

**IN THE MATTER OF RUGBY FOOTBALL UNION DISCIPLINARY PROCEEDINGS  
CONCERNING REGULATION 20 OF THE RUGBY FOOTBALL UNION AND  
REGULATION 21 OF WORLD RUGBY**

*Before:*

*David Casement QC (Chair)*

*Dr Mike Irani*

*Carole Billington-Wood*

**BETWEEN:**

**The Rugby Football Union**

***Anti-Doping Organisation***

**-and-**

**Joseph Stokes**

***Respondent***

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**DECISION OF THE ANTI-DOPING TRIBUNAL**

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## INTRODUCTION

1. By charge letter dated 31 March 2017, the Rugby Football Union (“the RFU”) charged Joseph Stokes with a breach of Regulation 21.2.1 of the World Rugby Regulation namely that he provided a sample during an In-Competition Test on 11 March 2017 which contained Benzolecgonine, a metabolite of cocaine. Benzolecgonine is a Prohibited Substance, S6a Non-Specified Stimulants, as defined in the World Anti-Doping Agency *Prohibited List* 2017. The Player was tested after a match on 11 March 2017 in which he played for Matson Rugby Football Club against Clevedon Rugby Football Club.
2. In the charge letter the RFU provisionally suspended the Player with effect from the date of the letter pursuant to RFU Regulation 20.12.2. The charge letter also informed the Player of his right to have a B Sample tested and notified the Player that the standard sanction for this type of violation is a suspension of two years. That would depend upon whether Intention was established as addressed further below. The player was asked to provide his response to the charge letter by 14 April 2017.
3. The response from the Player was provided by letter dated 13 April 2017 in which the Player made a number of points:
  - 3.1 the Player did not intentionally take cocaine. He was distraught and surprised to learn that he had tested positive;
  - 3.2 there was confusion and irregularities in the testing, labeling and completion of the Doping Control Form;
  - 3.3 there was the potential for the mixing of the Player’s sample with that of others;
  - 3.4 other than a mix-up in samples the only possible means by which the Player could think that he would have ingested cocaine was as a result of counting bank notes that he had been counting in respect of a fundraising effort. The Player suggested that banknotes are known to possibly carry traces of

cocaine and by such means, including licking his finger or thumb when counting the notes, he would have ingested cocaine.

4. A directions hearing was held before the Chairman David Casement QC on 28 April 2017 pursuant to RFU Regulation 20.12.4. James Segan of Counsel appeared for the RFU and Grahame Anderson of Counsel appeared for the Player. Directions were given which were to lead to a hearing on 13 October 2017.
5. By email dated 26 May 2017 Mr Anderson on behalf of the Player gave confirmation, in accordance with the directions, that the Player intended to contest the charge against him: "His defences remain (1) that the urine test was not, or was not exclusively, his and (2) that, to the extent that he ingested any cocaine, such ingestion was not deliberate." The email did however proceed to narrow the issues set out in the letter in response from the Player by stating: "Please note, however, that he will not be asserting a positive case that any ingestion was because of his handling of banknotes. Accordingly, he does not intend to lead expert evidence specific to that point."
6. As a result of the Player contesting liability the RFU were obliged, under the directions set by the Chairman, to file evidence addressing the alleged mix-up regarding samples. The RFU filed and served witness statements from Allan Davies and Dean White, UKAD Doping Control Personnel, who oversaw the taking of the sample from the Player.
7. By letter dated 18 July 2017 Mr Anderson confirmed to the Chairman on behalf of the Player that liability would no longer be contested. Confirmation had previously been given to the RFU on 12 July 2017. The RFU requested that the Player set out the points he wished to make in respect of sanction so that the RFU could determine if it felt that further evidence was required, in accordance with the directions, or even whether a hearing was required. In the letter of 18 July 2017 Mr Anderson set out the points which the Player wished to advance namely:
  - 7.1 the charge was admitted promptly and referred to Regulation 21.10.6.3;
  - 7.2 this was a first violation;

7.3 he did not intentionally ingest cocaine;

7.4 whilst he had advanced a possible explanation previously namely contamination through used banknotes that he had been counting he was not in a financial position to obtain expert evidence in that regard.

On behalf of the Player it was suggested that the directions be abbreviated to written submissions from each party and for the Panel to make its decision based upon those submissions.

8. In the event the RFU agreed amended directions with the Player and his Counsel so that any evidence relied upon was to be served by both parties. The RFU would then state its position on whether a hearing was required.
9. Further to that the Player served a statement dated 25 August 2017. At the forefront of the Player's evidence was that ingestion was not intentional:

*"I can confirm that I have never knowingly ingested cocaine or anything like it, or any other illegal drug. I would not know where or from whom to buy cocaine. No one offered cocaine to me and I have no reason to think anything I ingested contained it, either in the run up to the 11 March match or before or after."*

10. The Player went on to explain the basis for his anecdotal account in respect of banknotes. He contended that there had been a prompt admission. He explained that whereas he had concerns about the way in which the test was conducted, after the "anomalies" were explained in the witness statements of Mr Davies and Mr White, and he took advice from counsel, he accepted liability.
11. The RFU served written submissions dated 12 September 2017. The RFU objected to the assertion that there had been a prompt admission by the Player in circumstances where the Player had requested a hearing and denied liability up until after the RFU served witness statements. The Panel agrees with the submissions of the RFU. This is not a case where the Player could seriously contend that he made a prompt admission within the meaning of the Regulations.

12. However, the RFU accepted the Player's assertion that the ingestion of cocaine was not Intentional within the meaning of the Regulations. In its written submissions the RFU states at paragraphs 15 and 16 thereof:

*"The RFU has considered carefully whether the Player's evidence suffices to establish that he did not engage in any conduct which (a) he "knew constituted" an ADRV or (b) knew there was a "significant risk" "might constitute" an ADRV which he "manifestly disregarded" (World Rugby Regulation 21.10.2.3). The RFU has considered all the circumstances of the case – including the Player's lack of any previous disciplinary record and the level at which he plays the game.*

*In those circumstances, the RFU does not challenge the Player's evidence. The RFU accordingly accepts that the ADRV was not intentional, and that the appropriate period of ineligibility would accordingly be two years."*

13. The RFU continued at paragraph 20 of the written submissions to say:

*"The RFU accordingly invites the Panel to deal with the present case on the papers. The RFU does not seek an oral hearing. The RFU respectfully submits that the Panel should impose a two-year period of ineligibility."*

## **THE REGULATIONS**

14. The Regulation of which a breach has been admitted is World Rugby Regulation 21.1.2.1:

*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).*

15. It will be apparent from Regulation 21.2.1.1 that the inadvertent ingestion of cocaine would still be a breach of the Regulation 21.2.1.

16. The period of Ineligibility in respect of the breach is set out in the World Rugby Regulations:

*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.*

## CONCLUSION

17. Therefore the starting point is a period of Ineligibility of four years. That can be reduced to two years if the ingestion of the Prohibited Substance was not intentional. It is for the Player to establish that it was not intentional where the Prohibited Substance is not a Specified Substance. In the present case the RFU, having considered all of the material circumstances, not only do not challenge the evidence adduced by the Player but have positively accepted for the purposes of these proceedings that the Anti-Doping Rule Violation was not intentional.
18. It is a feature of this case that the Player did not seek to suggest there should be period of Ineligibility of less than two years and the RFU contended that it should be a period of two years. The actual sanction imposed is of course ultimately a matter for the Panel.
19. Given the request by both parties to deal with this matter on the papers the Chairman acceded to that request and directed that the hearing be vacated and for the Panel to reach their decision based upon the papers presented by the parties.
20. The conclusion reached by the Panel is based upon the common ground between the parties, in particular the Player's case that the ingestion was not intentional was not only unchallenged by the RFU but was in fact accepted by the RFU. The period of Ineligibility imposed upon the Player shall therefore be a period of two years which shall apply from the date of the provisional suspension, namely from 31 March 2017 until 30 March 2019.
21. The parties have a right of appeal in accordance with Rugby Football Union Regulation 20.14 and World Rugby Regulation 21.13.



**DAVID CASEMENT QC (CHAIRMAN)**

**CAROLE BILLINGTON-WOOD**

**DR MIKE IRANI**

**03 November 2017**



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