

WORLD RUGBY INDEPENDENT JUDICIAL COMMITTEE

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATIONS BY
LUCAS DOMINGUES (BRAZIL) CONTRARY TO REGULATION 21

BEFORE A JUDICIAL COMMITTEE APPOINTED PURSUANT TO
REGULATION 21.8.2 CONSISTING OF:

Judicial Committee:

Graeme Mew (Canada - Chair)
Dr Margo Mountjoy (Canada)
Gregor Nicholson (Scotland)

Representatives and Participants:

Ben Rutherford (Counsel for World Rugby)

David Ho (Anti-Doping Manager – Compliance and Results)
Lucas Domingues (the Player)

Hearing conducted in writing.

REASONS FOR DECISION

1. Lucas Domingues (the "Player") was a member of the Brazilian Men's Sevens Team, having played in three World Rugby HSBC Sevens Series tournaments during 2014/2015 season. He has been a member of World Rugby's Out of Competition Testing Pool since 24 March 2016 and, in that connection, signed a letter acknowledging that he had received World Rugby's "Guide to Player Whereabouts" and the World Rugby "Anti-Doping Handbook".
2. On 1 April 2016, the Player was tested out of competition in Brazil. He noted on his Doping Control Form that he was taking creatine, BCAA and alginac.
3. Subsequent testing of the sample which the Player provided returned an Adverse Analytical Finding for stanozolol and its metabolites, 16 β hydroxystanozolol and 4 β -hydroxystanozolol.
4. Stanozolol is listed in S.1.1A (Exogenous Anabolic Androgenic Steroids) of the Prohibited List 2016 set out in Schedule 2 to World Rugby Regulation 21. It

is not a Specified Substance and is prohibited at all times.

5. After a Preliminary Review, conducted in accordance with Regulation 21.7.2, it was confirmed that an anti-doping rule violation may have been committed; the Player was notified on 26 April 2016 and provisionally suspended with immediate effect.

6. The time passed within which the Player could have requested testing of his B sample.

7. Then on 31 May 2016 the Player wrote to World Rugby stating:

"I take this communication to admit without reservation that consciously made use of the substance detected during the out of competition anti-doping control; I suffered serious knee injury, and lacking the proper technical and psychological support, including due to the fact that I come from a family with few financial resources, decided by the use of the substance to recover me from the injury, I am, however, deeply sorry and I can now realize the gravity of this decision... "

8. The Player waived his right to an oral hearing.

Anti-Doping Rule Violation Established

9. As a result of the Player's admission, World Rugby has met its burden of establishing that the Player has committed an Anti-Doping Rule Violation.

10. This Judicial Committee ("JC") was appointed to consider the Player's case and, in particular, to determine the applicable sanction.

11. Certain directions were given by the JC, which in summary deemed the Player's letter of 31 May 2016 to serve as his initial written submission on sanction, permitted World Rugby to respond and provided the Player with an opportunity to make a further written submission by way of reply.

12. No further submission was, in fact, received from the Player.

13. The presumptive sanction for an anti-doping rule violation for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance which is not a Specified Substance, is a period of Ineligibility of four years: Regulation 20.10.2.1.

14. Although Regulation 21.10.2.1.1 provides a player with an opportunity to establish that the anti-doping rule violation was not intentional (in which case, if successful, the sanction would be reduced to two years), no attempt has been made by the Player to bring himself within that provision.

Prompt Admission

15. The Player does, however, seek a reduced sanction pursuant to regulation 21.10.6.3 (Prompt Admission), which provides as follows:

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 or 21.10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), 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.

16. Before any reduction of a four-year sanction can be confirmed, each of the thresholds set out in Regulation 21.10.6.3 (which corresponds with Article 10.6.3 of the *World Anti-Doping Code* (2015)) must be met, namely:

- a) The player must have promptly admitted the anti-doping rule violation after being confronted by World Rugby;
- b) World Rugby must approve the reduction; and
- c) WADA must approve the reduction.

Determination of Whether an Admission was "Prompt"

17. The Oxford English Dictionary defines "prompt" as "done without delay; immediate". After the initial notification letter on 26 April 2016, a follow-up letter was sent by World Rugby on 17 May 2016, but it was not until 31 May 2016 that the Player admitted the violation.

18. By an email sent to the JC on 26 October 2016 the Player explained that the package he received as part of being notified of his adverse analytical finding totalled 162 pages, of which 161 were in English, a language in which the Player does not have any proficiency. By the time he had obtained translation assistance, time had passed. He says he sent an email to his Union as early as 14 May 2016 admitting his mistake and wrongdoing (that email, however, does not form part of the record provided to the JC).

19. World Rugby argues that the Player's admission 36 days after being notified of his anti-doping rule violation was not sufficiently "prompt".

20. But who decides whether an admission has been "prompt"? Is it the Anti-Doping Organisation with results management responsibility – in this case World Rugby – or is it an impartial hearing panel?

21. In the recent decision of a RFU Anti-Doping Appeal Panel in *UK Anti-Doping v. The Rugby Football Union and Lancaster*, 9 February 2016, the question of whether there has been a prompt admission or not was held to be a "finding of fact" to be made by the RFU (or the Anti-Doping Organisation handling the case, in the present case World Rugby).

22. That approach may be apt in circumstances where applicable rules provide for no recourse to an impartial hearing panel. The practice of some Anti-Doping Organisations in circumstances where reduced sanctions may be available is to discuss the issue of sanction with the athlete or other person concerned and, if possible, reach agreement on what the sanction should be. This is sometimes referred to as a form of "plea bargaining". If agreement is reached, and Article 10.6.3 is applied, it will indeed be the Anti-Doping Organisation that would have to agree that the admission has been prompt.

23. The practice of World Rugby, however, is to refer all anti-doping rule violations to a judicial committee, even where a Player or other Person has admitted the anti-doping rule violation. Accordingly, in cases under World Rugby's jurisdiction, the question of whether an admission has been prompt or not will be a question of fact to be determined not by World Rugby, but, rather, by the judicial committee.

24. In evaluating whether credit should be given for "prompt" admission, regard should be had to all relevant surrounding circumstances. There is no hard and fast rule as to how prompt an admission must be to qualify as "prompt".

25. One consideration will be whether additional steps were taken in furtherance of the prosecution of the alleged anti-doping rule violation between the time of the notification time and the admission. The reduction of a sanction for prompt reporting should operate as an incentive to not waste the time or resources of anti-doping agencies and sports federations.

26. In the present case, there is no indication that the further steps taken by World Rugby amounted to anything more than sending out a chasing letter.

27. Furthermore, "prompt" should not be construed as so immediate that it would foreclose a player from seeking professional advice on his or her rights and obligations prior to making an admission. In the present case there was also a language barrier which is claimed to have hampered the Player's ability

to read, understand and respond to the notification of his adverse analytical finding.

28. In the circumstances, we are inclined to give the Player the benefit of the doubt and accept the “prompt” criterion as having been satisfied – just.

29. Having decided that the Player’s admission was “prompt” for the purposes of regulation 21.10.6.3, the next issue is what, if any, reduction of sanction is appropriate.

Reduction of Sanction?

30. Regulation 21.10.6.3 makes it clear that both World Rugby and WADA must approve a reduced sanction. What role then, if any, does an independent tribunal, such as this JC, have to play in the process?

31. The approval of World Rugby and WADA involves an exercise of discretion by those organisations. The rationale for this is clearly explained in the *Lancaster* appeal decision (para. 29):

WADA is the world body tasked with keeping sport drug free, and also with harmonising sanctions across the world for transgressions. The discretion, as with any exercise of discretion in any field, would have to be exercised on proper grounds. It is neither necessary nor desirable to identify definitively in this decision what all those possible grounds are or could be, although given the discretion is exercisable by WADA (which governs all WADA-accredited sports worldwide), consistency across different sports and different jurisdictions is bound to be one of the considerations. So far as lack of discretion on the part of the independent panel is concerned, that is one of the purposes, in our view, of the Regulation. That is why the approval of WADA is required. Operation of the Regulation does, after all, result in a reduction from the period of four years sanction to a lesser one. That is the period which has been introduced worldwide in order to achieve consistency, and is one shorter than some sports and jurisdictions wished to have, and greater than others. One purpose of the WADA Code is “to ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping”. If every independent panel in every sport had its own discretion to go below the four year period, with no involvement or approval required on the part of WADA, then this purpose would be undermined.

32. The *Lancaster* panel was not asked to determine whether a JC has a role to play in deciding whether a reduced sanction is appropriate in any given case. That panel did, however, observe, as just noted, that if “every independent panel in every sport had its own discretion to go below the four year period, with

no involvement or approval required on the part of WADA” ... the valid objective of achieving “consistency across different sports and different jurisdictions” would be undermined. This would seem to imply that an independent panel may have a role to play, but subject to World Rugby and WADA’s involvement.

33. Given the policy of World Rugby to refer all anti-doping rule violations to judicial committees, we do not read Regulation 21.10.6.3 or Article 10.6.3 of the WADA Code as excluding the involvement of a JC in the question of sanction, acknowledging, as we do, that anything we conclude about reduction of sanction would be subject to “the approval and at the discretion of” World Rugby and WADA.

34. We do not, however, agree with the position of World Rugby that its and WADA’s approval is required *before* a reduction in sanction can be *considered*. Since World Rugby employs an independent judicial committee to consider anti-doping cases, we suggest that a JC should be able to make its own unfettered assessment of whether a reduction of sanction is appropriate, uninfluenced by knowledge of what position World Rugby and WADA may take at the approval stage. Indeed, we would think that World Rugby and WADA would in many cases benefit from having the reasoned view of an independent judicial committee on the issue of sanction even if, ultimately, World Rugby or WADA do not agree with that view.

35. It follows that, in our opinion, World Rugby was premature in presenting WADA’s stance on a possible reduction before all the facts of the case and submissions had been considered by this independent JC.

36. We recognise that this makes for a potentially awkward process. It raises the possibility that, having considered all the facts of the case and submissions, a JC could favour a reduced sanction, only for World Rugby or WADA to not approve the reduction. Or, as has happened in this case, the JC will be told that regardless of whether it decides that an admission has been “prompt”, if it decides that there should be a reduction of sanction, no such reduction will be approved.

37. Such questions and concerns are largely academic in this case because, as we will explain, we agree with the position taken by World Rugby and WADA that a reduction of sanction is not appropriate. But there will be other cases where the well-intended, but infelicitous drafting of Article 10.6.3 and, hence, Regulation 21.10.6.3, could lead to the unsatisfactory outcome of an independent tribunal decision effectively being vetoed in advance through the exercise of discretion by an International Federation or WADA.

38. The Player has been tested previously. He has completed World Rugby’s online anti-doping e-learning programme. He has signed participation agreements which have incorporated anti-doping provisions. In March 2016,

when he was notified that he had been included in World Rugby's out of competition testing pool, he received a copy of the World Anti-Doping Handbook and signed an acknowledgment that he had received the notification.

39. Notwithstanding all of this, the Player used a steroid which is widely known and recognised as a prohibited substance. He used it for the express purpose of assisting his recovery from injury. In other words, he used it to gain a sporting advantage.

40. The Player's actions in admitting his anti-doping rule violation within 36 days and the concomitant saving of the time and resources which would have been required to prosecute have to be weighed against the Player's brazen use of a prohibited steroid. Lack of technical support or financial resources are not excuses for cheating.

41. In making these observations, we should not be taken as implying that we have any discretion to review the reasonableness of the decision by World Rugby and WADA not to approve a reduced sanction. Like the appeal panel in the *Lancaster* case (at para. 39), we recognise that the issue of appeal from or review of decisions by Anti-Doping Organisations or WADA has potentially important procedural consequences, not only for the World Rugby Regulations but also the *World Anti-Doping Code*. Any pronouncement on this point should only be made with the benefit of a full record and submissions.

Decision

42. On 1 April 2016, the Player committed an Anti-Doping Rule Violation, namely the presence in his bodily Sample of for stanozolol and its metabolites 16 β hydroxystanozolol and 4 β -hydroxystanozolol. Stanozolol is listed in S.1.1A (Exogenous Anabolic Androgenic Steroids) of the Prohibited List 2016 set out in Schedule 2 to World Rugby Regulation 21.

43. The sanction imposed for this Anti-Doping Rule Violation is a period of Ineligibility of four years commencing 26 April 2016 (the date upon the Player, through his Union, was notified of the Adverse Analytical Finding and provisionally suspended).

44. The Player's attention is drawn to World Rugby Regulation 21.10.12 which provides, *inter alia*, that:

21.10.12.1 Prohibition Against Participation During Ineligibility

"No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programmes) authorised or organised by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union, or in Competitions authorised or organised by any

professional league or any international- or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency".

"A Player or other Person subject to a period of Ineligibility shall remain subject to Testing.

21.10.12.2 Return to Training

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".

45. The full text of Regulation 21.10.12 and the related commentaries should be consulted. World Rugby notes in its submissions that, in the case of the Player, he would be able to return to training at the start of month 46 of the 4 year period of Ineligibility, so on 26 February 2020.

Costs

46. We are provisionally of the view that there should be no order as to costs, pursuant to either Regulation 21.8.2.10 or 21.8.2.11. Should World Rugby wish us to exercise our discretion in relation to costs written submissions should be provided to the JC via Mr. Ho within 10 business days of the receipt by World Rugby of this decision. The Player will then have 10 business days to respond.

Review or Appeal

47. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.13.8) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.13.2). The regulation sets out the timelines within which any referral or appeal must be commenced.



15 November 2016

Graeme Mew, Chairman