

WORLD RUGBY

IN THE MATTER

of the Regulations Relating to
the Game and an alleged
doping offence

BETWEEN

WORLD RUGBY

A N D

CAMERON XAVIER McNAB

("the Player")

Judicial Committee

T M Gresson	(New Zealand) (Chairman)
P Thomson	(Australia)
Prof D Gerrard	(New Zealand)

Appearances and Attendances

Cameron McNab	(Player)
Christopher Stanley	(Legal Practitioner for Player)
Elizma Theron	(Acting Chief Executive Officer Namibia Rugby Union ("NRU"))

For World Rugby

Richard Liddell	(Counsel for World Rugby)
Yvonne Nolan	(Counsel for World Rugby)
Amanda Savage	(Counsel Observing)
David Ho	(Anti-Doping Manager – Compliance and Results)
Michael Earl	(Anti-Doping General Manager, World Rugby)
Ross Blake	(Anti-Doping Co-Ordinator, World Rugby)

Hearing

26 July 2016 (supplemented by affidavit evidence, written submissions and correspondence)

DECISION OF THE JUDICIAL COMMITTEE

1. On 5 April 2016 Cameron Xavier McNab ("the Player") at Windhoek, Namibia, provided a urine sample, Number 3928379, ("the Sample") during an out-of-competition test conducted as part of World Rugby's Under 20 Trophy testing programme. Subsequently, the Player's A Sample returned an Adverse Analytical Finding ("AAF") for metabolites of two prohibited substances namely Dehydrochloromethyltestosterone and Metandienone, which are anabolic steroids ("the Substances"). The pharmaceutical tradenames for the Substances

respectively are *Turinabol* and *Dianabol*. For convenience, the Substances are referred to by their tradenames.

2. Both Substances are classified under S1.1a Exogenous Anabolic Androgenic Steroids in World Anti-Doping Agency ("WADA") 2016 List of Prohibited Substances and Methods. They are not Specified Substances. The WADA Prohibited List is included in Schedule 2 of World Rugby Regulation 21. The Substances are prohibited in-competition and out-of-competition. The Player had not applied for, and had not been granted pursuant to Regulation 21.4.4, a Therapeutic Use Exemption allowing him to use the Substances.
3. Following receipt of the analysis result of the Player's 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 notified by World Rugby of the AAF and was provisionally suspended on 26 April 2016. The Player did not request an analysis of his "B" Sample within the stipulated time. Subsequently, on 23 June 2016 he indicated he did not require analysis of his "B" sample.
4. This Judicial Committee ("JC") was appointed to consider the Player's case. In accordance with the JC's directions written material (including affidavit evidence and submissions) was presented to the JC prior to, and following, the oral hearing held on 26 July 2016.

The Evidence

5. The evidential material considered by the JC consisted of:
 - The Player's unsworn and undated affidavit sent by Mrs Theron by e-mail dated 10 May 2016 in which she stated he "*will visit a commissioner for oaths and forward a signed copy tomorrow*". This did not occur and during the hearing, while being cross-examined, the Player sought to disavow parts of the unsworn affidavit on the basis he was not the only person responsible for the compilation of its content. Mr Stanley then submitted the affidavit should not be considered by us. In relation to this submission, we ruled we would permit cross-examination on the contents of this document but only the evidence provided by the Player in response to Counsel's questions would form part of the overall factual matrix to be considered by the JC.
 - A sworn affidavit by the Player dated 30 June 2016 ("Sworn Affidavit"). This document was in response to the JC directing the evidential material contained in Mr Stanley's written submissions dated 23 June 2016 should be included in a properly sworn document.

- A sworn affidavit dated 12 July 2016 by Mr Ross Blake ("Mr Blake"), a World Rugby Anti-Doping Co-Ordinator.
 - Oral evidence given by the Player and Mr Blake during the hearing.
 - Sworn affidavits dated 5 and 11 August 2016 by Mr Walid Bergstedt ("Mr Bergstedt"), a Doping Control Officer – South Africa.
 - A sworn affidavit dated 5 August 2016 by Ms Tasneem Harms ("Ms Harms"), a SAIDS Senior Doping Control Co-Ordinator.
 - A sworn affidavit dated 11 August 2016 by Dr Tiia Kuuranne ("Dr Kuuranne"), a Laboratory Director of the Laboratoire Suisse d'Analyse du Dopage.
 - A sworn affidavit dated 11 August 2016 by Mr David Ho ("Mr Ho").
 - Correspondence and various documents.
6. The Player is a Professional Rugby Player who, when 18 and 19 years of age, was a member of the Namibian Under 20 National Team which participated in the World Rugby Under 20 2015 and 2016 Trophy Tournaments played respectively in Lisbon and Harare. On 10 May 2015 before the commencement of the Lisbon Tournament the Player provided a test urine sample which returned a negative result.
7. The following day he attended an oral education session conducted by Mr Blake in his capacity as a World Rugby Anti-Doping Co-Ordinator in Lisbon prior to the commencement of the Tournament. Mr Blake stated that during the session the Player received a copy of the 2015 World Rugby Handbook ("the Handbook"). The Handbook contained the full WADA Prohibited List. The Player also successfully completed the World Rugby Anti-Doping E-learning Programme which contained a link to the full WADA Prohibited List. Further, we are satisfied during this comprehensive education session Mr Blake carefully explained the risks and dangers of taking medications, dietary and nutritional supplements.
8. The Player, in addition to denying intentionally ingesting the Substances, deposed in his sworn affidavit:
- 4.2.7 I have never been exposed to specific informative sessions as a Namibia Player specifically dealing with all possible banned or prohibited substances. I respectfully submit that I have never even seen the full and complete list as issued by WADA on prohibited substances, I was first introduced thereto by my legal representative during our consultations.*
- 4.2.8 I state with complete honesty and candid therein that I did not at any material stage suspect or could reasonably have suspected that certain prohibitory substances were contained in the afore-mentioned products used. I should state that in fact my complete ignorance and poor knowledge of prohibited substances would make it more difficult for me at any stage suspect or by reasonably aware of prohibited substances in any supplement I may anticipate to use."*

9. Understandably, in view of Mr Blake's evidence, the Player was extensively cross-examined by Counsel for World Rugby about the extent of his knowledge of prohibited substances and in this respect we are satisfied the Player was fully aware of the risks and dangers involved in taking substances and supplements which may be contaminated by prohibited substances. Moreover, we are satisfied Mr Blake fully explained (by referring to the Handbook and by providing details of the relevant website for an internet search) the steps which could be taken to check whether any substances were banned and whether any supplements could contain any prohibited substances.
10. Further, as mentioned the Player would have acquired an understanding of World Rugby's Anti-Doping regime when he was previously tested on 10 May 2015 in Lisbon.
11. The Player deposed in his sworn affidavit that during 2015 he adopted a strict exercise programme while he was a member of the Sharks (Natal) Provincial Rugby Academy based in Durban, South Africa. He stated this programme included using supplements labelled *Animal M Stak*, *Hellfire EPH 150* and *Jack 3d* which he had obtained from pharmacies in November/December 2015. Subsequently, at the hearing he changed his account and stated he first used *Jack 3d* by ingesting a single scoop of a teammates supply on 5 March 2016 before a premier club rugby match played in Windhoek. The Player also deposed that at the time of purchase of the *M Stak* and *Hellfire* he checked the labels detailing the ingredients of each of these supplements against the list of banned substances in the Handbook. In relation to the *Jack 3d* he stated he relied on a teammate's assurance the product did not contain any prohibited substances. The Player also stated he had used *M Stak* and *Hellfire* to enhance his performance during practice sessions with the Sharks.
12. *Jack 3d* and *Hellfire* are supplements designed for their "stimulant" effect. *Jack 3d* is illegal in the UK, Australia, New Zealand and Canada. It contains 1, 3-Dimethylamylamine HCl (known as DMAA) which is classified as a Prohibited and Specified Substance and Stimulant in category S6.b of WADA's 2016 list. We were informed in the USA, *Hellfire EPH 150* is regarded as a high risk supplement as it may also contain DMAA. *Animal M Stak* is a "Non-Hormonal Anabolic Pack". The Player's Sample which returned the AAF did not contain DMAA.
13. When the Player provided the Sample on 5 April 2016, in response to questioning by the Doping Control Officer (Mr Bergstedt), he stated he had only taken a Vitamin B nutritional supplement during the previous seven days. He had no additional

comment and in signing the Doping Control Form he declared all the information provided by him was correct.

14. The Player stated the presence of the Substances could only be attributed to him having them in his bodily system when he used any one or more of the *Animal M Stak*, *Hellfire* and *Jack 3d* supplements. As mentioned he stated he did not intentionally take the Substances. Further, he took appropriate steps to avoid ingesting any prohibited substance and for this reason he was not at fault or negligent. The Player also deposed for the first time during the hearing that at the time of the test his Uncle (who is not a Doctor) had given him a "blue pill" for the treatment of a "flu like" illness. However, neither the Player or Mr Stanley suggested the "blue pill" or the acknowledged Vitamin B supplement could have been potential sources of the Substances.
15. The Player also confirmed he trained in a gym where he received advice from teammates about supplements. He had not purchased any products at the gym. He also confirmed he knew "a little about" anabolic steroids. The Player also expressed remorse for the AAF stating:

"... I never thought I would find myself, having so much respect and high regard for the Game, in such a position.

I do not condone the use of prohibited substances in the game of Rugby or any sport for that matter. I thus find myself as having let down my Country, my Rugby Union, my fellow rugby colleagues and more specially my high aspirations for excelling personally in this sport.

...

I am as well remorseful for having tainted the image and spirit of World Rugby as a sport, especially in its attempt to instil discipline and advocate same in the game.

16. An expert opinion (dated 12 July 2016) completed by the Director and Deputy Director of the WADA accredited Swiss Doping Control Laboratory (which carried out the analysis of the Player's sample) was provided as to establishing the detection windows for the Substances. The opinion was supported by authoritative scientific articles¹ which concluded a long-term metabolite of Metandienone (*Dianabol*) could be detected for about 20 days after intake and for

¹ Nutritional supplements cross-contaminated and faked with doping substances. *J Mass Spectrom.* 2008; 43(7): 892-902

Mass spectrometric identification and characterization of a new long-term metabolite of metandienone in human urine. *Rapid Commun Mass Spectrom.* 2006; 20(15): 2252-8

Detection and mass spectrometric characterization of novel long-term dehydrochloromethyl-testosterone metabolites in human urine. *J Steroid Biochem Mol Biol.* 2012 Feb; 128(3-5): 121-7

Dehydrochloromethyltestosterone metabolite (*Turinabol*) the detection time could be approximately 40 to 50 days.

Has the Anti-Doping Violation Been Established?

"In Limine" Issues in Relation to the Collection and Security of the Player's Sample

17. Mr Stanley, (not surprisingly) on behalf of the Player, raised issues in relation to the collection and the security of the Player's Sample when it was conveyed from Windhoek to the Swiss Laboratory via South Africa. Mr Stanley relied on three matters (namely incorrect references in documents relating to the date and place of collection, and the changes in seal numbers of the bags containing the Sample) which he submitted, in the absence of proper proof by World Rugby in relation to the chain of custody of the Sample, should result in the JC ruling the AAF was a nullity.
18. On a "*prima facie*" basis the issues raised by Mr Stanley were considered by the JC to be potentially serious. Accordingly, we allowed both parties to present further evidence by way of affidavits by appropriate deponents and supplementary submissions.
19. In this respect, we acknowledge the detailed information provided in the sworn testimony of Mr Bergstedt, Ms Harms, Dr Kuuranne and Mr Ho. Having considered all the evidence which has been adduced together with Counsels' submissions, we are comfortably satisfied (refer Regulation 21.3.1²) World Rugby has established the Sample was properly collected from the Player on 5 April 2016 at Windhoek and subsequently without any interference securely conveyed from Namibia (via South Africa) to the Swiss Laboratory. The JC's reasons for this conclusion are as follows:
20. Firstly, in relation to the date on which the Sample was collected. This issue arose because initially World Rugby incorrectly in a letter dated 26 April 2016 referred to the Player's Sample having been collected on 4 April 2016. However, later on 26 April 2016 World Rugby sent a further letter correcting the mistake and confirmed the collection date of 5 April 2016. This was clearly the date of the Sample collection. The Doping Control Form (which was signed by the Player, his representative and Mr Bergstedt) was dated 5 April 2016. Further, it was confirmed

² Regulation 21.3.1 provides:

"Burden and Standards of Proof

World Rugby shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Rugby has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Player or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability."

by Mr Bergstedt in his sworn evidence. The Chain of Custody Form (attached as Appendix A) refers to the "collection session" occurring on 5 April 2016.

21. Secondly, the issue in relation to the collection location arose because the Swiss Laboratory made an error by referring to South Africa in its Letter of Acknowledgement and Doping Control Report. Subsequently the laboratory acknowledged its mistake in a letter dated 12 July 2016. Dr Kuuranne also deposed this mistake did not affect the accuracy of the analytical results. Further, Mr Bergstedt in his sworn evidence confirmed the collection location was in Windhoek. The Chain of Custody Form also refers to Windhoek as the collection location.

22. Thirdly, in relation to the changes in the seal numbers (065266, 065267 and 051648), this issue arose because as can be seen there are references to each of them in the Chain of Custody Form as a result of which Mr Stanley submitted:

"Applying the "Rules of Logic" from a legal perspective certain inferences can be drawn from the above submissions (a) – (i);

- 1. That the sample were tampered with in that the seal was broken and or opened in Pinelands, South Africa;*
- 2. That the wrong sample was send (sic) to the DCO/SAIDS personnel member on the 07th of April 2016, as per the Chain of Custody Form;*
- 3. Or that a different sample with Seal No. A 051648 was send (sic) to the laboratory on the 11th of April 2016 and as confirmed by the laboratory on the 19th day of April 2016 (see the Chain of Custody Form)."*

23. With regard to this submission we are satisfied the evidence (as disclosed in the affidavits of Mr Bergstedt and Ms Harms) subsequently obtained by World Rugby clearly established the seal numbers referred to the Chain of Custody Form relate to the plastic seals attached to the blue bag which was used to transport the "A" and "B" Samples from the collection site to the Swiss Laboratory via South Africa. Contrary to Mr Stanley's apprehension they did not relate to the sealing of the security caps on the two urine bottles which contained the Player's A and B Samples.

24. The securing of the Samples was fully explained by Mr Bergstedt in his second affidavit which was accurately and conveniently summarised by Mr Liddell in his submissions as follows:

"13) As is customary, and as explained by Walid Bergsedt in his second affidavit (at Appendix 3), Berlinger kits were used in this case to collect and contain the Player's urine sample. The bottles (A and B) and security caps are all numbered with a unique sample code – in the Player's case sample no. 3928379, which correspond to the "bar code sticker" (provided in the Berlinger kits) and the sample number identified on the Doping Control Form and the Athlete Information Form. The security caps contain a one directional ratchet, which is the tamper-evident system and once screwed

down then fully seals the samples and are not opened until the caps are broken by the Laboratory. Each sample is then placed in a small individual plastic bag and the Player is asked to peel the red tape from the plastic bag in order to seal the sample inside it. The plastic bag is then put into a small cardboard box ready for transport. The sample (inside the box) is then placed into the blue transport bag together with the Chain of Custody Form before the blue bag is then sealed and a blue plastic seal is attached, which has an individual seal number."

25. Accordingly, we are satisfied a specific seal number was not allocated for the bottles containing the A and B Samples but both bottles and the security caps were numbered with the same unique sample code (3928379) and based on the affidavits of Mr Bergstedt and Ms Harms the evidential chain of custody clearly established the Player's Sample (and the Chain of Custody Form) were conveyed from Windhoek to the Swiss Laboratory (via South Africa) without either bottle being opened. Consequently, we reject the suggestion they were tampered with.

26. Finally, for completeness, we accept the explanations provided by Mr Bergstedt and Ms Harms as to the reasons for the changes of the seal numbers which were attached at various times to the blue plastic transport bag. Following the collection of the Player's Sample both bottles and the completed Chain of Custody Form were placed in the bag which was sealed with plastic seal number 065266. Mr Bergstedt then retained custody of the blue bag until it was collected by a courier on 7 April 2016 when the seal was broken and the bag opened for the purpose of the courier completing a fresh seal number on the Chain of Custody Form which he then returned to the bag. The bag was then taken to the SAIDS Office where it remained unopened in a freezer until 11 April 2016 when it was again collected by a courier who in relation to completing the Chain of Custody Form followed the same process as the previous courier. The bag with a further seal number (A051648) was then couriered to the Swiss Laboratory which acknowledged receipt of the Samples on 19 April 2016 and by completing the last section of the Chain of Custody Form confirmed the last seal number on the bag. It follows, the bag was not opened when transported from the SAIDS Office in South Africa to the Laboratory where, upon inspection in accordance with the "*routine protocol*" and the International Standard for Laboratories, it was noted there were "*no irregularities that may adversely impact on the integrity of the sample ...*".

27. For the foregoing reasons, as mentioned, we are comfortably satisfied there are no issues concerning the collection of the Sample and the subsequent chain of custody.

Substantive Issue in Relation to Whether Anti-Doping Violation Established

28. 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.
29. Regulation 21.2.1.1 provides:
- 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 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"*
30. As mentioned we are satisfied that in relation to the chain of custody of the Player's Sample, from the time it was collected to the time it was analysed by the Swiss Laboratory it was anything other than intact. Also, as noted, the Player confirmed he waived his right to have his B sample analysed.
31. Accordingly, we find World Rugby has established to the required standard the anti-doping violation, that is the presence of the Substances in the Sample.

Sanction

Legal Framework

32. The period of ineligibility to be imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers) which does not involve a Specified Substance is four years for a first violation. The 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). If established, the period of ineligibility shall be reduced to two years (refer 21.10.2.2).
 - The Player establishing exceptional circumstances as set out in Regulation 21.10.4 (No fault or negligence, in which case, the otherwise applicable period of ineligibility shall be eliminated), or 21.10.5 (No significant fault or negligence, in which case the period of ineligibility shall be at a minimum of a reprimand and no period of ineligibility and at a maximum of two years ineligibility depending on the Player's degree of fault).
33. The Player has the burden of establishing both of these matters. Pursuant to Regulation 21.3.1 the standard of proof shall be by a balance of probability.

Intention

34. Regulation 21.10.2.3 defines the term "intentional" as used in Regulation 21.10.2.1.1. 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."

35. It will be noted this definition contains two alternative elements; namely intentional or reckless conduct. For there to be a reduction of the four year period of ineligibility to two years on the basis the Player's conduct was unintentional, he must prove on a balance of probability he did not know his conduct constituted an anti-doping violation or he did not manifestly disregard the significant risk of engaging in conduct which might constitute an anti-doping violation.

No Fault or Negligence

36. As indicated, Regulation 21.10.4 provides if a Player can establish No Fault or Negligence then the otherwise applicable period of ineligibility shall be eliminated.

37. No Fault or Negligence is defined in Appendix 1 of Regulation 21 as follows:

"No Fault or Negligence: The Player or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Regulation 21.2.1, the Player must also establish how the Prohibited Substance entered his or her system."

No Significant Fault or Negligence

38. For completeness, although the Player did not seek to invoke Regulation 21.10.5 (No Significant Fault or Negligence) we refer to the definition of the term "No Significant Fault or Negligence" as defined in Appendix 1 to Regulation 21:

"No Significant Fault or Negligence: The Player or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Regulation 21.2.1, the Player must also establish how the Prohibited Substance entered his or her system."

39. Regulation 21.10.5.1 provides:

Contaminated Products

In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Player's or other Person's degree of Fault. [See Comment 31]"

40. Comment 31 states:
"In assessing that Player's degree of Fault, it would, for example, be favourable for the Player if the Player had declared the product which was subsequently determined to be contaminated on his Doping Control form."

41. A Contaminated Product is defined in Appendix 1 as:
"A product that contains a Prohibited Substance that is not disclosed on the product label or in information available in a reasonable Internet search."

Submissions in Relation to Sanction

42. Both Mr Stanley and Mr Liddell presented submissions which comprehensively addressed the legal and factual issues. These submissions have been carefully considered by us and we intend no disrespect to Counsel by not referring to them in detail. They are summarised as follows.

43. Mr Stanley, in addition to his submissions in relation to the "*In Limine*" issues regarding the collection and subsequent security of the Sample, submitted the Player had established on a balance of probability the anti-doping violation was unintentional in that any one or more of the supplements which the Player started taking in November/December 2015 "*can only be*" (Mr Stanley's words) the source of the Substances and he (the Player) "*subjectively*" was not aware at least one of them was contaminated with steroids. Mr Stanley emphasised the precautionary steps the Player had taken to ensure the supplements did not contain banned substances which included checking the contents of the labels against the list of prescribed substances in the Handbook. Mr Stanley referred to the Player's youth and in spite of the educational session conducted by World Rugby in Lisbon he had a "*poor*" understanding of WADA's list of prohibited substances. He submitted no fault or negligence could be attributed to the Player for his conduct and the appropriate sanction should only be a reprimand.

44. Mr Liddell, in addition to making submissions in relation to the collection and subsequent security of the sample, in relation to the first limb of the term "*intentional*" submitted the Player had failed to prove on a balance of probability the source of the Substances in all likelihood came from any of the three supplements. He referred to the scientific evidence:

- as to the detection windows in respect of *Turinabol* and *Dianabol*
- confirming two of the supplements were designed for their stimulant effect and were not anabolic
- the Player did not test positive for DMAA.

45. Mr Liddell referred to other factors which he submitted indicated the presence of the Substances was not unintentional. They included the lack of any “hard” evidence provided by the Player in support of the assertion any one or more of the supplements did in fact contain the Substances and the many internal and external discrepancies³ in the Player’s evidence. Counsel emphasised the Player’s statement he had “... *never been exposed to specific sessions as a Namibia Player specifically dealing with all possible banned or prohibited substances*” (refer paragraph 4.2.7 Player’s sworn affidavit dated 30 June 2016) was patently untrue. Mr Liddell also referred to the inconsistencies in the Player’s evidence as to when and how he obtained the *Jack 3d* supplement. Reference was also made to the Player’s awareness of World Rugby’s Anti-Doping regime.
46. Alternatively, Mr Liddell submitted if the JC determined that on a balance of probability the source of the presence of the Substances was one or more of the supplements, the Player had not satisfied the requirements of the second limb of Regulation 21.10.2.3 in that (citing from a passage at paragraph 69 in the Sharapova⁴ case) the Player “*knowingly took the risk of committing an actual violation of the Regulations and still ingested the supplements regardless of that risk*”. In support of this submission Mr Liddell referred to Mr Blake’s education session which highlighted the risks of taking supplements and the special care which needed to be taken.
47. Finally, Mr Liddell discounted any notion which supported the proposition there was a complete absence of fault or negligence on the part of the Player (Reg 21.10.4), or there was no significant fault or negligence on his part (Reg 21.10.5). In this regard, Counsel emphasised the Player had failed to prove the source of the Substances was one or more of the supplements. Counsel again referred to the World Rugby education programme, the Player’s awareness of risks and dangers of taking supplements which could be contaminated and the Player’s failure to carefully ascertain (by searching the internet) whether there was the potential any of these products contained banned substances. In this regard an internet search of *Jack 3d* would have indicated it contained the banned substance DMAA which Counsel suggested would have “*sounded loud warning bells and raised bright red flags*”.

Discussion

48. As indicated, the first issue requiring determination, is whether the Player has proved, on a balance of probability, the anti-doping violation was unintentional, in that the positive test result was likely to have been caused by the consumption of

³ Many of the discrepancies became apparent during searching questioning of the Player by Counsel for World Rugby

any one or more of the *M Stak*, *Hellfire* and *Jack 3d* supplements in respect of which the Player was unaware they were contaminated with two different anabolic steroids.

49. At the outset, we note the Player (in contrast to other cases, eg. Vencill⁵ cited by World Rugby) has not provided any reliable forensic evidence which supports the proposition one or more of the supplements were contaminated by the Substances. Indeed, the Player stated, his enquiries (with pharmacies, teammates (in relation to *Jack 3d*) and checking the ingredients listed on the labels against the list of banned substances in the Handbook) did not result in the supplements having any connection with the anabolic steroids.
50. Further, for the following reasons, in our view the scientific evidence which has been adduced does not indicate one or more of the supplements could have been the source of the Substances. Consequently, it is more likely the anabolic steroids were ingested independently of the supplements.
51. Firstly, two of the supplements (*Hellfire* and *Jack 3d*) were designed for their “stimulant” effect. On the other hand, the two steroids were designed for their “anabolic” (muscle growth) effect. Thus, in our view, it is unlikely either of these supplements contained either of the identified anabolic steroids and for two anabolic steroids to be present is even more unlikely.
52. Secondly, the Player stated two of the supplements (*M Stak* and *Hellfire*) were taken in November/December 2015. As stated, the Directors of the Swiss Laboratory opined the detection windows after intake in respect of *Dianabol* is 20 days and for *Turinabol* 40 to 50 days. Accordingly, in our view, it is unlikely the AAF for the Sample taken on 5 April 2016 could be explained by the ingestion of these supplements in December 2015.
53. In the case of *Jack 3d*, the Player stated this was taken on 5 March 2015 before a club match. In our view, not only was it unlikely one isolated scoop of *Jack 3d* would have contained sufficient quantities of the breakdown products of the anabolic steroids for their presence to be detectable in the Player’s Sample taken 30 days later; but as mentioned by that time *Dianabol* would have been eliminated from the Player’s body after approximately 20 days, leaving only *Turinabol* and its metabolites with a clearance time of between 40 to 50 days as the remaining contaminant. Thus, the positive test result indicating the presence of two prohibited substances

⁴ <http://www.itftennis.com/news/231175.aspx>

⁵ http://www.usada.org/wp-content/uploads/arbitration_ruling_3_17_2004_Vencill.pdf

does not support the theory the contaminated *Jack 3d* was the inadvertent source of the anabolic steroids.

54. We have also carefully considered the Player's affidavit and oral testimony. Overall, we did not find it convincing. It contained several significant discrepancies. We do not consider it necessary to refer to the discrepancies in detail but the most glaring examples were, firstly, the Player in his sworn affidavit deposed that he had "never" been provided with specific information about prohibited substances (emphasis added). This statement was demonstrably incorrect as during cross-examination the Player accepted as a result of the educational training sessions he did have an understanding of World Rugby's Anti-Doping Programme and the risks of taking banned substances and supplements which may be contaminated. Secondly, there was the inconsistency with the Player's evidence in relation to *Jack 3d*. In his sworn affidavit he deposed he used this supplement (together with *Animal M-Stak* and *Hellfire*) as part of the "*pre work out and post work out sessions*" with the Sharks Rugby Academy. However, again during the hearing while being cross-examined, the Player stated for the first time⁶ he had taken one scoop of a teammate's *Jack 3d* before a club match played in Windhoek on 5 March 2016. Further, we note if the Player had undertaken a search of the safety profile of *Jack 3d* he would have noted the presence of DMAA, which as mentioned is a banned stimulant⁷.

55. For all of these reasons, namely:

- The Player failing to adduce any empirical evidence which supported his theory some or all of the supplements contained the Substances
- The scientific evidence adduced indicating it was unlikely any one or more of the supplements contained the Substances
- The Player's evidence lacking credibility
- The Player's awareness of World Rugby's Anti-Doping Programme and the dangers of taking banned substances and supplements which may be contaminated

we are not satisfied the Player has discharged the onus of proof of establishing his ingestion of the Substances was unintentional. In our view it is more likely the Substances were ingested independently of the supplements and, given the Player's revealing statement he took the supplements in order to enhance his performance during practice occasions, we consider in taking the Substances he has engaged in conduct which he knew constituted an anti-doping rule violation. Alternatively, in relation to the second limb of Regulation 21.10.2.3, the Player knew that in

⁶ This followed the filing of World Rugby's material which included evidence and submissions in relation to the detection windows

⁷ We note the presence of DMAA was not detected in the sample which was analysed. However, we accept the DMAA could have been excreted from the Player's body within the 30 day period.

independently ingesting the Substances there was a significant risk his conduct might constitute or result in an anti-doping rule violation and he manifestly disregarded that risk.

56. Finally, for completeness, as mentioned Regulation 21.10.2 is subject to a potential reduction pursuant to Regulations 21.10.4 (No Fault or Negligence) and 21.10.5 (No Significant Fault or Negligence). However, given our findings in relation to the Player's conduct, clearly we are unable to uphold the Player's submission he had established there was no fault or negligence or there was no significant fault or negligence on his part.

Decision

57. 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 26 April 2016 (being the date upon which the Player's provisional suspension commenced) and concluding (but inclusive of) the 26 April 2020.
58. 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 26 February 2020. During the training period as described the Player may not compete or engage in any activity as described, other than training.

Costs

59. 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 7 September 2016, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 21 September 2016.

Review

60. 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

31 August 2016

CHAIN OF CUSTODY FORM

South African Institute for Drug-Free Sport



1. TEST MISSION INFORMATION

DOB NAME	TEST MISC/DOP NUMBER	SPORT CODE	IC	DOB	NR. OF SAMPLES
WALID BERGSTEDT	M-426517185	RUGBY 15		X	9

2. SAMPLE NUMBERS

A/B	EPO	IRMS	A/B	EPO	IRMS	A/B	EPO	IRMS
A/B			A/B			A/B		
A/B	3	9	A/B			A/B		
A/B	2	8	A/B			A/B		
A/B	3	7	A/B			A/B		
A/B	7	9	A/B			A/B		
A/B			A/B			A/B		
A/B			A/B			A/B		
A/B			A/B			A/B		

3. TRANSPORTATION AND STORAGE

AT THE END OF THE SAMPLE COLLECTION SESSION

WINDHOEK	05	04	20	16	17:30	A065266	WALID	
LOCATION	DATE		TIME		SEAL NUMBER	DCO	N/A	
								✓
								N/A

STORAGE

WINDHOEK	05	04	20	16	18:00	A065266	WALID	
LOCATION	DATE		TIME		SEAL NUMBER	DCO	N/A	
PINELANDS	06	04	20	16	20:00	A065266	WALID	
LOCATION	DATE		TIME		SEAL NUMBER	DCO	N/A	

DESCRIBE THE STORAGE LOCATION OF THE SAMPLES FROM THE TIME IT WAS REMOVED FROM THE LAST STORAGE POINT ABOVE UNTIL IT WAS HANDED TO THE COMMERICAL LABORATORY

COOL ROOM. GOOD SECURITY.

SAIDS OFFICE. STORED IN A FREEZER IN LOCKED DOPING CONTROL ROOM.

PLEASE LIST THE INDIVIDUALS WITH ACCESS TO THE SAMPLES WHILE IN STORAGE

WALID BERGSTEDT DCO.	ENDORSED BY 19 APR. 2016
SAIDS DOPING CONTROL STAFF.	2016-0645

4. DCO TRANSFER OF THE SAMPLES TO ANOTHER DCO/SAIDS PERSONNEL, LABORATORY OR COURIER COMPANY

IF TRANSFERRED TO ANOTHER DCO/SAIDS PERSONNEL

NAME TAJNEEM HARMS	SEAL NUMBER A065267	DATE 07/04/2016	TIME 12:15	N/A
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IF TRANSFERRED TO LABORATORY

NAME	SEAL NUMBER	DATE	TIME	N/A
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IF TRANSFERRED TO THE COURIER COMPANY

COMPANY NAME COURIER IT	WAYBILL NUMBER 88811332307	SEAL NUMBER A051648	N/A
DATE 11/04/2016	TIME 16:55	COURIER NAME DEON	

5. TO BE COMPLETED AT THE LABORATORY

SEAL NUMBER	RECEIVED BY	POSITION	DATE RECEIVED	TIME RECEIVED	COMMENTS
A051648	Josin Louren	Reception	19.04.2016	10h06'	