testing process. That is an inherent ambiguity that we find unhelpful and militates against the efficacy of any such principle. When we look at the cases placed before us which have been decided by application of that principle (distinguishing for example *Campbell-Brown*), such departures have been established only where the athlete has been denied an important right enshrined in the WADC. The examples are all of an athlete being deprived of the right to 'attend' the opening and testing of the B sample.

124. That is not this case. The Player was not deprived of that right. M. Chevalier represented the Player throughout the testing of the B sample. The Player's representative witnessed and scrutinised the testing process on his behalf.

125. The ISL departure in this case came about because the B sample bottle broke. That departure, on our analysis of the evidence (above, para 98-105), is one that gave rise to a theoretical, implausible or fanciful risk of contamination of the B sample. In those circumstances, we are comfortably satisfied that it cannot properly be said that it was one such as to undermine the fairness of the testing process to such an extent that it is impossible for us to be comfortably satisfied that an ADRV has occurred.

(4) Conclusion on the ADRV

126. There was no issue that drostanolone is listed as a Prohibited Substance in category S1.1A Exogenous Anabolic Androgenic Steroid on the Prohibited List.

127. The drostanolone metabolite was detected in both A and B samples taken from the player on 19 March 2014. For reasons set out above World Rugby is entitled to rely on Regulation 21.3.2 in establishing those facts and so in turn the commission by the Player of an ADRV.

128. Accordingly we are comfortably satisfied that World Rugby discharged the burden upon it pursuant to Regulation 21.3.1 and established that the Player committed an anti-doping rule violation contrary to Regulation 21.2.1.

C. Sanction

129. The starting point is Regulation 21.22.4

(1) Regulation 21.22.4

130. Regulation provides:

> *21.22.4 No Fault or Negligence*
> *If a Player or other Person establishes in an individual case that he bears No Fault or Negligence, the otherwise-applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or Metabolites is detected in a Player's Sample in violation of Regulation 21.2.1 (presence of a Prohibited Substance or its Metabolites or Markers), the Player must also establish how the Prohibited Substance entered his system in order to have*

the period of Ineligibility eliminated. In the event this Regulation 21.22.4 is applied and the period of Ineligibility otherwise applicable is eliminated, the anti-doping rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Regulation 21.22.10." (emphasis added)

131. It is necessary to turn to that decision and briefly to the facts of that 2010 Violation.

(2) 2010 Violation

132. The sample was collected from the Player during an in-competition test conducted during the Autumn Internationals November 2010. On 6 November 2010 the Player provided a urine sample in-competition which revealed the presence of methylhexaneamine ("MHA"). The source of the MHA was determined to be a supplement, provided to the Player by his national team, which the Respondent was contractually bound to consume.

133. He was charged with committing an ADRV contrary to Regulation 21.2.1(a) of the Regulations, incorporated by Regulation 5.1 of South African Rugby Union ('SARU') Anti-Doping Regulations.

134. The Player appeared before SARU Judicial Committee on 25 January 2011. He admitted the ADRV. It is an ADRV. It was his first.

135. In a decision dated 27 January 2011 SARU Judicial Committee stated, *inter alia*:
    a. "*We disagree with the submission of SARU that the Players were at fault and that they should have refused to make use of the supplement as the use of supplements were in breach of the SARU guidelines. The management of SARU knew that the medical team of the Springbok team supplied the players with supplements. SARU, one assumes, in fact paid for the supplements*". (para 27, emphasis added)

b. *"If there is any blame to be apportioned in this matter, SARU should be blamed for not having the supplements tested more comprehensively (as required by their own guidelines - in particular the extract referred to above) and definitely not the players, who relied on the professional assistance and judgment of their medical team, and could in this Committee's view not have been expected to take any other steps in the circumstances"*. (para 27, emphasis added)

c. "*On the facts set out in paragraphs [14] and [23] above we find that there was no fault on the part of the Players for the purposes of section 21.22.4*." (para 28, emphasis added)

136. The SARU Judicial Committee reprimanded the Player and observed that "*any further punishment for the Players would be out of kilter with their lack of fault in the matter*" (para 2, emphasis added).

(3) Interpretation of the 2010 SARU Judicial Committee's decision

Our approach

137. We must approach it by reference to the words of the decision unless we are satisfied that there is some obvious error. An obvious error is one on the face of the decision, such as a typographical error rather than (what we consider to be) an error in the reasoning or the conclusion. It was open to both parties to appeal that decision; neither did. It is not for us to rewrite the 2010 SARU Judicial Committee's decision. Emphatically, we cannot decide afresh that case or act in some quasi-appellate capacity.

138. The Player put before us press reports which include quotations apparently from SARU officials. Ms Ahern addressed us as to how WADA and the IRB understood and treated the decision. Such material did not assist us. The views, opinions and interpretations of the 2010 decision by others are of no assistance to us. Resolution of the issues depends upon our own understanding and interpretation of that decision.

Our interpretation

139. With great respect, there are aspects of the SARU Judicial Committee's decision that we find puzzling. First, it might well be asked what power it had to reprimand the Player if it found he was not at fault or negligent. Regulation 21.22.4 does not provide for any sanction where the Player establishes no fault or negligence. It is silent on the point; save to say that the otherwise appropriate period of Ineligibility shall be eliminated. This is to be contrasted with Regulation 21.22.3 which does provide for a reprimand (as a minimum sanction) for a specified substance ADRV where the player can establish how the substance entered his body and that he did not intend thereby to enhance his sport performance or mask the use of a performance-enhancing substance.

140. Second, why it chose to reprimand him if it found he was not at fault (or negligent). Insofar as it sought to explain that, it simply said he (they) was (were) "*strictly liable and a reprimand is accordingly the appropriate sanction in the circumstances of this exceptional case; (*para 29). We do not follow why it was thought appropriate to reprimand an athlete if it concluded he was not at fault nor negligent.

141. Third, if the Player was not at fault (or negligent) we do not understand the relevance of the fact the Player had been provisionally suspended (see para 27). If he succeeded in establishing no fault (or negligence) then the period of Ineligibility that would otherwise be imposed is eliminated. That he has been provisionally suspended is (for those purposes) irrelevant.

142. Notwithstanding those concerns, it does not follow, in our judgment, that we can or should ignore the plain and repeated words employed by the SARU Judicial Committee in its decision

    a. Repeatedly it stated that the Player was not at fault.

b. It expressly stated the Player not being at fault for the purposes of Regulation 21.22.4 (para 28). We are not persuaded that we can conclude the reference to 21.22.4 was a typographical error.
    i. The (learned) composition of the Judicial Committee, presided over by a senior and experienced Chairman. It is inevitable that the decision would have been proofread. Any such error would, one would reasonably expect, have been identified and corrected.
    ii. Further, to what other regulatory provision might the Judicial Committee have meant to refer? Reference to 21.22.5 does not work. Had the Judicial Committee meant to refer to 21.22.5 the adjective "significant" would have qualified "fault". Further, and more significantly that provision does not allow for the complete elimination of the period of Ineligibility.
    iii. However the same cannot be said of 21.22.3. Indeed there is a tolerable argument that that is the provision the Judicial Committee had in mind and either applied or meant to apply:
        1. An argument, relying upon *lex mitior,* that MHA should be treated as a specified substance (as it was in 2011 but not at the time of testing 2010) was mounted on the Player's behalf (para 6).
        2. The Judicial Committee determined it in the Player's favour (para 10).
        3. In the first two paragraphs of its decision the Judicial Committee decided the two conditions precedent to its application (having already decided in his favour the third – it was treating MHA as a specified substance):
            a. That the Player established the route of ingestion (para 25); and
            b. That he had no intention of enhancing his sport performance thereby conditions precedent (para 26)

4. Once those three conditions are satisfied, fault is the criterion by which sanction is assessed. That is the very topic considered in the next paragraph (para 27) of the decision. The reference therein to "*no fault*" would fit with a consideration of Regulation 21.22.3 (chronologically). It would also explain the failure to mention the other ingredient of 21.22.4, namely "negligence". We are bound to observe that the content and sequence of those paragraphs, but the reference to 21.22.4 at the conclusion thereof (para 28) is the fourth troubling feature of the decision.

iv. However,

1. The omission of express reference to 21.22.3 is odd, if that is the provision that was then and there being addressed.
2. That chain of reasoning or interpretation does ignore the express reference to 21.22.3, 21.22.4 and 21.22.5 elsewhere in the decision.
3. In our experience, it would be a rare case that results in no period of Ineligibility by application of regulation 21.22.3 (or its comparative provision under the WADC).

143. Further, we cannot accept the argument that in having regard to the period of provisional suspension, the Judicial Committee effectively imposed a period of Ineligibility. The words of the decision are clear: it did not. It imposed only one sanction: a reprimand. If it wanted to take that into account, it would and should have imposed a period of Ineligibility which started at the same same as the provisional suspension.

144. For the reasons set out, we are driven to conclude that we are bound by the 2010 decision and the words used therein (especially para 28). Notwithstanding the concerns we have identified, we cannot say that there is an obvious error (of the nature we have identified) on the face of the

written decision. Furthermore, for us to conclude that the SARU Judicial Committee's decision was anything other than a finding of "no fault or negligence" pursuant to Regulation 21.22.4 would amount to rewriting it in a material respect. That would not be right. It would also be unfair to the Player. He is entitled to the benefit of any doubt, if doubt there be, on the face of the written decision.

(4) Applicable Sanction

145. The effect of our interpretation of the 2010 SARU Judicial Committee's decision is that pursuant to Regulation 21.22.4 the 2010 ADRV does not constitute a violation for the purposes of determining the period of ineligibility under Regulation 21.22.10. While the instant ADRV is (as a matter of fact) his second, it counts as his first for purposes of sanctioning.

146. Regulation 21.22.1 provides:

"The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of a Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided for in Regulations 21.22.3, 21.22.4, 21.22.5, 21.22.6, 21.22.7 and/or 21.22.8 or the conditions for increasing the period of Ineligibility, as provided in Regulation 21.22.9, are met:
First violation: Two years."

147. On the facts of this case the principle of *lex mitior* does not arise in this resect.

148. The Player did not submit that there were any grounds to reduce or eliminate the otherwise applicable period of two years.

149. The Player submitted that Regulation 21.22.9 does not apply to his case because there are no aggravating circumstances present which would justify the imposition of a period of ineligibility greater than the standard sanction. World Rugby did not submit to the contrary. The maximum period of ineligibility that could be applied in the present case, therefore, is two years.

150. Accordingly, in light of the absence of any basis for eliminating or reducing the period of Ineligibility, the sanction for his anti-doping rule violation committed on 19 March 2014 by reason of the presence in his urine sample of drostanolone metabolite is fixed: it is a period of Ineligibility of two years.

(5) Commencement of Ineligibility

151. Regulation 21.22.12 addresses the commencement date of any period of ineligibility:

"*Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served."*

152. Therefore the period of Ineligibility imposed on the Player will commence on 10 April 2014, being the date on which the SARU and so the Player was informed that he was provisionally suspended (*per* Regulation 21.22.12(c)).

(6) Terms of Ineligibility

153. The meaning of Ineligibility is as provided in Reg. 21.22.13A(i) provides:

"No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Match and/or Tournament (International or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any Union or Tournament Organiser. Such participation includes but is not limited to coaching, officiating, selection, Team management, administration or promotion of the Game, playing, training as part of a Team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB."

For IRB read 'World Rugby".

154. Neither party raised this point. World Rugby's 2015 edition of Regulation 21.10.12.1 does not change the meaning of Ineligibility in any material respect. However, 21.10.12.2 provides for a return to training. It states:

"*As an exception to Regulation 21.10.12.1, a Player may return to train with a team or to use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union during the shorter of: (1) the last two months of the Player's period of Ineligibility, or (2) the last one-quarter of the period of Ineligibility imposed.*"

155. The principle of *lex mitior* means that if since the commission of the ADRV the relevant law has been amended the less severe law should be applied. In this respect it has. It is not for us to make an order in such terms but it seems to us that 2015 Regulation 21.10.12.2 should apply to the Respondent's period of Ineligibility.

VI . APPEAL

156. This decision is final, subject to a Post Hearing Review Body (Regulation 21.24 and 21.25) and, if applicable, an appeal to the Court of Arbitration for Sport (Regulation 21.27).

157. In this regard, attention is directed to Regulation 21.24.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be started.

VII. COSTS

158. We make no order for costs.

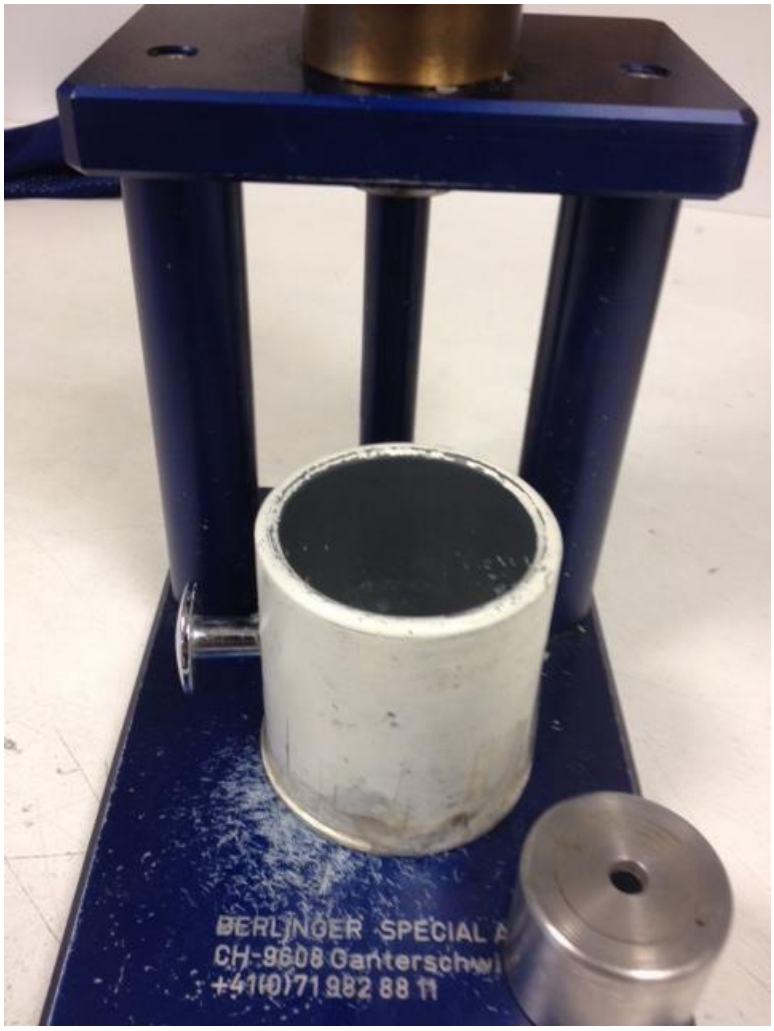
VIII. SUMMARY

159. For the reasons set out above, the BJC determines:
    a. The anti-doping rule violation has been established.
    b. The period of Ineligibility imposed is one of two years commencing on 10 April 2014.

Christopher Quinlan QC
Chairman
Bristol, England
16 June 2015

APPENDIX 1

The Berlinger Machine



APPENDIX 2

afld
agence française de lutte contre le dopage
Département des analyses

Accrédité par
AGENCE MONDIALE ANTIDOPAGE
franc jeu

Chatenay-Malabry, the June 20th, 2014

IRB - David HO
Huguenot House
35/38 St Stephen's Green
DUBLIN 2
IRELAND

Dear David,

The sample 2873137 B had been stored frozen in a glass bottle Bereg kit from Berlinger at -20°C since the 21th March 2014. On the 27th May 2014, after it had been taken out from the cold chamber, the bottle was positioned on the stand of the opening tool (manual compressor from Berlinger). While the operator was turning the wheel of the compressor, the glass bottle suddenly broke so that the block of frozen urine and the rest of the glass bottle remained in the stand of the tool. Both were immediately taken out from the stand by the operator (wearing clean gloves) and put into a clean glass container (chosen by the representative of the athlete) to separate the block from the glass splinters. The representative of the athlete was invited to choose a disposable plastic container. The block of frozen urine was then transferred into this container by the operator and thawed. The analysis was then performed in the same manner as for the corresponding A sample.

The result of this analysis totally corroborated the result previously obtained with the A sample and showed the presence of Drostanolone metabolite at an estimated concentration of 4.2ng /mL (estimated concentration in the A sample: 5 ng /mL).

Our opinion is that on no account, a contamination of the block of urine used for the analysis could be responsible for the result obtained in the B sample.

Such a contamination (from the stand of the opening tool to the block of frozen urine) would have required that the stand was tainted by a high concentration of Drostanolone metabolite.

In fact, the stand of the apparatus is kept clean and dry. This tool is reserved for the opening of sealed B bottles. We reexamined all B results from May 2014 until 2003. As shown by the enclosed document, none of the B samples opened with this tool contained Drostanolone metabolite.

Thus, it is not conceivable that a contamination might be responsible for the result obtained with this sample 2873137.

Best Regards,

Françoise LASNE
Director

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ANNEE : 2004

Date B analysis	SUBSTANCES
28/01/2004	THG
28/01/2004	Triamcinolone Acétonide
14/01/2004	Amphétamine
26/01/2004	THG
22/01/2004	Prednisolone
23/03/2004	stanozolol
20/04/2004	Pseudoéphédrine
04/05/2004	Prednisolone
19/05/2004	BHCG
09/06/2004	Nicethamide
09/06/2004	Salbutamol
13/07/2004	Méthadone
15/07/2004	Dextromoramide
29/07/2004	Hydrochlorotiazide
01/09/2004	Prednisolone et métabolites
02/09/2004	Prednisolone et métabolites
06/09/2004	EPO
07/09/2004	Prednisolone et métabolites
14/09/2004	Furosémide
14/09/2004	19-Norandrostérone
6 au 17/09/04	IRMS
30/09/2004	20B-dihydroprednisolone
04/11/2004	Triamcinolone Acétonide
16/11/2004	19-Norandrostérone
16/11/2004	19-Norandrostérone

ANNEE : 2003

janv-03	Salbutamol
janv-03	ephédrine+Pseudoéphédrine
févr-03	Heptaminol+Triamcinolone Acétonide
01/03/2003	Prednisolone
01/03/2003	EPO
01/03/2003	Bétaméthasone+Triamcinolone Acétonide
avr-03	Salbutamol
juil-03	EPO
juil-03	EPO
juil-03	Stanozolol
juil-03	Stanozolol
juil-03	Mestérolone
juil-03	Morphine
sept-03	Norfenfluramine
sept-03	EPO
sept-03	Modafinil
sept-03	Prednisolone
oct-03	Modafinil
oct-03	Métandienone + Caféine + Ephédine
oct-03	EPO
nov-03	Prednisolone
nov-03	Triamcinolone Acétonide
nov-03	Caféine

ANNEE : 2006

Date B analysis	SUBSTANCES
09/01/2006	Stanozolol
17/01/2006	benzoylecgonine
01/02/2006	Testosterone
07/02/2006	Stanozolol
07/03/2006	THC
09/05/2006	THC
13/06/2006	Stanozolol
28/06/2006	Stanozolol
12/07/2006	Strychnine
18/07/2006	LH
3 AU 5/08/06	T/E + IRMS
30/08/2006	Nandrolone + Finastéride
au 11/11/200	T/E + IRMS
au 11/11/200	T/E + IRMS
07/11/2006	Phentermine
28/11/2006	Nandrolone

ANNEE : 2005

Date B analysis	SUBSTANCES
18/01/2005	Hormone Lutéinisante
16/02/2005	THC
22/03/2005	benzoylecgonine
13/04/2005	19-Norandrostérone + IRMS+
19/04/2005	IRMS + THC
10/05/2005	THC
17/05/2005	Stanozolol
25/05/2005	IRMS
31/05/2005	THC + Benzoylecgonine
15/06/2005	benzoylecgonine
05/07/2005	Acétazolamide
27/07/2005	B-HCG
30/08/2005	Nicéthamide
06/09/2005	19-Norandrostérone
08/09/2005	Métabolite acide du Finastéride
15/09/2005	Etiléfrine
20/09/2005	19-Norandrostérone
19/10/2005	IRMS
17/11/2005	Hydrochlorothiazide
08/12/2005	Ephédrine

ANNEE : 2008

Date B analysis	Substance
09/01/2008	IRMS +
14/01/2008	THC
15/01/2008	Cocaïne
29/01/2008	THC
19/03/2008	Cathine
20/03/2008	FINASTERIDE
12/06/2008	STANZOLOL
07 AU 11/07/	EPO
/07 au 17/07/	IRMS +
/07 au 02/08/	EPO
/07 au 02/08/	EPO
28 au 30/08/0	EPO
01 au 03/09/0	EPO
24/09/2008	Cathine
07/10/2008	EPO + EPHEDRINE
09/10/2008	NANDROLONE
7 au19/11/200	EPO (Mircera)
7 au 19/11/200	EPO (Mircera)
09/12/2008	Stanozolol + IRMS+

ANNEE : 2007

Date B analysis	SUBSTANCES
01/02/2007	AMILORIDE
01/02/2007	HYDROCHLOROTHIAZIDE
07/03/2007	EPO
19/03/2007	IRMS +
29/05/2008	IRMS +
25/05/2007	HEPTAMINOL
01/06/2007	THC
12/06/2007	EPO
19/07/2007	EPO
27/07/2007	TRANSFUSION SANGUINE
28/07/2007	TRANSFUSION SANGUINE
29/08/2007	HEPTAMINOL
10/10/2007	THC
10/10/2007	COCAINE
23/10/2007	ACIDE RITALINIQUE
04/12/2007	EPO
04/12/2007	IRMS +
11/12/2007	BENZOYLECGONINE

ANNEE : 2011

Date B analysis	Substance
11/01/2011	THC
06/04/2011	EPO
12/07/2011	4-Méthylhexanamine
19/07/2011	Hydrochlorothiazide
31/08/2011	Prednisolone (négatif)
19/09/2011	EPO
17/10/2011	EPO
19/12/2011	EPO

ANNEE : 2010

Date B analysis	Substance
21/04/2010	Salbutamol
02/06/2010	CERA
25/06/2010	Acétazolamide
06/07/2010	Darbépoétine-α
01/09/2010	Benzoylecgonine
27/10/2010	Furosémide
04/11/2010	Stanozolol

ANNEE : 2009

Date B analysis	Substance
26 au 28/01/200	EPO mircera
09/02/2009	16β-Hydroxystanozolol
11/02/2009	19-Norandrostérone
18/02/2009	Cocaïne
31/03/2009	EPO
28 au 30/05/200	EPO Mircera
02 au 04/06/200	EPO Mircera
11 au 13/06/200	EPO mircera
15 au 17/06/200	Aucune EPO mirecra
18 au 21/06/09	EPO mircera
18 au 21/06/09	EPO mircera
03/08 au 05/08/0	EPO mircera
03/08 au 05/08/0	EPO mircera
08/09/2009	Stanozolol
14/09/2009	EPO
24/09/2009	Acide Ritalinique
14/10/2009	EPO mircera
21/10/2009	EPO mircera
04 au 06/11/200	EPO NESP
16/11/2009	EPO

ANNEE : 2014

Date B analysis	Substance
28/01/2014	Budésonide + Cocaïne
08/04/2014	Nandrolone
23/04/2014	Méténolone
27/05/2014	Drostanolone
10/06/2014	Furosémide

ANNEE : 2013

Date B analysis	Substance
16/01/2013	Morphine+Cathine
05/02/2013	19-norandrostérone
02/05/2013	EPO
30/07/2013	T/E + IRMS+ et Formestane
03/09/2013	EPO

ANNEE : 2012

Date B analysis	Substance
06/03/2012	Oxilofrine
15/05/2012	Hydrochlorothiazide
15/05/2012	THC
16/05/2012	4-Méthylhexanamine
28/06/2012	Furosémide
02/07/2012	4-Méthylhexanamine
08/07/2012	EPO
11/07/2012	Stanozolol
20/07/2012	Xipamide
22/07/2012	EPO
23/07/2012	Testostérone+Mestérolone
24/07/2012	Probénécide
11/09/2012	Morphine/Codéine
25/09/2012	Androstatrièn edione
25/09/2012	EPO
26/09/2012	Prednisone/Prednisolone

APPENDIX 3

afld
agence française de lutte contre le dopage
Département des analyses

Accrédité par
AGENCE MONDIALE ANTIDOPAGE
franc jeu

Chatenay-Malabry, July 24th, 2014

David HO
Anti-Doping Manager – Compliance and Results
International Rugby Board
Huguenot House – 35/38 St Stephen's Green
DUBLIN 2
IRELAND

In reply to your request of the July 9th, 2014, we have proceeded to the whole "screening" procedure of our laboratory for urine samples on sample 2873137B on July 14th, 2014.

As previously observed with sample 2873137A, no substance apart from Drostanolone was detected in sample 2873137B.

Kind regards,

Dr Françoise LASNE
Director

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APPENDIX 4

List of Authorities

- *UKAD v Warburton and Williams,* 12 January 2015
- *International Association of Athletics Federations (IAAF) v USA Track & Field (USATF),* CAS 02-401, 10 January 2003
- *AEK Athens and SK Slavia Prague v UEFA,* CAS 98-200 20 August 1999
- *Bohdan Ulirach v ATP,* 7 July 2003
- *Boxing Australia v. AIB,* CAS 08-1455, 16 April 2008
- *CAS ad hoc division (O.G. Beijing) Christel Simms v. FINA,* CAS 08-002, 1 August 2008
- *Rebagliati v. IOC,* CAS 98-002, 12 February 1998
- *R. v. FISA,* CAS 01-330, 23 November 2001
- *USOC v. IOC & IAAF,* CAS 04-725, 20 July 2005
- *TTF Liebherr Ochsenhausen v. ETTU,* CAS 07-1363, 5 October 2007
- CAS 08-1545 *A & co v IOC,* 16 July 2010
- Case No.-21.ADDP.01.2014: *NADA vs Sudheer Kumar*, Decision of the Anti-Doping Disciplinary Panel, India, 23 September 2014
- *USA Shooting & Quigley v. UIT* , CAS 94/129, 23 May 1995
- *USADA v. Jenkins*, AAA No. 30 190 00199 07, 25 January 2008
- *Devyatovskiy v. IOC / Tsikhan v IOC*, CAS 2009/A/1752 & 1753, 10 June 2010
- *Veronica Campbell-Brown v. IAAA & IAAF*, CAS 2014/A/3487, 10 April 2014
- *T. v. International Gymnastics Federation*, CAS 2002/A/385, 23 January 2003
- *Wen Tong v. International Judo Federation*, CAS 2010/A/2161, 23 February 2011
- *Varis v. IBU*, CAS 2008/A/1607, 13 March 2009
- *Decision of the SARU Judicial Committee in the matter of Mahlatse "Chiliboy" Ralepelle and Bjorn Basson,* 27 January 2011
- *WADA v Chernova & RUSADA,* CAS 2013/A3112

- *WADA v Wium,* CAS 2005/A/908
- *IAAF v De Silva,* CAS 2012/A/2779