

BEFORE THE ANTI-DOPING APPEAL TRIBUNAL OF SOUTH AFRICA

(Instituted in terms of Section 17(2) (a) of Act No. 14 of 1997, as amended by Act No. 25 of 2006)

Case No: SAIDS/2017/01/A02

In the matter between:-

**SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT (SAIDS)
Representing the South African Rugby Union (SARU)**

(APPELLANT)

and

STEAN PIENAAR (the Player)

(REPOUDENT)

Before

Mr. Alex Abercrombie (Chairperson)

Mr. Raymond Hack

Dr Phatho Cele

DECISION

1. On the 6th April 2017 Respondent (the Player) was found guilty of a breach of Article 21.2.1 of the World Rugby Anti-Doping Regulations in that, on the 5th December 2016 during an out-of-competition test, following a tip off, his urine sample showed the presence of Letrozole and its metabolite Bis-(4-cyanophenyl). Letrozole is categorized under Class S4.1 - Hormone and Metabolic Modulators on the World Anti-Doping Code 2016 Prohibited List International Standard
2. Letrozole is a Specified Substance on the Prohibited List.
3. The Panel imposed a Sanction of twenty (20) months ineligibility. It is against this Sanction that the Appellant appeals.
4. The attendance at the hearing was as follows:
 - 4.1. Ms. W Begg for the Appellant
 - 4.2. Adv van Zyl SC – Players Legal Representative
 - 4.3. Mr. Roux – the instructing attorney from BDS Attorneys
 - 4.4. Mr. F Galant – SAIDS Observer
 - 4.5. Ms. Lungi Madikani – Minute taker.

DETERMINING THE SANCTION

5. The Appellant contended in its Notice of Appeal, and Heads of Argument that the violation was intentional.
6. At the Disciplinary hearing, the Player submitted that he qualified for a reduction under Regulation 21.10.5 based on No Significant Fault or Negligence. This he must prove on a balance of probabilities.
7. At the commencement of the hearing before us the Parties handed in a Settlement Agreement, annexed hereto, in which:
 - 7.1. SARU abandoned its contention that the violation was intentional; and
 - 7.2. The Player conceded, as he did in his Heads of Argument, that because he failed to prove No Significant Fault or Negligence the period of ineligibility could not be reduced from the prescribed period of 2 years.
 - 7.3. The Parties requested the Appeal Board to impose a period of Ineligibility of 2 years calculated from the 24th January 2017, the date on which he was provisionally suspended.

THE REDUCTION IN SANCTION

8. The Disciplinary Tribunal considered 5 key factors that speak to the significance of the Player's fault and concluded as follows:

"An objective review of the above facts supports the argument that the fault of the Player was significant. He had various legitimate options available to him to determine the true status of Letrozole, but failed to act on these options".
9. The Tribunal then went on to consider 3 subjective factors, namely, his youth, his naivety and the impact on his career. These factors cannot override the finding of significant fault or negligence
10. The Player is an adult (19-year-old), elite professional rugby player and it is his duty to acquaint himself with the rules relating to his sport.
11. If a player merely had to state that he placed great trust in someone who is alleged to be a doctor or a friend in a gymnasium in order to obtain a reduced sanction, then a reduction under Regulations 21.10.4 or 21.10.5 could be engineered to apply in almost every doping matter.
12. Whilst a player may not have taken a prohibited substance to deliberately enhance his performance (cheat), such performance enhancement may still accrue from such use and grants the player an unfair advantage over competitors.

13. A reduction of the otherwise applicable period of ineligibility is meant to occur only in cases where the circumstances are truly exceptional, i.e. when an Athlete can show that the degree of fault or negligence in the totality of the circumstances was such that it was not significant in relation to the doping offence.
14. We are satisfied, having regard to the record of proceedings, the findings of the Panel and the concessions made by the Player, that his degree of fault or negligence was significant.

DECISION

15. The sanction imposed by the Disciplinary Panel is set aside and we impose the following Sanction:
 - 15.1. A period of Ineligibility of 2 years calculated from the 24th January 2017, the date on which he was provisionally suspended
 - 15.2. The period of ineligibility ends on 23rd January 2019
 - 15.3. We make no order as to costs.

DATED AT NEWLANDS ON THIS 4th DAY OF July 2017.



ALEX ABERCROMBIE

Mr R Hack

Dr Phatho Cele

ANNEXURE

In the matter between:

THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORT

Appellant

and

STEAN PIENAAR

Respondent

Case No: SAIDS/2017/01/A01

SETTLEMENT AGREEMENT

1. This is a settlement agreement between the abovementioned parties with regard to the Appellant's pending appeal against the Respondent. The application for the appeal is resultant from the decision of an Independent Hearing Doping Panel ("the Panel") appointed under Article 8 of the SAIDS Anti-Doping Rules 2016, which decision was given on 8th April 2017, pursuant to a hearing which commenced on 4th April 2017 in terms of which, a period of ineligibility of 20 months was imposed on the Respondent.
2. The parties having considered their respective heads of argument filed in the appeal, have reached agreement on the following:
 - 2.1 Letrozole is a "specified substance" as provided for in Regulation 21, Appendix 2, Schedule 2 of the World Rugby Anti-Doping Regulations;

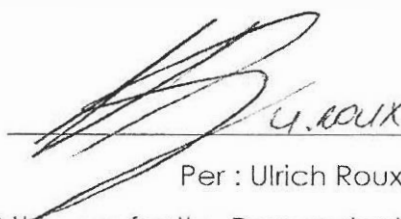
- 2.2 The onus to prove that the anti-doping violation was intentional was accordingly on SAIDS, in terms of Rule 21.10.2.1.2;
 - 2.3 The Panel correctly found that SAIDS did not satisfy the onus to prove that the violation was intentional, accordingly rule 21.10.2.2 which provides for a 2 year period of ineligibility, became applicable;
 - 2.4 The Panel correctly found that the Respondent failed to establish that he bears no significant fault or negligence as provided for in Rule 21.10.5.1.1, accordingly the Respondent did not establish a basis for a further reduction from the compulsory 2 year sanction provided for in Rule 21.10.2.2;
 - 2.5 Accordingly the Panel erred in imposing a 20 month period of ineligibility on the Respondent. It should have imposed a 2 year period of ineligibility on the Respondent;
 - 2.6 The period of ineligibility should commence from the date of the Respondent's provisional suspension on 24 January 2017, which suspension was respected by the Respondent.
3. The parties accordingly request the Appeal Panel to set aside the period of ineligibility of 20 months imposed by the Panel and to replace it with a period of ineligibility of 2 years, commencing from the date of the Respondent's provisional suspension on 24 January 2017.

DATED at CAPE TOWN on this 4TH day of JULY 2017



Wafeekah Begg : Legal Manager
South African Institute for Drug-Free Sport
Sport Science Institute of South Africa Building
4th Floor
Boundary Road, Newlands
Cape Town

BDK ATTORNEYS



Per : Ulrich Roux
Attorneys for the Respondent
Ground Floor
Oxford Terrace 3 on 9th Street
Houghton Estate
JOHANNESBURG

TO: THE REGISTRAR OF THE APPEAL BOARD

Prof D Hendricks (denver.hendricks@up.ac.za)

AND TO: THE APPEALS PANEL

Mr Alex Abercrombie (aabercrombie@grandparade.co.za)

Mr Raymond Hack (ggloves@worldonline.co.za)

Dr Phathokuhle Zondi (phathokuhlez@gmail.com)