

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR KEENON BLIGNAUT

SPORTS FEDERATION: SOUTH AFRICAN FOOTBALL ASSOCIATION (“SAFA”)

DATE: THURSDAY 13 JULY 2017

PLACE OF HEARING: SAIDS OFFICES, SSISA, NEWLANDS,

DISCIPLINARY PANEL (“PANEL”): MR ANDREW BREETZKE (CHAIRMAN)
DR NASIR JAFFER (MEDICAL REPRESENTATIVE)
MR CLINT READHEAD (SPORTS ADMINISTRATOR)

PROSECUTOR: MS WAFEEKAH BEGG

**ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE
2.1 OF THE 2016 SAIDS ANTI-DOPING RULES.**

APPLICABLE LAW

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the WADA Anti-Doping Code (WADC) adopted and implemented by the World Anti-Doping Agency in 2015. In so doing, SAIDS introduced anti-doping rules and regulations to govern all sports under the jurisdiction of South African Sports Confederation and Olympic Committee, as well as any national sports federation.

The SAIDS Anti-Doping Rules (“the Rules”) were adopted and implemented in 2016. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel has been appointed in accordance with Article 8 of the Rules, to adjudicate whether the Athlete has violated the said Rules, and if so the consequences of such a violation.

The Athlete was tested at an event under the jurisdiction of SAFA, in terms of the Rules.

PROCEDURAL MATTERS

The Athlete was in attendance, and was assisted by Mr Goolam Allie.

The Disciplinary panel were provided with a set of documents, as well as written submissions from SAIDS.

The rights of the Athlete to present evidence, argument and cross examine any evidence were explained to him.

ANTI DOPING RULE VIOLATION

The charge against the Athlete was set out in written correspondence forwarded to the Athlete on the 19 June 2017. The charge against the Athlete read as follows:

You are formally charged with an anti-doping violation in terms of Article 2.1 of the 2016 South African Institute for Drug-Free Sport (SAIDS) Anti-Doping Rules.

*On 23 April 2017, you provided a urine sample (3926657) during an in-competition test. Upon analysis the Doping Control Laboratory Gent reported the presence of a prohibited substance in your urine samples. The substance identified was Carboxy-THC (the mean concentration is measured at 766 ng/ml which is greater than the WADA decision limit of 180ng/ml). This substance is categorised under **Class S8 "Cannabinoids"** on the World Anti-Doping Code 2017 Prohibited List International Standard.*

FINDING ON THE CHARGE

In communicating with SAIDS prior to the convening of the hearing, the Athlete admitted guilt on the anti-doping violation charge as set out. This admission was confirmed in the hearing. The presence of the substances identified as *Carboxy-THC* in the sample of the Athlete was therefore admitted. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 2.1 of the 2016 Anti-Doping Rules of the South African Institute for Drug-Free Sport.

SUMMARY OF EVIDENCE PRESENTED FOR PURPOSES OF SANCTION

The Athlete is a professional soccer player at Santos Football Club. He is 23 years of age and has been contracted at the club for over 6 years, having moved to Cape Town from East London in 2010. He earns R8500 per month (as well as assistance with food and lodging) and supports his family (mother, sister and nephew) who still live in East London.

The Athlete acknowledged that smoking Cannabis had been a mistake, and he had done so in a moment of weakness when celebrating a birthday with friends. This had occurred on the Friday night before the match on Saturday afternoon. He had smoked for an extended period until 02h00 on the Saturday morning.

On cross-examination by SAIDS, the Athlete admitted that he was aware of the fact that Cannabis was a prohibited substance and was aware of the anti-doping rules. He informed

the Doping Control Officer prior to the test that he had been smoking Cannabis, and the Doping Control Officer had noted THC on his Doping Control Form.

He was remorseful and sorry for what he had done and had accepted a provisional suspension as of 21 June 2017. A suspension of an extended period would seriously impact his football career, and may even end his career.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Article 2.1.1 of the Rules reads as follows:

It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete's part be demonstrated in order to establish an anti-doping violation under Article 2.1.

This Article is the foundation of the strict liability principle that is applicable to anti-doping violations. There is a clear and definitive standard of compliance that all athletes are required to adhere to and it is on this basis that they are held accountable. Ignorance of the anti-doping provisions and/or prohibited list cannot be accepted as an excuse. The responsibility that rests on the athlete is therefore clear, and the liability that rests on the Athlete *in casu* has been established.

Article 10.2.1 provides that the period of ineligibility for a violation of Article 2.1 shall be as follows:

10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specific Substance, unless the athlete or other person can establish that the anti-doping rule violation was not intentional.

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.

Carboxy-THC is a Specified Substance as defined in Article 4.2.2 of the Rules, and as such Article 10.2.1.2 is applicable. SAIDS did not present evidence or argument to establish intent, and the provisions of Article 10.2.2 are therefore relevant for purposes of determining sanction.

The issue before the Panel is therefore whether circumstances exist such that it is able to consider any elimination, or reduction, of the period of ineligibility as provided for under Articles 10.4 or 10.5.

10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If an Athlete or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

10.5.1 ...

10.5.1.1 Specified Substances

Where the anti-doping rule violation involves a Specified Substance, and the Athlete 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 (2) years of Ineligibility depending on the Athlete's or other Person's degree of Fault.

This Panel must therefore consider the degree of fault or negligence of the individual athlete and the appropriate sanction for the athlete viewed in the light of that degree of fault or negligence.

SAIDS argued that various factors had to be taken into consideration when determining the degree of Fault, including whether the athlete was a minor, his experience, degree of risk that should have been perceived by the athlete and the investigation exercised by the athlete in relation to what should have been the perceived level of risk. The Athlete is not a minor, is an experienced football player competing in the National Football Division; he is aware of the anti-doping regulations. The definition of No Fault or Negligence states that the athlete must establish that he did not know or suspect and could not reasonable have known or suspected even with the exercise of utmost caution, that he had used a prohibited substance. Furthermore, SAIDS argued that to prove No Significant Fault or Negligence, the Athlete had to prove that his fault or negligence was not significant when viewed in the totality of circumstances.

SAIDS referenced the matter of ***NADO Flanders 2017 Disciplinary Commission 2017002T*** where a one year period of ineligibility was imposed for a positive cannabis test – the athlete admitting that he was a long-term cannabis user.

SAIDS argued that the facts of the case supported a two-year period of ineligibility.

REVIEW OF EVIDENCE AND ARGUMENT AS TO SANCTION

In reviewing the above arguments in considering the degree of fault attributable to the Athlete and the appropriate sanction for the athlete, the following:

1. The Athlete has pleaded guilty, co-operated with SAIDS, and established how the prohibited substance entered his body;
2. This is the first positive test of the Athlete;
3. The Athlete has shown remorse;

4. It is common cause that there is no performance-enhancing benefit to be gained from the prohibited substance;
5. The period of ineligibility may have an impact upon his career.

The above factors are mitigating factors relevant to the degree of fault. There are various issues in this matter however, that indicate a material degree of fault on the part of the Athlete:

6. The Athlete intentionally took the substance for recreational purposes;
7. The Athlete is a professional sportsman with a number of years of experience;
8. No evidence was presented that he was ignorant of anti-doping procedures/issues, and as such it must be accepted that he was aware that his actions were in breach of anti-doping regulations, as well as his contractual obligations. In fact, on being tested he advised the Doping Control Officer that he had been smoking Cannabis – clear evidence of his being aware of the fact that Cannabis was a prohibited substance.
9. The substance is an illegal substance.

DEGREE OF FAULT

The use of Cannabis as a recreational drug is common-place in society, but it remains illegal in South Africa. Although the issue of the relevance of Cannabis being a prohibited substance is often debated, it remains that its use is inconsistent with the spirit of sport.

As such, when an athlete knowingly uses Cannabis there will rarely be circumstances where the adverse analytical finding does not attract a sanction which includes a period of ineligibility. There is therefore a degree of fault.

In the matter of *FINA v Cesar (Court of Arbitration for Sport 2011/A/2495)*, the Court in reviewing and assessing the degree of fault of an athlete focused on whether the athlete could have initiated any action to avoid the positive test results. *In casu*, the Athlete utilised Cannabis as a recreational drug – as a professional athlete he should have been more prudent in this regard and could have initiated action to avoid the positive test. The Athlete could

have, and should have, refused the drug and as such taken action to avoid the positive test. The Athlete could furthermore have advised management as to the fact that he had smoked Cannabis, and as such withdrawn from the team. By playing the game, he took a risk that if tested, an adverse analytical finding may be made. The Athlete did not act within the expected standard of behaviour of a professional athlete. Furthermore, the Athlete, as a role model has a responsibility to act in a manner that sets an example to minor children, especially given the widespread use of recreational drugs amongst these children in South Africa. There is material fault on the part of the Athlete.

Whilst SAIDS referenced the matter of ***NADO Flanders 2017 Disciplinary Commission 2017002T*** which attracted a one-year period of ineligibility, I would submit that it could be argued that the fact that the athlete was a long-term user, thereby increasing the degree of fault, was an aggravating factor – this can be seen as a differentiating factor from the matter *in casu*.

In the matter of ***ST 2016_16 DFSNZ vs Stacey Mikara*** the Respondent admitted the anti-doping rule violation and stated that he smoked cannabis during the 2016 season for recreational purposes in social settings as an alternative to drinking alcohol and without intention to enhance sport performance. He acknowledged that he was informed about the prohibited substances, including cannabis, but it had been difficult to stop his habitual cannabis use. It was accepted by the tribunal that use of cannabis was recreational and without intention to enhance. The Tribunal was also satisfied that there was no significant fault in his having infringed the WADA limits on the use of cannabis during a period of competition. A period of 6 months ineligibility was imposed

In ***ST 2016_17 DFSNZ vs Travell Ngatoko*** the Respondent gave a prompt admission of the violation, he co-operated with the case and stated that the use of the substance was recreational and not to enhance sport performance. DFSNZ and the Tribunal accepted the Respondent's statement and that he was without significant fault. A 6 month period of ineligibility was imposed.

In **SDRCC 2015 CCES vs Steve Stanislaus** a sanction of one year was imposed where the Athlete had used cannabis after the competition and before he provided a sample for drug testing. The Athlete walked away to smoke cannabis with some fans after he was notified by the DCO and Chaperone and finally showed up within the allotted time to provide a sample. The Athlete's disappearance after notification by the DCO was regarded as an aggravating factor.

In the South African matter of **SAIDS 2012_07 SAIDS vs Rory Kleinveldt** the Athlete pleaded guilty to the charge and stated he had smoked cannabis at a social function and admitted his mistake. The SAIDS Disciplinary Committee imposed a 3 month period of ineligibility on the Athlete.

An important aggravating factor in determining degree of fault is the fact that the Athlete smoked the Cannabis, being well aware that should he be tested the next day he would test positive. This is evidenced by his admission to the Doping Control Officer that he had smoked Cannabis the previous day – the Doping Control Officer recording THC on the Doping Control Form. In reviewing the above, the sanction on the finding of Guilty is as follows:

1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Article 10 of the Rules, for a period of four (4) months;
2. The period of four months will be effective as of 21 June 2017 (being the date of provisional suspension), to terminate on the 22 October 2017;



Andrew Breetzke (Chair)

For and on behalf of Dr Nassir Jaffer and Mr Clint Readhead