

WORLD RUGBY

IN THE MATTER of the Regulations
relating to the Game

A N D

IN THE MATTER of a doping offence by
CARL TOWNSEND
("the Player")

Judicial Committee

T M Gresson	(New Zealand)	(Chairman)
J de Pencier	(Germany)	
Dr P Wiley	(Canada)	

Appearances and Attendances

For World Rugby

Ben Rutherford	(Legal Counsel)
David Ho	(Anti-Doping Manager – Compliance and Results)

The Player

Carl Townsend	(Player)
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Hearing

By way of written submissions and correspondence

REASONS FOR DECISION OF THE JUDICIAL COMMITTEE

1. On 7 June 2015 Carl Townsend ("the Player") provided a urine sample (Sample Number 3881667) during an in-competition test conducted during the Rugby Europe Grand Prix 7s held in Moscow on behalf of World Rugby and Rugby Europe. Subsequently, the sample returned an Adverse Analytical Finding ("AAF") for the substance Oxandrolone ("the substance").

2. Oxandrolone is an Anabolic Androgenic Steroid classified under Section 1.1a Anabolic Agents in the World Anti-Doping Agency (“WADA”) 2015 List of Prohibited Substances and Methods. It is not a Specified Substance. The WADA Prohibited List is included in Schedule 2 of World Rugby Regulation 21. The substance is prohibited in-competition and out-of-competition. The Player had not applied for, and had not been granted, a therapeutic use exemption allowing him to use the substance.
3. Following receipt of the analysis result of the A Sample, and after a preliminary review conducted in accordance with Regulation 21.7.2 (which confirmed that an anti-doping rule violation may have been committed) the Player was provisionally suspended on 29 June 2015. Subsequently, on 6 July 2015, by letter sent to Mr Ho (World Rugby Anti-Doping Manager – Compliance and Results), the Player with commendable candour confirmed the AAF was accepted and thus, he had committed an anti-doping violation. He also accepted the likelihood of him being sanctioned in accordance with the Regulation 21 prescribed sanctioning regime. The Player indicated he did not require analysis of the “B” sample.
4. This Judicial Committee (“JC”) was appointed to consider the Player’s case. The Player waived his right to an oral hearing. Thus, in accordance with the Committee’s directions written submissions were presented by Counsel for World Rugby to which the Player responded by way of correspondence. The hearing was conducted on the basis of the written material presented to the Committee.

Factual Background

5. In his correspondence the Player made no attempt to obfuscate the fact he had committed an anti-doping violation and therefore, should be sanctioned in accordance with the mandatory sanction applicable under the Regulations. In his first letter dated 6 July 2015 he stated:

“Following a decision to retire from semi-professional rugby early in February 2015, I did not have any intention of returning to the sport. During this time I admittedly purchased over the counter protein, pre-workout powders and testosterone boosters that were not quality assured and batch tested.

I was selected to represent Wales development 7's in in (sic) May 2015, and following notice of my selection immediately returned to

purchasing certified and batch tested supplements to ensure that i was in line with doping rules and regulations of 2015.

Following a doping urine test that took place during a representative competition in Moscow European Gand (sic) Prix 7's tournament, it came as a disappointment and surprise that I had tested positive for Oxandrolone.

I regret the naive decision to have taken such supplements that were not quality assured, batch tested and in this case had been contaminated. I am aware that it is my responsibility to ensure that the supplements consumed are batch tested and and (sic) quality assured to be in line with the anti-doping rules and regulations.

I therefore accept that I have violated the anti-doping rules 2015 and accept the subscribed sanction for the consequences of my actions."

6. Subsequently, following receipt of World Rugby's submissions as to sanction, on 20 July 2015 the Player wrote:

"In response to your correspondence the 17th July 2015, As stated in my correspondence 6th July 2015, I fully regret my naive decision to consume supplements that were not batch tested and therefore fully accept the sanctions placed against myself for the Anti-doping violation for the Adverse Analytical Findings of exogenous anabolic steroids. I am aware it is solely my responsibility to ensure my consumption of supplement were batch tested in line with the Anti-doping Regulations 2015 outset by WADA and World Rugby regardless of my decisions to retire from the sport in February 2015 and then to return to the sport later in May 2015. I am therefore unable to challenge any diss-intention regarding my actions in this instance. I would also like to formally apologise for damaging the reputation of World Rugby, The WRU and for undermining the integrity of the sport."

7. When the Player provided his urine sample on 7 June 2015 he only declared on the Doping Control Form¹ he had been taking paracetamol and ibuprofen for the purpose of medicinal supplements. The former is a pain killer; the latter an anti-inflammatory.

Anti-Doping Violation Established

8. Pursuant to Regulation 21.2.1 the "*presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample*" constitutes an anti-doping rule violation. Regulation 21.2.1.1 provides:

"21.2.1.1 *It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their*

¹ The Doping Control Form requires a player to declare any medication and/or supplement taken in the last seven days.

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"

9. Pursuant to Regulation 21.3.1 World Rugby has the burden of establishing an anti-doping rule violation to the comfortable satisfaction of the JC. As indicated the Player accepted and did not challenge the analytical findings of the laboratory. Accordingly, the JC finds that World Rugby has established to the required standard the anti-doping rule violation; that is the presence of the Prohibited Substance Oxandrolone in the Player's bodily sample.

Sanction

10. The period of ineligibility to be imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers) that does not involve a Specified Substance is four years for a first violation. This period of ineligibility can be reduced in certain circumstances. In the context of this case they include:
- The Player establishing the anti-doping rule violation was not intentional (refer Regulation 21.10.2.1.1)
 - The Player establishing exceptional circumstances as set out in Regulation 21.10.4 (No fault or negligence), 21.10.5 (No significant fault or negligence)
 - The Player making a prompt admission of an anti-doping rule violation after being confronted with a violation sanctionable under Regulation 21.10.2.1.
11. The JC understands it has been provided with all the correspondence which was exchanged between World Rugby and the Player. Having viewed this correspondence the JC is satisfied that the above provisions were clearly explained to the Player who has not sought to rely on any of them for the purpose of attempting to establish on a balance of probabilities (Regulation 21.3.1) that the mandatory sanction should be reduced below a period of four years ineligibility.
12. For completeness, we refer to Regulation 21.10.2.3 which defines the term "intentional" as used in Regulation 21.10.2.1.1. Essentially, the definition embraces intentional and reckless conduct. The Regulation provides:

“... the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.”

13. It is to be noted the definition contains two alternative elements namely; the Player establishing that he did know his conduct did not constitute an anti-doping rule violation or he did not manifestly disregard the significant risk of engaging in conduct which might constitute an anti-doping violation. In relation to the second element, the JC agrees with Mr Rutherford’s submission that the Player’s comments in his letters dated 6 July 2015 and 20 July 2015 (refer paras 5 and 6 *supra*) amount to an admission of reckless conduct as defined. The Player admitted he *“purchased over the counter protein, pre-workout powders and testosterone boosters that were not quality assured and batch tested (emphasis added)”*. Further, he admitted he was aware that without quality assurance and batch testing there was a significant risk of contamination. After he resumed his active playing career (which included playing for the Welsh Development 7s in May 2015) he stated he reverted to more responsible behaviour with regard to the use of supplements but it is clear he made minimal effort to address the underlying problem that there was the strong possibility of the prohibited substance consumed during the preceding months still being in his bodily system.
14. The JC has considered whether the Regulations permit a reduction in the mandatory sanction of four years because of the Player’s prompt acknowledgement he had committed an anti-doping violation. In this regard reference is made to Regulation 21.10.6.3 which provides:

“21.10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Regulation 21.10.2.1 or Regulation 21.10.3.1

A Player or other Person potentially subject to a four-year sanction under Regulation 21.10.2.1 ... by promptly admitting the asserted anti-doping rule violation after being confronted by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), and also upon the approval and at the discretion of both WADA and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending

on the seriousness of the violation and the Player or other Person's degree of Fault."

15. It can be seen this Regulation also contains two elements namely the prerequisite for World Rugby and WADA respectively exercising their discretion by approving a reduction and the JC assessing the seriousness of the violation and the Player's degree of fault.
16. We understand neither World Rugby nor WADA have granted their approval but in any event the JC considers the Player's offending was towards the higher end of the scale of seriousness. It involved (during the period of his retirement from rugby) the deliberate ingestion of an exogenous anabolic steroid followed by him, prior to representing his country at the 7s Tournament, failing to ensure the banned substance was not present in his system. Further, as Mr Rutherford submitted, "*If Regulation 21.10.6.3 were to be applied in cases of this ilk it would fundamentally undermine the move to four year sanctions for non-Specific Substances which was a key tenet of the revised World Anti-Doping Code 2015*". We agree.

Decision

17. For the foregoing reasons, the sanction imposed for this anti-doping rule violation is a period of ineligibility of four years (48 months) commencing from 29 June 2015 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) the 28 June 2019.
18. Pursuant to Regulation 21.10.12.2 during the period of Ineligibility the Player may return to train with a team or he may use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union, on or after 29 April 2019. During the training period as described the Player may not compete or engage in any activity as described, other than training.

Costs

19. If World Rugby wishes us to exercise our discretion in relation to costs, written submissions should be provided to the JC via Mr Ho by 17:00 Dublin time on 21 August 2015, with any responding written submissions from the

Player to be provided by no later than 17:00 Dublin time on 11 September 2015.

Review

20. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.13.8.1) or an appeal, where the circumstances permit to the Court of Arbitration for Sport (Regulation 21.13.2.1). In this regard, attention is also directed to Regulation 21.13.8.2, which sets out the process for referral to a Post Hearing Review Body, including the time within which the process must be initiated.



T M Gresson
Chairman

13 August 2015