

WORLD RUGBY

IN THE MATTER of the Regulations Relating to the Game

AND

IN THE MATTER of an alleged doping offence by Luis Alvaro Puentes Rodríguez ("the Player")

Judicial Committee

Joseph de Pencier Canada

DECISION OF THE BOARD JUDICIAL COMMITTEE

1. This is a decision made under World Rugby's Regulation 21 (as updated to 18 May 2015), the federation's anti-doping regulations ("Regulation"). I find that the Player committed an anti-doping rule violation and is to be sanctioned to eight (8) years ineligibility in addition to forfeiture of results and prizes.

Background of Anti-Doping Rule Violation

2. The Player was tested In Competition on 20 March 2016 in Santander, Spain after a match between the Club and UE Santboiana. The Player's sample returned an Adverse Analytical Finding (AAF).
3. The Agencia Espanola para la Proteccion de la Salud en el Deporte (AEPSAD) was established as the national anti-doping organisation in Spain and ordinarily would be responsible for conducting the results management of this case, including any hearing. However, AEPSAD has been declared non-compliant with the World Anti-Doping Code by the World Anti-Doping Agency (WADA) and accordingly is not permitted to conduct the result management process for cases at the current time. In accordance with WADA's instructions, AEPSAD has requested World Rugby, as the applicable International Federation to assume responsibility for result management during the non-compliant period. Accordingly, World Rugby is responsible for results management in respect of this case.
4. The Player noted on his Doping Control Form that he was taking "ESOMEPRAZOL, APROXENO, VENTOLIN". He made no comments on the collection process.
5. The Player's sample was transported to the WADA-accredited laboratory in Madrid, Spain. Following the suspension of the Madrid laboratory by WADA, the Player's sample was transferred to the WADA-accredited laboratory at DoCoLab Universiteit Gent, Belgium. The analysis returned an Adverse Analytical Finding for p-OH-amfetamine which is a metabolite of amfetamine as reported by the WADA-accredited laboratory at DoCoLab Universiteit Gent, Belgium on 14 July 2016. Note

there was an error on the originally issued ADAMS test report stating the date of receipt at the lab as 02 June 2016 which was inconsistent with the lab issued report. The updated ADAMS Test report was corrected to reflect this.

6. Amphetamine is listed in category S6.a. Non-Specified Stimulants on WADA's 2016 List of Prohibited Substances (which appears at Schedule 2 of Regulation 21).
7. World Rugby remitted the matter for Preliminary Review in accordance with Regulation 21.7.2. On 19 July 2016 Gregor Nicholson wrote to David Ho, World Rugby Anti-Doping Manager – Compliance and Results, confirming that "I am satisfied that there is sufficient evidence before me to conclude that an anti-doping rule violation may have been committed...". Mr. Ho responded to Mr. Nicholson on 20 July 2016 to clarify and confirm some additional points of information.
8. Mr. Ho wrote to the Player via the Federacion Espanola de Rugby ("Union") on 25 July 2016 advising him inter alia of his Adverse Analytical Finding, that he was now Provisionally Suspended and that he had the opportunity to request his B Sample to be opened and analysed.
9. On 10 August 2016, Mr. Ho followed up with the Union to check that the documents had been sent to the Player. The Union responded on 17 August 2016 to confirm that the documents had been sent to the Player's Club. On 22 August 2016, the Union reported that the Club had confirmed that the Player had been notified.
10. On 6 September 2016, Mr. Ho emailed the Union with a letter to the Player (dated 4 September 2016) which said that in the absence of a reply from the Player, he was deemed to have waived his right to request the analysis of his B sample. The Player was given 14 days to respond in relation to his right to a hearing and notified that if he did not respond, he would be deemed to have waived his right to a hearing and would have seven days therefrom in which to make submissions as to sanction. In that letter, World Rugby also informed the Player that it had been brought to World Rugby's attention that this was the Player's second anti-doping rule violation. His first was as a result of a 2013 Adverse Analytical Finding for methylhexanamine.
11. On 22 September 2016, Mr. Ho followed up with the Union by email to check if any response had been received from the Player. On 3 October 2016, Mr. Ho informed the Union that in the absence of a response from the Player, he was deemed to have waived his right to a hearing and that in the absence of any submissions from the Player as to sanction, the matter would now be referred to a Judicial Committee for review.
12. According to Regulation 21.7.10.2 of the Regulations, I was appointed as a Judicial Committee ("JC") to consider the Player's case.
13. World Rugby's e-mail of September 6 also included a letter dated September 4, 2016, advising the Player of his right to a hearing, giving him 14 days to reply. The Player did not respond, despite reminders to his Union on 22 September and 3 October 2016. Therefore, this matter is subject to Regulation 21.7.10.2 (Resolution

without a Hearing).

14. Because the Player has not contested the anti-doping rule violation asserted against him, the only matter the JC must determine is the appropriate consequences of the violation.
15. On 28 November 2016, the JC issued Minute N. 1 seeking the written submissions of the Parties on the possible consequences to the Player. On 13 December 2016, in accordance with those directions, World Rugby filed its written submissions and provided them in Spanish to the Player. The Player did not respond.

Regulation 21

16. The Regulation sets out the framework under which players can be subjected to Doping Control and the procedures for any alleged infringements of those Regulations. The Regulation adopts the mandatory provisions of the World Anti-Doping Code 2015 (“Code”).
17. The Regulation and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.
18. The Regulation was amended on 1 January 2015 in line with changes to the Code. The sanctioning regime in the Code (and accordingly, Regulation 21) was revised in 2015 pursuant to a strong lobby from the sporting world (including athletes, in particular) to WADA to increase the sanctions on those who are found to have committed anti-doping rule violations.
19. The rationale for the prescriptive sanctioning process is set out at the head of the new Code, as follows:

The purposes of the World Anti-Doping Code and the World Anti-Doping Program which supports it are:

- *To protect the Athletes’ fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide, and*
 - *To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.*
20. World Rugby submits, and the JC agrees, that the Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented. The Code has been drafted giving consideration to the principles of proportionality and human rights.
 21. Regulation 21.2 provides:

21.2.1 Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample

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 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 (Presence). [See Comment 1]

21.2.1.2 Sufficient proof of an anti-doping rule violation under Regulation 21.2.1 is established by any 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 Player's A Sample; or, where the Player's B Sample is split into two bottles and the analysis of the second bottle confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the first bottle. [See Comment 2]"

22. According to World Rugby, the underlying rationale of the Code which is implemented by the Programme and Regulation 21 is to harmonise doping control regulation across sports globally and in particular the harmonisation of sanctions. Consequently and intentionally on the part of the drafters of the Code there are limited circumstances in which discretion in the area of sanctioning can be exercised. This principle continues to be necessary to ensure the harmonisation objective and consistency of sanction application across all sports is achieved.

World Rugby Submission on Sanctions

23. The specifically applicable Regulations are:

21.10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method

The period of Ineligibility for a violation of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession) shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

21.10.2.1 The period of Ineligibility shall be four years where:

21.10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.

21.10.2.1.2 The anti-doping rule violation involves a Specified Substance and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) can establish that the anti-doping rule violation was intentional.

21.10.2.2 If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.

21.10.2.3 As used in Regulations 21.10.2 and 21.10.3, 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

Multiple Violations

21.10.7.1 For a Player or other Person’s second anti-doping rule violation, the period of Ineligibility shall be the greater of:

(a) six months;

b) one-half of the period of Ineligibility imposed for the first anti-doping rule violation without taking into account any reduction under Regulation 21.10.6; or

(c) twice the period of Ineligibility otherwise applicable to the second antidoping rule violation treated as if it were a first violation, without taking into account any reduction under Regulation 21.10.6.

The period of Ineligibility established above may then be further reduced by the application of Regulation 21.10.6.

24. World Rugby says that in this case, the anti-doping rule violation does not involve a Specified Substance, and the Player has not established that the anti-doping rule violation was not intentional. In addition, this is the Player’s second anti-doping rule violation. Accordingly, the period of ineligibility is eight years (being twice the period of four years which would be applicable to this anti-doping rule violation treated as if it were a first violation).
25. The Player has provided no evidence whatsoever as to the facts or circumstances involved in this case. Similarly, he has made no submissions in respect to sanctioning or the application of any of the Regulations which provide for reductions in sanctions (Regulations 21.10.4, 21.10.5 and 21.10.6). Therefore World Rugby does not in its submissions deal with the elimination, reduction or suspension of sanction in any detail. For completeness and the avoidance of doubt, World Rugby submits that the Player’s case is not eligible for consideration of a reduction of sanction under any part of Regulation 21 (albeit noting that he has not claimed that any such Regulation applies). World Rugby has taken this position for the sake of brevity in circumstances where the Player has not relied upon them.
26. Accordingly, World Rugby submits that there are no grounds for a reduction in the applicable eight-year sanction. World Rugby requests the Judicial Committee to impose an eight-year period of Ineligibility in this case.

Decision

27. The JC accepts the submissions of World Rugby in their entirety. There is no reason not to apply the standard sanction in this case for a second anti-doping rule violation.
28. The Player has committed a second anti-doping rule violation contrary to Regulation 21.2.1, as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely p-OH-amfetamine which is a metabolite of amfetamine.
29. Under Regulation 21.10.1 (Disqualification of Results in the Event During which an Anti-Doping Rule Violation Occurs), the Player's individual results obtained in the Tournament shall be disqualified, including forfeiture of all medals, points and prizes.
30. The Period of Ineligibility will be eight (8) years, starting from the date the Player was Provisionally Suspended (25 July 2016) (see Regulation 21.10.11.3). Therefore, the Player will become eligible again to participate in rugby on 25 July 2024.
31. The restrictions on the Player's status during his Period of Ineligibility are set out in Regulation 21.10.12.

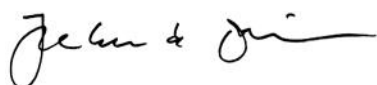
Costs

32. If World Rugby wishes me to exercise my discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to me by 17:00 Dublin time on 9 March 2017, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 16 March 2017.

Review

33. This decision is final, subject to referral to a Post Hearing Review (Regulation 21.13.8) or an Appeal (Regulation 21.13.1 - .7).

25 February 2017



Joseph de Pencier, Judicial Committee

25 February 2017

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