

**BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA**

(Instituted in terms of section 17(2) (a) of Act No. 14 of 1977, as amended by Act No. 25 of 2006)

**HELD IN CAPE TOWN**

**TYRONE WHITE**

**Applicant**

and

**THE SOUTH AFRICAN INSTITUTE FOR**

**DRUG-FREE SPORT**

**Respondent**

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THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' APPEAL BOARD TRIBUNAL HELD ON Monday 27 MARCH 2017 at 14h00 AT THE OFFICES OF THE SOUTH AFRICAN INSTITUTE FOR DRUG FREE SPORT, CAPE TOWN

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The Appeal Board Tribunal consisted of the following Appeal Board Members -

Mr Raymond Hack	-	Chairperson
Mr Metja Ledwaba	-	Member
Dr Shuaib Manjra	-	Member

Also in attendance were Messrs. E Hunter and F Galant, Ms Ayanda Njilo.

Advocate I C Bremridge SC appeared on behalf of the Applicant.

The Minute taker was Ms Lungi Madikane

The Chairman confirmed that the panel was appointed in terms of article 13.2.2.1 (a) and (b) of the South African Institute for Drug-Free Sport ("SAIDS") Anti-Doping Rules, 2015.

He further inquired from the members that they complied with art 13.2.2.1.2 (no conflict of interest) as well as obtaining assurances from both the Applicant and the Respondent that they were satisfied with the composition of the Panel.

**INTRODUCTION**

1.1 This is an appeal from the decision of the Disciplinary Panel appointed in terms of art. 8 of the SAIDS Anti-Doping rules, and arising thereout the

decision given by the aforesaid Panel on 16 November 2016 pursuant to the initial hearing which was convened on 24 August 2016.

- 1.2 Pursuant to the Applicant having pleaded guilty to the charge against him, the aforementioned Disciplinary Panel determined that the Applicant's infraction was in terms of art. 10.5.1.1 which carried a maximum ineligibility period of two (2) years, of which the athlete was sanctioned with an ineligibility period of eighteen (18) months with effect from 14 December 2016 until 13 June 2018.

## **BACKGROUND**

- 2.1 On 30 April 2016, the Applicant was required and duly provided a urine sample during an in-competition test at the JoBurg2C Mountain Bike Race.
- 2.2 The urine sample was submitted by SAIDS to the duly accredited Doping Control Laboratory Qatar ("Laboratory") for analysis. The analytical report from the Laboratory reported the presence of Dexamethasone.
- 2.3 This substance is categorised under Class S9-Glucocorticoids by the World Anti-Doping Code 2016 and appears within the WADA Prohibited List International Standard.
- 2.4 On 8 July 2016 the Applicant was notified of the prohibited substances being found in his urine sample, and was not provisionally suspended from competing and participating in any authorised or organised sport or any national or international level competition.
- 2.5 On 19 July 2016, he elected to exercise his right to analyse the B sample. The Applicant was not provisionally suspended and so he continued to compete and participate in competitions.
- 2.6 The analytical urine test received from the Laboratory pertaining to his B sample confirmed the A Sample analysis result for the presence of Dexamethasone and the Athlete was notified on 25 July 2016.
- 2.7 On 2 August 2016, the Applicant admitted the anti-doping rule violation, and elected to exercise his right to request for a hearing to present evidence and make submissions regarding the appropriate consequences.
- 2.8 The Applicant's hearing took place on 24 October 2016.

2.9 As a result of the hearing, the Independent Doping Hearing Panel ("the Panel") imposed a period of ineligibility of eighteen (18) months from the date of the decision, being 14 December 2016 until 13 June 2018.

2.10 The Applicant appealed the decision of the Panel.

## PROCEEDINGS BEFORE THE TRIBUNAL

### **Submissions of the Applicant**

2.11 The Applicant called three witnesses to testify on his behalf. Those witnesses were himself, Doctor Lindsay and Andrew Hill.

2.12 The evidence of the witnesses was essentially as follows:

#### **Mr White**

2.13 He took part in a stage race – joBurg2C - which is a 9-day race.

2.14 The race was going very well and they (him and his race partner Andrew Hill) were experiencing great conditions.

2.15 *"We felt really good we had a wonderful sort of seven, eight days."*  
On the evening of 29 April 2016 (the last day of the race was 30 April 2016) he fell ill, severely and only managed to fall asleep in the early hours of the morning of 30 April 2016. Mr Hill, his racing partner woke him up at 5 o'clock and he was still not feeling well.

2.16 Mr Hill brought his father to the caravan and his father *"tried to give him some Vibrant, Vibrant Health. A product made by Vibrant Health."*

2.17 He did not get better and so they took him to the Race Doctor.

2.18 The Race doctor and Chief Medical Officer for the event was Doctor Lindsay ("Dr Lindsay"). He knows Dr Lindsay as he was a regular doctor in stage races and other events in which he had participated and he has been treated by Dr Lindsay before.

2.19 Dr Lindsay advised that he was badly dehydrated and that he was concerned about his kidney function and general well-being.

2.20 Dr Lindsay prescribed a drip and Promethazine and he trusted Dr Lindsay. He Asked Dr Lindsay whether what he prescribed for him was not on the prohibited list and Dr Lindsay confirmed that it was not.

- 2.21 The drip was administered by a nurse. He did not check with the nurse whether what she administered to him is what Dr Lindsay had prescribed for him or check whether what she was administering was not on the prohibited list. He also did not check whether she kept proper records.
- 2.22 The nurse was not called in as a witness and the medical records were also not provided.
- 2.23 After approximately 20 minutes of receiving the drip he 'sprung back to life' and Dr. Lindsay advised that he was fit to continue with the race.
- 2.24 He and his racing partner finished the race in third position.
- 2.25 Immediately after completing the race, he was asked for a urine sample which he could not give for about an hour or so because he was dehydrated and had no urine.
- 2.26 The Doping Control Officer explained the doping control form to him and he understood the process but he failed to list the medication which he had taken a few hours before the test on the doping control form.
- 2.27 He is of the view that the prohibited substance entered his body either because of a miscommunication between Dr Lindsay and the nurse or contamination of the IV.

### **Dr Lindsay**

- 2.28. He is a registered medical practitioner, practising emergency medicine and events/remote/expedition care.
- 2.29. He has worked as a medical officer at a number of high profile endurance events.
- 2.30. He knows about doping and the Prohibited List.
- 2.31. He knows the Applicant and his father. He sees them at races. He knows that the Applicant's father gives him "*all sorts of funny green stuff and herbal sort of natural remedies.*"
- 2.32 On 30 April 2016, he examined the Applicant and concluded that he was clinically very dehydrated and he was concerned about his kidney function and general well-being. He prescribed vitamins, Ringers Lactate and Promethazine. All of this happened just before the start of the race.

- 2.33. He did not administer the Promethazine to the Applicant, a nurse administered it.
- 2.34. He described the chaos of the environment where he works and confirmed that everything that happens there goes through him.<sup>8</sup>
- 2.35. Before the test results of the Applicant confirmed the anti-doping rule violation, he received a call from the Applicant's father who told him that the Applicant had tested and asked him what to do and he told him to "*just wait and see what happens*".
- 2.36. After being informed that the Applicant had tested positive, he met with the Applicant and they discussed the matter.
- 2.37. He explained that he had stocked Dexamethasone for resuscitation purposes and it is in a very similar vial or ampule to the Promethazine. As an anti-emetic it would have treated the Applicant's symptoms. He said "*It's a very good anti-emetic, probably a better job, excellent*".
- 2.38. He confirmed that given the half-life of the Dexamethasone, it was given to the Applicant the morning of the race.
- 2.39. He confirmed that the race involves some 800 participants and that the Applicant and his partner finished the race third.

### **Andrew Hill**

- 2.40 He said that Applicant starting looking ill in the afternoon of 29 April 2016. When they went to dinner he (the Applicant) told him that he really wasn't feeling well and he gave him a Valoid.
- 2.41 In the morning he woke the Applicant up at approximately 5 o'clock. The Applicant was not feeling any better and so he told the Applicant's father about his condition and he gave him "*green powder, a green based shake*."
- 2.42 The Applicant's condition did not improve and so they took him to the shed to see Dr Lindsay.
- 2.43 He knows Dr Lindsay and he has been treated by Doctor Lindsay before.
- 2.44 Dr Lindsay told them that he would administer an anti-emetic. After 15, 20 or 30 minutes of the administration of the substance that the Applicant was administered he "*bounced back very very quickly, sort of feeling, looking normal, not look normal but almost normal*." This miraculous recovery, by chance, happened 20 minutes before the start of the race.
- 2.45 He testified that Dr Lindsay administered the drip to the Applicant and not the nurse.

### **3. Submissions by the Respondent**

- 3.1 The Respondent called one witness to testify on its behalf, Dr. Jeroen Swart, whose evidence was essentially that Dexamethasone is performance enhancing and that its half-life is between 3 to 7 hours.

### **THE APPROPRIATE RULES**

- 4.1 The Rules provide the following:

*'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 Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:*

*10.2.1 The period on Ineligibility shall be four (4) years where:*

*10.2.1.2 The anti-doping rule violation involves a Specified Substance and SAIDS can establish that the anti-doping rule violation was intentional.*

*10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two (2) years.*

- 4.2 The Respondent conceded it could not establish that the anti-doping rule violation was intentional. In the circumstances, it argued that the period of ineligibility should be two (2) years.

### **ISSUES**

- 5.1 The Issue before the Appeal Board is based on the interpretation of fault or negligence as referred to in the Anti-Doping Rules Regulations.
- 5.2 The Applicant argues that there should be no fault or negligence and that the degree of fault is insignificant.
- 5.3 The Respondent on the other hand, argues that the Applicant breached his duty of care, and that the fault is in fact significant
- 5.4 Both the Applicant and the Respondent were duly afforded the opportunity to expand on their written Heads of Argument and duly did so, concentrating specifically on the references as set out in the aforementioned Heads of

Argument, with the Applicant highlighting that the initial disciplinary finding was not one in terms of art. 10.5 but in fact was one in terms of art. 10.4.

- 5.5 The Respondent contending that the disciplinary finding was in fact correct, and as such art.10.5.1.1 should be interpreted strictly and a two (2) year ineligibility period should be imposed.

Various points of clarity were sought by members of the Appeal Board.

#### REASONS:

- 6.1 After deliberation, the Panel accepted that in the circumstances pertaining to this matter, the Athlete had a responsibility to inquire from the physician as to what had been administered to him, and furthermore had a duty to record same on his anti-doping form, when called upon to provide his sample.

It is common cause that the Athlete is a seasoned athlete and was well-aware of this requirement, and had further been treated by Dr. Hill on numerous occasions prior to this event, it being conceded that as the Race Doctor, Dr. Lindsay was aware of the Athlete being an elite athlete, and as such would be subject to the provisions of the SAIDS Anti-Doping Rules as well as the World Anti-Doping Agency (WADA) Code, in regard to prohibited substances.

- 6.2 The Panel held that "*In this matter one would have expected the Athlete to have enquired as to the medication given to him in order that he could have complete and recorded the name of the substance on the relevant anti-doping form.*"

- 6.3 Irrespective of the fact that the Athlete had inquired from Dr. Lindsay that the substance prescribed was not contrary to the code, the Athlete would be expected to record the name of the substance, not least of all in order to declare it on the anti-doping form.

Therefore, the Panel finds that the Applicant must bear a degree of negligence.

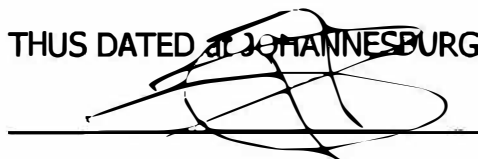
#### DECISION

- 7.1 The Panel finds that the decision as imposed by the Disciplinary Committee in the interpretation of art. 10.5.1.1 is in fact correct, and should be upheld.

However, the Panel is of the opinion that as a result of the evidence submitted by all the parties, the period of ineligibility should be reduced from eighteen (18) months to six (6) months.

- 7.2 The Panel further wishes to record as part of the Judgment, its concern in regard to the evidence provided by Dr. Lindsay and the concession that the substance administered to the Athlete could, in all probability have given rise to this matter, and requests that SAIDS record and address the concerns of the doctor's conduct with the relevant Sporting federation. Some of the issues relating to the doctor's conduct include *inter alia*, a failure to appropriately record treatment, the confusion that reigned (by his own admission) in the medical tent under his supervision, administering at least one litre of intravenous fluid to the Athlete without applying for a TUE.

THUS DATED at JOHANNESBURG on this the 19<sup>th</sup> day of APRIL 2017



Raymond Hack (CHAIRPERSON ON BEHALF OF THE COMMITTEE)