

DISCIPLINARY HEARING

IN THE INDEPENDENT DOPING HEARING PANEL

established in terms of rule 8.1 of the Anti-Doping Rules made under
the South African Institute for Drug-Free Sport Act, 1997 (Act 14 of 1997)

HELD AT THE SOUTHERN SUN HOTEL BLOEMFONTEIN

In the matter of:

South African Institute for Drug-Free Sport

Complainant

and

Zanmare Terblanche

Respondent

Before

Prof Steve Cornelius
Dr Nicolas Theron
Dr Willien Fourie

Chairperson
Panel Member
Panel Member

RULING

Preliminary question

1. The Complainant was represented by Ms Ayanda Majozi, who acted as the Prosecutor in this matter.
2. The Respondent was not present at the hearing and the Panel had to determine whether it would be permissible and appropriate to proceed with the matter *in absentia*.
3. The Prosecutor submitted that the hearing should proceed in the absence of the Respondent.

4. The Prosecutor informed the Panel that the Respondent was informed of and served with all the necessary and relevant documents for the hearing. In addition, the Prosecutor brought the following to the attention of the Panel:

4.1 The Respondent was notified of the charge against her in a letter dated 30 August 2015 (hereinafter referred to as “the Charge Sheet”). The Charge Sheet further notified the Respondent that the hearing would take place on 22 September 2015 in Bloemfontein. There followed a lengthy exchange of emails between the Respondent and Mr Fahmy Galant, the General Manager of the Complainant, with regard to the Respondent’s participation in the hearing on 22 September 2015.

4.2 The Respondent acknowledged receipt of the Charge Sheet and indicated that she would not be in Bloemfontein on 22 September 2015 and made an enquiry as to what was expected of her if she was absent from the hearing (email dated 3 September 2015). Mr Galant requested the Respondent to provide alternative dates in October 2015 when the Respondent would be available and on which dates the hearing could take place (email dated 4 September 2015). The Respondent replied that she would participate in the hearing on 22 September 2015 by means of telephone conference as she was uncertain about her schedule for October 2015 (email dated 4 September 2015). In reply, Mr Galant stressed the importance for the Respondent to attend the hearing in person and again requested the Respondent to provide alternative dates in October 2015 when she would be able to attend the hearing (email dated 7 September 2015). The Respondent reiterated that she would rather participate in the hearing by means of a telephone conference and added “i don’t want to go to the meeting” (sic) (email dated 8 September 2015). This seemed to settle the matter. However, on 21 September 2015, the Respondent notified the Complainant (email dated 21 September 2015) as follows:

“Hai sorry to bother you ...i just relize that im ariving on 23 sep at 5:30 the morning in soufhafrica from a congress so i will not be able to answer m phone on flight sorry you guys can then carry on with my stuff” (sic).

The Respondent followed this up with a further message to the Complainant (email dated 21 September 2015) in which she stated:

“I do understand the implication of all this what is hapening but i have work to do and m time is limited i really wanted to present my case but this is not my

future work im not getting payed for my sports so i do it for the fun of it .. you can continue with my case and just let me know of the descision you made” (sic).

4.3 The question for the Panel was, inter alia, whether the emails dated 21 September 2015 could be interpreted as a waiver of the Respondent’s right to a hearing. The Prosecutor argued that the Respondent had clearly waived her right to be present at the hearing.

4.4 The panel had to weigh the Prosecutor’s arguments against the provisions of the Anti-Doping Rules made under the South African Institute for Drug-Free Sport Act, 1997 (Act 14 of 1997) (hereinafter referred to as “the Rules”). The Panel was particularly mindful of Article 8.1.3, which provides:

“8.1.3 The principles of natural justice shall be adhered to in all disciplinary proceedings. Such principles include, but are not limited to, the right to know what evidence will be presented at the hearing, the right to be heard and to be represented, the right to produce evidence and to be judged by impartial and independent adjudicators, the right to be represented by a competent person; the right to call witnesses and to cross-examine witnesses; etc.”

The Panel was also mindful of Article 8.2.4, which provides:

“8.2.4 The Independent Doping Hearing Panel shall act in a fair and impartial manner towards all parties at all times.”

4.5 It was therefore incumbent on the Panel to determine whether it would be fair for the hearing to proceed in the absence of the Respondent.

4.6 In *Old Mutual Life Assurance Co SA Ltd v Gumbi* 2007 (5) SA 552 (SCA), a case dealing with dismissal of an employee, the Supreme Court of Appeal held (at 555A-E):

“The process of determining the actual content of fairness in matters such as this involves the balancing of competing and sometimes conflicting interests of the employee, on the one hand, and the employer on the other. The facts of a particular case determine the weight to be attached to such interests on each side of the scale. ...

The right to a pre-dismissal hearing imposes upon employers nothing more than the obligation to afford employees the opportunity of being heard before employment is terminated by means of a dismissal. Should the employee fail to take the opportunity offered, in a case where he or she ought to have, the employer's decision to dismiss cannot be challenged on the basis of procedural unfairness.

4.7 In the present matter, the Complainant was given ample notice by the Complainant of the date on which the hearing would take place. The Respondent was also given more than one opportunity to specify an alternative date for the hearing that would better suit her schedule, but she elected to abide by the original date determined in the Charge Sheet. The Complainant had taken care to ensure that the Respondent understood the significance of the hearing before the Panel and gave the Respondent ample opportunity to present her case before the panel. In the circumstances, it was not reasonable for the Respondent to wait until the day before the hearing to indicate that she would not be available for a telephone conference to participate in the hearing. It was also not reasonable to decline the offer of the Complainant to reschedule the hearing.

Finding on preliminary question

5. The Panel finds that the Respondent had waived her right to be present at the hearing and the matter could proceed in the absence of the Respondent.

Anti-doping rules violation

6. Turning to the merits of the case, the Respondent is a cyclist. On 15 March 2015, she participated in the Gauteng Provincial Track Cycling Championships. These championships were hosted by Central Gauteng Cycling, an affiliate of Cycling South Africa. Cycling South Africa is affiliated with the South African Sports Commission and Olympic Committee. As such, Central Gauteng Cycling and Cycling South Africa is subject to doping control by the Complainant, as also evidenced by the doping control procedures instituted by the Complainant at the Gauteng Provincial Track Cycling Championships on the date in question.

7. After her event on 15 March 2015, the Respondent was subjected to an in-competition doping test. The Doping Control Form was properly completed and the

urine sample collected from the Respondent was duly sent to the South African Doping Control Laboratory in Bloemfontein for analysis. The analysis of the Respondent's "A sample" returned an adverse analytical finding in that it revealed the presence of Methandienone LT, a metabolite of the anabolic agent Methandienone, in her urine. Methandienone is listed under class S1 of the World Anti-Doping Agency prohibited list, which is incorporated into the rules by Article 4.1.

8. The Respondent was notified on 30 April 2015 of the adverse analytical finding and was informed that she was provisionally suspended with immediate effect from competing and participating in any authorised or organised amateur or professional sport. A copy of the notice was also sent to Cycling South Africa, the *Union Cycliste Internationale* and the World Anti-Doping Agency.

9. The athlete was also notified of her right to have her "B sample" analysed. The respondent waived this right (email dated 9 June 2015).

10. Article 2 of the Rules provide inter alia:

"The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample

2.1.1 ...

2.1.2 Sufficient proof of an anti-doping rule violation under Article 2.1 is established by any of the following: presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives analysis of the B Sample and the B Sample is not analysed; or, where the Athlete's B Sample is analysed and the analysis of the Athlete's B Sample confirms the presence of the Prohibited Substance or its Metabolites or Markers found in the Athlete's A Sample; or, where the Athlete's B Sample is split into two (2) 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.

11. The prosecutor argued that the adverse analytical finding stands uncontradicted and should be accepted as proof of the anti-doping rules violation.

Finding on anti-doping rules violation

12. The Panel finds that the Respondent is guilty of a violation of Article 2.1 of the Rules in that an analysis of the Respondent's urine sample taken during the Gauteng Provincial Track Cycling Championships on 15 March 2015, returned an adverse analytical finding in that it revealed the presence of Methandienone LT, a metabolite of the anabolic agent Methandienone, in her urine.

Appropriate sanction

13. The Prosecutor referred the Panel to Article 10.2 of the Rules, which provides that the period of ineligibility for a violation of Article 2.1 shall be four years, where the anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional. In terms of Article 4.2.2 of the Rules, all Prohibited Substances shall be Specified Substances except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Methandienone, being an anabolic agent, is therefore not a specified substance.

14. In support of her submission that the maximum period of ineligibility should be imposed, the Prosecutor referred the Panel to three anti-doping tribunal rulings which involved adverse analytical findings involving Methandienone (*International Basketball Federation v Jovanovic* (ruling of 20 February 2013); *World Curling Federation v Dumontelle* (ruling of 7 April 2013); *International Rugby Board v Chalmers* ruling of 28 August 2013).

15. While the Panel is not bound to follow the rulings of other anti-doping disciplinary panels, such rulings could still have persuasive value and the Panel found paragraph 6 of the *Jovanovic*-ruling particularly apt for the present matter before the Panel:

“In the present case, by not replying to FIBA's correspondence within the set deadline and by not participating in the hearing the Player waived his right to be heard and consequently failed to bring forward any circumstances in order to demonstrate how the substance entered his body.”

16. The Respondent failed to attend the hearing and consequently also failed to show any circumstances that could demonstrate how the substance had entered her body.

Finding on appropriate sanction

17. The Panel finds no grounds to deviate from the maximum period of ineligibility prescribed in Article 10.2.

Ruling of Panel


18.1 It is the ruling of the Panel that the Respondent is guilty of a violation of Article 2.1 of the Rules.

18.2 It is the further ruling of the Panel that the Respondent is, for a period of four years calculated from 30 April 2015 (the date on which the respondent was provisionally suspended), declared ineligible to participate in any capacity in any professional or amateur sports competition or activity (other than authorised anti-doping education or rehabilitation programs) as contemplated in Article 10.11 of the Rules.

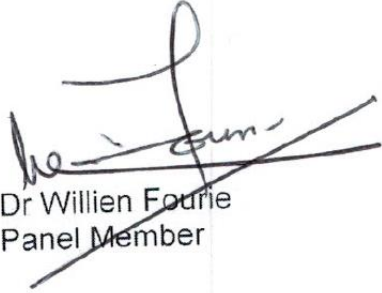


Prof SJ Cornelius
Chairperson

Bloemfontein
22 September 2015



Dr Nicolas Theron
Panel Member



Dr Willien Fourie
Panel Member