

WORLD RUGBY INDEPENDENT JUDICIAL COMMITTEE

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF THE WORD RUGBY ANTI-DOPING RULES

AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATION BY **LUCKY SCHUSTER PALAMO** CONTRARY TO REGULATION 21

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

Judicial Committee:	Tim Gresson, Chairman (New Zealand) David Gerrard (New Zealand) Paul Hayes (Australia).
Appearances:	Counsel for the Player: Aaron Lloyd, Auckland. Counsel for World Rugby: Ben Rutherford, Dublin.
Hearing:	Conducted on the papers. Written submissions dated 16 June and 7 July 2017 (Player) and 30 June 2017 (World Rugby).

DECISION

I. Background

1. Lucky Schuster Palamo (**'the Player'**) is a member of the Samoa A national rugby team and is a player registered with the Samoa Rugby Union.
2. On 18 March 2017 during the 2017 World Rugby Pacific Challenge Tournament (**'the Tournament'**) held in Suva, Fiji, the Player in the course of 'in-competition' anti-doping testing (overseen and administered by World Rugby), provided a urine sample - Code Number 4097497 – ("sample") which was subsequently tested by the Sports Medicine Research and

Testing Laboratory ('SMRTL'), a World Anti-Doping Agency (WADA) accredited laboratory located in Utah, United States of America. The 'A' sample was tested by SMRTL on 4 April 2017.

3. The sample analysis conducted by SMRTL indicated a urinary concentration of the Beta-2 agonist Salbutamol at the level of 1800 ng/mL which exceeded the rebuttable threshold of 1000 ng/mL and the maximum inhaled limits of 1600 mcg over 24 hours and 800 mcg over 12 hours, as prescribed by the World Anti-Doping Agency (WADA) 2017 list of prohibited substances and methods. The WADA Prohibited List was incorporated into the Tournament's Anti-Doping Programme (TADP) that was based on World Rugby Regulation 21. By reason of Regulation 21 (presence of a prohibited substance in a player's sample), World Rugby considered this was an adverse analytical finding ('AAF'). Pursuant to Regulation 21.4.2.2, Salbutamol is categorised as a '*specified substance*' for the purpose of the imposition of any sanction under Regulation 21.10. It is prohibited at all times (ie. In and Out of Competition).
4. World Rugby informed the Player of the AAF on 18 April 2017.
5. On 2 May 2017, the Player through Mr Josh Blackie (a representative of the Pacific Island Players' Association) requested that his 'B' sample be analysed. The 'B' sample was subsequently tested by SMRTL on 5 May 2017 and on 8 May 2017 World Rugby informed the Player that the analysis of the 'B' sample also rendered a positive result to the substance Salbutamol at a level above the rebuttable threshold limit. As a result World Rugby alleged the Player had committed an anti-doping rule violation ('ADRV') within the meaning of Regulation 21.2.1 (presence of a prohibited substance in a player's sample), which it referred to the Judicial Committee ('JC') appointed to hear the matter.
6. On 18 May 2017, the Player through Mr Blackie admitted the ADRV and pursuant to Regulation 21.7.10, waived his right to a hearing and requested that he be permitted to address the discrete issue of sanction by making written submissions to the JC.

7. On 24 May 2017, the Chairman of the JC made the following directions via teleconference with the parties, which were subsequently minuted and distributed to the parties:
 - (a) The Player file and serve his submissions and accompanying statement by 5:00pm (GMT) on 16 June 2017;
 - (b) World Rugby file and serve its submissions by 5:00pm (GMT) by 30 June 2017; and
 - (c) The Player file and serve submissions in reply to the World Rugby's submissions (in relation to any fresh matters) by 5:00pm (GMT) by 14 July 2017.

8. Mr Lloyd filed and served submissions which included supporting authorities, the Player's statement together with relevant medical evidence on 16 June 2017. World Rugby filed and served its submissions on 30 June 2017. Mr Lloyd then filed and served submissions in reply on 7 July 2017.

9. The JC subsequently considered the foregoing material before it, as referred to in the preceding paragraph and on 11 July 2017 the JC (via the Chairman) issued a short decision which was forwarded to the Parties informing them of the JC's determination of the applicable sanction, in respect of the Player's ADRV ('**Short Decision**'). The determination detailed in the Short Decision was in the following terms:
 1. The JC has determined as follows:
 - pursuant to Regulation 21.2.1 World Rugby has established to the comfortable satisfaction of the JC the Player committed an anti-doping rule violation ("ADRV"); that is, the presence of the substance Salbutamol above the rebuttable threshold urinary concentration of 1000 ng/mL and the maximum inhaled limits of 1600 mcg over 24 hours or 800 mcg over 12 hours, following In-Competition testing conducted on 18 March 2017 during the 2017 World Rugby Pacific Challenge Tournament held in Suva.
 - pursuant to Regulation 21.10.2.2 the Player established on a balance of probability the ADRV was neither intentional or reckless, as the term "*intentional*" is defined in Regulation 21.10.2.3.
 - given the overall circumstances of the ADRV the JC is satisfied the Player has established on a balance of probability that pursuant to Regulation 21.10.5.1.1 there was No Significant Fault or Negligence on his part. However, it concluded that the Player's degree of fault warranted a period of three (3) months ineligibility from 18 April 2017 (being the date upon which the Player's provisional suspension commenced) and concluding (but not inclusive of) 18 July 2017.

2. A full decision with reasons will be issued in due course.
10. This decision is the full and final reasoned decision.

II. Relevant Facts

11. The Player was born on 10 June 1991 in Auckland, New Zealand. He is a professional rugby player and is currently playing for the Samoa A national rugby team and Harlequins Rugby Club in Melbourne, Australia. The Player has played rugby since he was 5 years of age and has also previously represented Counties Manukau in the New Zealand ITM Cup competition from 2012 to 2013. He also played in the Counties Manukau U20 side and also represented Auckland at U18 level. He is an experienced rugby player.
12. On 3 March 2017, the Player signed a Team Member Consent Form ('**TMCF**') in advance of his participation in the Tournament, which rendered him subject to the provisions of World Rugby's Regulations (including Regulation 21). The TMCF he signed also contained an acknowledgement that he had completed the World Rugby Anti-Doping Education Programme located on the world wide web at folio identifier www.keeprugbyclean.worldrugby.org and that he had also read the *World Rugby Anti-Doping Handbook* and the World Rugby Prohibited List (revised each year as at 1 January) also published at www.keeprugbyclean.worldrugby.org. The Parties have without controversy proceeded on the basis that the Player is and was at all material times subject to the application of the Regulations. Furthermore, the Player has specifically acknowledged that '*as a rugby player [he is] subject to anti-doping rules*'.¹
13. The Player was diagnosed with asthma in early childhood, receiving regular treatment for this condition at the Turuki Healthcare Clinic in Auckland since 1997 when he was 6 years of age. He stated that his asthma is provoked by exercise including training and playing rugby and is more severe in hotter weather conditions necessitating an increased use of inhaled salbutamol to manage his symptoms.

¹ Witness Statement of the Player dated 16 June 2017, paragraph 13.

14. The Player's account of his asthma condition was supported by Dr Lillian Fraser of Turuki Health Care in her statement dated 10 May 2017 (which was filed and served together with the Player's submissions and accompanying statement). Dr Fraser stated that despite the Player residing in Australia during 2016 he has been treated at the Turuki Health Care clinic for his asthma on five occasions over the past two years. His most recent consultation was in February 2017 when he was prescribed a salbutamol 100 *mcg* reliever inhaler with the instruction to take '...up to six puffs as needed via spacer'. It was noted by Dr Fraser that the Player reported that his asthma condition was exacerbated by exercise. Dr Fraser also confirmed that the Player was prescribed the following medication on a long-term basis: Respigen 100mcg/1 dose Inhaler 200 doses, Diclofenac Sodium 75 mg Sustained Release Tab, and, Seretide 125 Inhaler 120 doses (125 mcg/25 mcg). The medications prescribed to the Player were the standard doses for his condition and based on regional dispensing information, the Player was not dispensed asthma medication anywhere else in Auckland over the past two years. In support of the Player's asthma, other medical records were filed with his submissions and statement and these include:
- Middlemore Hospital (Manukau) admission records dated 1 September 2003 and 11 May 2007;
 - Medical report of Ms Susan Lugton, Physiotherapist, of the Hyperventilation Physiotherapy Outpatient Clinic (Manukau), dated 22 June 2010.
15. The Player stated that throughout his rugby career he used his inhaler on a regular basis at training and during matches, when in the course of a match he would generally take 2 to 4 puffs from his inhaler prior to commencing the warm-up and then another 2 to 4 puffs during the game. Overall he believed he followed the instructions of his General Medical Practitioner as to the use of his asthma medication.
16. Notwithstanding his acknowledgement that he completed the World Rugby Anti-Doping Education Programme and he had also read the *World Rugby Anti-Doping Handbook* and the World Rugby Prohibited List (referred to in paragraph 12 above), the Player stated that he "*was not aware that excessive use of his inhaler would result in a breach of anti-doping rules*". Further, he stated that when he was a member of the Counties Manukau

rugby team, as far as he could remember, he did not receive any education as to the use of an asthma inhaler.²

17. The Player was in Suva with the Samoa A rugby team for approximately 11 days from 7 March 2017. The weather in Suva at this time was hot and humid with temperatures fluctuating between daily maximums of 27 and 31 degrees. The Player was unaccustomed to playing in such hot and humid conditions since he had never played in Fiji and had played all of his rugby in either New Zealand or Australia. Prior to arriving in Fiji, the Player had assembled with the Samoa A rugby team in Samoa from 3 to 7 March 2017, to prepare for the Tournament.
18. The Player participated in three matches on Friday 10, Tuesday 14 and Saturday 18 March 2017 and also trained with his team over the period of the Tournament. Due to the weather conditions, the Player used his inhaler more frequently than when playing in Australia and New Zealand.
19. On Friday 17 March 2017 at 3:00pm, the Player trained with his team in Suva. He stated that he took two puffs of his inhaler before training. On 18 March 2017 before the match between Samoa A and the Fiji Warriors, played at the ANZ Stadium in Suva, the Player stated that he took two puffs of his inhaler during the warm-up for that match at about 2:30pm. The match commenced at 3:00pm and during the match the Player stated that he took another two puffs from his inhaler.
20. After the match, at about 5:00pm, at the request of a World Rugby Doping Control Officer ('DCO'), the Player provided a urine sample. At the time of providing his urine sample, in response to being asked by the DCO to describe the medication he had taken in the past seven days, the Player responded that he had taken "two puffs of [his] inhaler".³ The doping control form completed by the DCO on the basis of information provided to him by the Player at the time he provided his urine sample indicated that the Player declared that in the past seven days he had consumed the following medication:

Tramedol	1 tab	100 mg	14/3
Asthma Pump	2 puffs		14/3

² Witness Statement of the Player dated 16 June 2017, paragraph 15.

³ Witness Statement of the Player dated 16 June 2017, paragraph 25.

21. The Player in his statement explained the entry in the doping control form as follows:⁴

"I understand that the doping control form states that these puffs were taken on Tuesday 14 March. However, what I meant by this was that I take 2 puffs of my inhaler every time I use it. I am not sure why the doping officer recorded the puffs for Tuesday 14th March. I also did not understand that the doping control officer was asking me to list every single time I had taken my inhaler in the last 7 days.

I also forgot to mention to the doping control officer that I was taking antibiotics for an extremely painful boil that I got on my arm during the week. I was given a course of flucloxacillin that I was taking for the week. I now understand that my antibiotics may also have added to me being more dehydrated at times during the week which may have made breathing more difficult".

22. As mentioned, on 18 April 2017 (referred to paragraph 4 above), the Player was notified by World Rugby as to having returned an AAF in respect of his sample and was informed that a provisional suspension (imposed by World Rugby in accordance with WRADR regulation 21.7.9.1) would take effect immediately.

23. The Player's response to being notified of the AAF and his provisional suspension was in the following terms:⁵

"I was extremely shocked to receive the letter. I have never knowingly or deliberately taken any prohibited substance and I am extremely worried about finding myself in this situation.

I did not know or suspect that the use of an inhaler could result in a positive test. It did not occur to me that such a risk even existed. I understand now that the use of my inhaler is what caused me to fail the doping test. I understand that the increased use of my inhaler in the conditions I was training and playing in means that I recorded Salbutamol levels above that allowed under the WADA Code. However, I never did any of this with any intention to cheat. I was only trying to treat my asthma, which was worse than normal."

24. It is common ground between the Parties that this is the Player's first ARDV.

III. Issues for Determination

25. The parties were in agreement as to the following:

- On 18 March 2017, the Player committed an ADRV by infringing Regulation 21.2.1 (presence of a prohibited substance), when

⁴ Witness Statement of the Player dated 16 June 2017, paragraphs 25 and 26.

⁵ Witness Statement of the Player dated 16 June 2017, paragraphs 27 and 28 (erroneously numbered 24 and 25). Cf Player's Submissions dated 16 June 2017, paragraph 5.3.

his sample tested positive to Salbutamol at the urinary concentration of 1800 ng/mL, above the rebuttable threshold limit of 1000 ng/ML and the maximum inhaled Salbutamol limits of 1600 mcg over 24 hours or 800 mcg over 12 hours, as prescribed by section S3 of the World Rugby Prohibited List 2017;

- The Player admitted the ADRV on 18 May 2017;
- For the purposes of determining the imposition of a sanction in respect of the ADRV committed by the Player, Salbutamol is a '*specified substance*' within the meaning of section S3 of the World Rugby Prohibited List 2017 and Regulation 21.4.2.2; and
- The Player has been serving a provisional suspension (in accordance with Regulation 21.7.9.1) since 18 April 2017.

26. Accordingly, the issues which require determination by the JC were as follows:

- (a) The appropriate sanction which should be imposed on the Player pursuant to Regulation 21.10; and
- (b) If a period of ineligibility ('Pol') is imposed upon the Player, then having regard to Regulation 21.10.11.2, when should the Pol commence?

IV. Parties' Submissions

Player's Submissions

27. The Player through Counsel submitted that a sanction in the form of a one month Pol should be imposed for the following reasons:

- (a) The imposition of any Pol by the JC should be considered within the rubric of Regulations 21.10.2.2 (prima facie two year Pol for an ADRV concerning a specified substance), 21.10.2.3 (non-intentional doping) and 21.10.5.1.1 (reduction of two year Pol where there is no significant fault or negligence on the part of the Player);
- (b) The Player:
 - has long-suffered a genuine asthmatic medical condition for which he is prescribed medication containing Salbutamol;
 - increased his use of the prescribed asthma medication via his inhaler during his participation in the Tournament due his

medical condition being exacerbated by the hot and humid weather conditions;

- although he received some anti-doping education, he did not recall it specifically addressing any limits on the medication he was prescribed and was using;
- knew he was entitled to use his inhaler, but did not appreciate that he could use it in such a way so as to result in an anti-doping breach;
- did not intend to cheat by his use of his prescribed asthma medication and inhaler; and accordingly,
- by reason of the circumstances contributing to his increased inhaler use during the Tournament and in particular on 18 March 2017, demonstrated '*no significant fault or negligence*'.

(c) In reply to World Rugby's submissions (referred to in paragraphs 29 and 30 below), Counsel submitted:

- the anomaly between the doping control form completed on 18 March 2017 and his Statement dated 16 June 2017, as to his use of his inhaler was explained by his evidence that the doping control form was completed by the DCO, and was due to a miscommunication or misunderstanding between the two of them (as referred to in paragraphs 20 and 21 above);
- despite having access to the World Rugby Anti-Doping Education Programme (at www.keeperugbyclean.worldrugby.org) and the *World Rugby Anti-Doping Handbook*, this material is complex and the Player received little in the way of assistance or support in comprehending or understanding these materials; and
- initially, the Player had not received proper advice when he denied committing any ADRV after being notified of the AAF on 18 April 2017. Therefore, his subsequent admission of the ADRV on 18 May 2017 (after he was properly advised) was sufficiently timely in the circumstances so as to appropriately trigger Regulation 21.10.11.2 in his favour.

28. Counsel submitted that the one month Pol should be deemed to have commenced from the date the sample was provided (18 March 2017)

essentially because in accordance with Regulation 21.10.11.2⁶ the Player had made a prompt admission of his ADRV.

World Rugby's Submissions

29. Counsel for World Rugby submitted a sanction in the form of a three month Pol, appropriately reflected the Player's degree of fault in committing an ADRV, should be imposed for the following reasons:

- (a) The Player by reason of Regulation 21.2.1.1 was under a "*personal duty to ensure that no Prohibited Substance enter[ed] his .. body*", which he breached when his sample tested positive to Salbutamol contrary to the provisions of Regulation 21.2.1;
- (b) World Rugby did not allege that the Player intended to cheat as per Regulation 21.10.2.3. Therefore a two-year Pol is '*prima facie*' applicable;
- (c) Despite the Player's long-term documented asthma condition and the medication he was required to take to treat such condition, in the context of Regulation 21.10.5.1.1 (reduction of two year Pol where there is no significant fault or negligence on the part of the Player), the Player did not demonstrate '*low fault*' and was '*careless*' in respect of his use of his inhaler because:
 - The *World Rugby Anti-Doping Handbook*, which the Player acknowledged as having read and which was a pre-requisite to participation in the Tournament, contained clear warnings that Salbutamol has a threshold allowance and athletes need to be careful in relation to their use of inhalers in order not to exceed the threshold and risk a positive test. Notwithstanding, the Player stated that he was not aware that excessive use of his inhaler would result in a breach of anti-doping rules; the Player's failure to heed the warning about inhalers (despite his medical condition and the prevailing weather conditions at the

⁶ Regulation 21.10.11.2 provides:

'Timely Admission

Where the Player or other Person promptly (which, in all events, for a Player means before the Player competes again) admits the anti-doping rule violation after being confronted with the anti-doping rule violation by World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable), the period of Ineligibility may start as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. In each case, however, where this Regulation is applied, the Player or other Person shall serve at least one-half of the period of Ineligibility going forward from the date the Player or other Person accepted the imposition of a sanction, the date of a hearing decision imposing a sanction, or the date the sanction is otherwise imposed. This Regulation shall not apply where the period of Ineligibility has already been reduced under Regulation 21.10.6.3'.

relevant time) required the imposition of a sanction greater than a nominal reprimand or one month Pol; and

- The Player demonstrated insufficient care to his anti-doping obligations. Having regard to the discrepancy between his disclosed use of Salbutamol in his doping control form completed on 18 March 2017 (when he stated he had last used his inhaler on 14 March 2017) and his statement dated 16 June 2017 (two puffs of his inhaler at training on 17 March 2017 and on 18 March 2017, two puffs of his inhaler shortly before the game and two puffs of his inhaler during the game).
- (d) There was a reasonable degree of fault on the Player's part, but such fault was less than that demonstrated in recent World Rugby/IRB cases where players have tested positive to 'specified substances'. Accordingly in the circumstances the imposition on the Player of a three-month Pol was an appropriate sanction.

30. Further, Mr Rutherford contended that the Pol should not commence from the date of the Player's provision of the sample on 18 March 2017, since his admission of the ADRV could not be regarded as 'prompt' due to his denial he had committed an AAF on 18 April 2017. He did not admit the ADRV until 18 May 2017, when his advocate informed World Rugby that the Player was waiving his right to a hearing and requested that he address the imposition of any sanction by making written submissions to the JC. Accordingly, the commencement of any Pol should commence from the date of the Player's provisional suspension which was on 18 April 2017.

V. Determination

ADRV

31. Pursuant to Regulation 21.3.1 World Rugby has the burden of establishing an anti-doping violation to the comfortable satisfaction of the JC. As indicated, the Player admitted the ADRV alleged by World Rugby (presence of a prohibited substance, Salbutamol, pursuant to Regulation 21.2.1). Accordingly, the JC finds World Rugby established to the required standard the ADRV; that is the presence of Salbutamol, in excess of the threshold urinary concentration of 1000 ng/mL, which was not rebutted by a controlled pharmacokinetic study.

Unintentional Doping – Specified Substance

32. Since Salbutamol is a 'specified substance' within the meaning of section S3 of the World Rugby Prohibited List 2017 and Regulation 21.4.2.2, Regulation 21.10.2 is applicable as to the determination and imposition of a sanction by the JC in respect of the Player's ADRV.

33. The starting point in determining the applicable Pol in respect of the Player's ADRV is Regulation 21.10.2.2 which prescribes a Pol of two years, where an athlete has unintentionally committed an ADRV involving a specified substance. Further, Regulation 21.10.2.3 provides:

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.

34. The Player's unchallenged evidence was that, by his use of the inhaler, he did not intend to cheat and despite his participation in anti-doping education provided by World Rugby, he *"did not know or suspect that the use of an inhaler could result in a positive test. He was "only trying to treat [his] asthma, which was worse than normal"*. As mentioned, World Rugby did not allege that the Player intended to cheat, but asserted the Player was 'careless' in his use of his inhaler. Thus as a starting point a two year sanction was applicable.

35. Taking into account the Player's evidence and the submissions of both parties, the Player during the 2017 Tournament (including on 17 and 18 March 2017) did not intend to cheat, in that he was not engaged in conduct when he knew he was committing an ADRV, or that there was a significant risk that his conduct might result in an ADRV and manifestly disregarded

that risk. Accordingly, a two-year Pol pursuant to Regulation 21.10.2.2 was applicable in the Player's circumstances.

Pol Reduction: No Significant Fault or Negligence

36. Counsel for the Player submitted that it was appropriate for the applicable Pol to be reduced from two years to one month. World Rugby accepted that a reduction in the applicable Pol was appropriate in the Player's circumstances and contended that having regard to his degree of fault, the JC should impose a sanction in the form of a three month Pol.

37. WRADR regulation 21.10.5.1.1 provides:

Where the anti-doping rule violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player's or other Person's degree of Fault.

38. Appendix 1 to the WRADR defines 'Fault' and 'No Significant Fault or Negligence' respectively as follows:

Fault: Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing a Player or other Person's degree of Fault include, for example, the Player's or other Person's experience, whether the Player or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Player and the level of care and investigation exercised by the Player in relation to what should have been the perceived level of risk. In assessing the Player's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Player's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that a Player would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Player only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Regulation 21.10.5.1 or 21.10.5.2. [See Comment 52]

Comment 52 (Definition of Fault): The criteria for assessing a Player's degree of Fault are the same under all Regulations where Fault is to be considered. However, under Regulation 21.10.5.2, no reduction of sanction is appropriate unless, when the degree of Fault is assessed, the conclusion is that No Significant Fault or Negligence on the part of the Player or other Person was involved.

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. [See Comment 55]

Comment 55 (Definition of No Significant Fault or Negligence): For Cannabinoids, a Player may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance.

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.

39. Mr Lloyd drew to the JC's attention the decisions of the Sports Tribunal of New Zealand in the cases of *Drug Free Sport New Zealand v Lewis* (27 July 2016) and *Drug Free Sport New Zealand v Wallace* (27 July 2016). In each of these cases, the Athletes suffered a life-long asthma condition and tested positive to Salbutamol in circumstances where they had been prescribed this medication. In the case of *Lewis*, the Athlete used asthma medication containing Salbutamol to control and prevent asthma attacks in circumstances where he had received anti-doping education but did not appreciate the specific risks associated with taking Salbutamol. In the case of *Wallace* the Athlete inadvertently used his asthma medication incorrectly. In each case (determined under anti-doping provisions equivalent to Regulation 21.10.5.1.1), the Athletes who were relatively experienced in their sports (Association Football and Softball, respectively), were subjected to a one month Pol on the ground that each of them did not intend to cheat, and having regard to their overall degree of fault in the circumstances, their conduct and degree of fault was considered not to be significant. Counsel for the Player also relied upon the case of *Football Association v Judge*, a decision of the Football Association Regulatory Commission ('FARC') dated 8 June 2016. In *Judge* the athlete, a professional football player and asthmatic, failed to demonstrate that his use of Salbutamol was within the permitted levels having regard to a pharmacokinetic study he relied upon as to his use of the medication. However, the FARC found the athlete did not

intend to cheat and had a lack of understanding as to the extent to which he could take Salbutamol (in part due to information the athlete had received from the club doctor) and imposed a reprimand.

40. Having considered the Player's evidence and also taking into account the submissions advanced by Counsel for the Player and World Rugby in respect of the Player's degree of fault, the JC determined that the Player on a balance of probabilities established although there was some fault on his part in his consumption of Salbutamol which gave rise to the ADRV, such fault was not significant or negligent within the meaning of Regulation 21.10.5.1.1, for the following reasons:
- (a) The Player had suffered from asthma requiring him to regularly take prescription asthma medication since he was an infant to the present day;
 - (b) The Player by his use of an inhaler that delivered his asthma Salbutamol medication did not intend to cheat in respect of his participation in the Tournament;
 - (c) The Player's asthma medication was prescribed to him by a medical practitioner;
 - (d) The Player's increased use of his asthma medication at the Tournament had been affected by prevailing hot and humid weather conditions that exacerbated his asthma condition;
 - (e) Despite what was contended to be sufficient and clear instruction as to the prospective use of Salbutamol in World Rugby's Anti-Doping Education Programme located at www.keeprugbyclean.worldrugby.org and in the *World Rugby Anti-Doping Handbook*, which had been undertaken and read by the Player, the Player, subjectively, did not fully appreciate how his use of his inhaler could result in an ADRV; and
 - (f) Notwithstanding the discrepancy between his use of Salbutamol disclosed in the doping control form completed by the DCO on the Player's instructions on 18 March 2017 and his Witness Statement dated 16 June 2017, such difference, in the absence of any other evidence to the contrary was more likely to be due to miscommunication or misunderstanding between the Player and the DCO.

41. For these reasons the JC determined that the Player should be sanctioned with the imposition of a three month Pol, which in the circumstances, despite the Player's personal obligation to present for the Tournament 'drug-free', it considered to be appropriate and commensurate with the degree of fault demonstrated by the Player and overall, to be fair and just.

Commencement of the Player's Pol

42. The JC rejected Mr Lloyd's submission that pursuant to Regulation 21.10.11.2, the Pol should commence on the date the Player provided the sample, (18 March 2017) by reason of what he contended to be a prompt admission of his ADRV. Notwithstanding Counsel's submission that the Player admitted the ADRV on 18 May 2017, one month after being notified of his AAF on 18 April 2017, his initial denial of his potential ADRV on 18 April 2017, even without the benefit of the advice he subsequently received, falls below the standard of timeliness required in the circumstances to be considered a prompt admission, especially when the Player knew as at 18 April 2017 when confronted with the AAF, that he had increased his use of his inhaler during the Tournament which had been conducted in hot and humid weather conditions and which had exacerbated his asthma condition.
43. Thus, the JC accepted World Rugby's submission that the Pol should not commence on the date of the provision of the Player's sample on 18 March 2017, but rather commence on 18 April 2017, that being the date upon which the Player was provisionally suspended.

VI. Conclusion

44. Accordingly for the above reasons, the JC directed that a three-month Pol be imposed upon the Player in respect of the ADRV; the commencement date for the Pol to be from 18 April 2017 and concluding (but not inclusive of) 18 July 2017.
45. Should World Rugby wish us to exercise our discretion in relation to costs under Regulation 21.8.2.10 or 21.8.2.11, written submissions should be provided to the JC via Mr Ho within 10 business days of the receipt of World

Rugby of this decision. The Player will then have 10 business days to respond.

46. This decision is the JC's final decision (subject to any application either party might make as to costs as referred to in the preceding paragraph) and replaces the Short Decision. It is subject to referral to a Post Hearing Review Body (Regulation 21.13.8.1) or an appeal, where circumstances permit an appeal to the Court of Arbitration for Sport (Regulation 21.13.2.1). In this regard, attention is 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.

DATED:

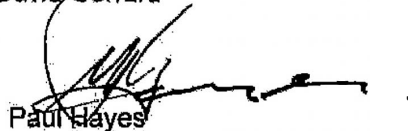
16th August 2017.



Tim Gresson



David Gerrard



Paul Hayes