

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

ATHLETE: MR JANDRE MAREE

SPORTS FEDERATION: SOUTH AFRICAN RUGBY UNION (SARU)

DATE: 6 FEBRUARY 2018

PLACE OF HEARING: SAIDS Offices, Sports Science Institute of South Africa, Newlands

DISCIPLINARY PANEL ("PANEL") MR ANDREW BREETZKE (CHAIRPERSON)
DR JASON SUTER (MEDICAL REPRESENTATIVE)
MR NORMAN BROOK (SPORTS ADMINISTRATOR)

PROSECUTOR: ADV WAFEEKAH BEGG

ATHLETE REPRESENTATIVE: SUPPORTED BY HIS PARENTS

MINUTE TAKER: MS THENJIWE FUNDA

ANTI-DOPING RULE VIOLATION: ANTI-DOPING RULE VIOLATION IN TERMS OF ARTICLE 21.2.1 OF THE 2017 WORLD RUGBY ANTI-DOPING RULES

INTRODUCTION

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 World Anti-Doping Code (“WADC”) adopted and implemented by the World Anti-Doping Agency in 2003. World Rugby adopted the WADC in June 2004. Following an international review of the WADC a new WADC was agreed and implemented as of 1 January 2015. The mandatory provisions and principles of the WADC have been adopted and incorporated into the World Rugby Regulation 21.

In terms of a Delegation of Powers Agreement entered into between the Executive Council of the SARU and SAIDS (July 2012), SARU has ceded and assigned all rights and delegated all its powers and obligations vested in it by virtue of the Regulation 21, with the responsibility to perform all such functions and duties to comply with the requirements of SARU in terms of the said Regulations.

It is by virtue of this delegation that the Panel has been constituted to preside over the Anti-Doping Rule Violation as set out.

The SAIDS Anti-Doping Rules (“the Rules”) were adopted and implemented in 2015. These proceedings are therefore governed by the Rules. This SAIDS Anti-Doping Disciplinary Panel (“the 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.

PROCEDURAL MATTERS

The Panel received a bundle of documents from SAIDS, which included correspondence between SAIDS and the legal representative of the Athlete, as well as statements from the Athlete and his mother. Whilst the Athlete had been legally represented in communications with SAIDS, he did not have a legal representative at the hearing. His rights to present evidence and argument, and to cross examine evidence presented by SAIDS were explained to him.

SUMMARY OF EVIDENCE AND ARGUMENT

The charge against the Athlete was set out in written correspondence addressed to the Athlete on the 24 January 2018. The charge against the Athlete read as follows:

You are formally charged with an anti-doping violation in terms of Article 21.2.1 of the 2017 World Rugby Anti-Doping Regulations.

On 15 September 2017, you provided a urine sample (4004526) during an in-competition test. Upon analysis the Doping Control Laboratory Gent reported the presence of a prohibited substance in your urine sample. The substance identified in your sample was Methasterone, and its metabolite 2 α -17 α dimethyl-5 α -androstone-3 α , 17 β – diol as well as 3OH-stanozolol-glucuronide, a metabolite of Stanozolol. Methasterone and Stanozolol are categorised under Class S1-Anabolic Agents on the World Anti-Doping Code 2017 Prohibited List International Standard.

The Athlete was advised of the nature of the charge and he confirmed that he recognised the seriousness of the process. The Athlete had not requested that his B-Sample be tested and did not dispute the positive test.

It was confirmed that the "A" sample test results showed the presence of the prohibited substance, *Methasterone*; that the Athlete had not requested that his "B" sample be tested; and that there was sufficient proof of an anti-doping rule violation.

The Athlete presented as to his career as a professional rugby player. After school he attended the University of Pretoria Rugby Academy before being contracted by the Mpumalanga Pumas team at u20 level. He led evidence as to a knee injury that he picked up whilst playing against Boland on the 2 September 2017. A week later, whilst playing against South Western Districts he suffered a further injury. He did not consult the team doctor, and returned to play on the 15 September 2017 against the Limpopo Bulls. It was at this game that he was tested.

On the 9 September 2017 the Athlete was approached by an individual whilst at the Virgin Active Gym in Faireglen. The individual engaged with the Athlete as to his injury. This individual gave the Athlete pills in a clear bank bag and told him that they would assist him with recovering from his injury, assuring him further that they were not steroids. The

individual assured him that he would not test positive and that the pills would be out of his system by the Friday. The Athlete drank two of the pills on the Monday, and a further two pills on the Wednesday. He was certain that these pills were the source of the prohibited substance.

The Athlete in written submissions had stated that he was prudent when buying supplements, being aware of the dangers of supplements. He had always purchased supplements with the assistance of his mother, to ensure that he was purchasing the correct products. He was aware that he should stay away from steroids.

He had not approached his team doctor after being injured, as he was concerned that he would be told to rest. He was not in a position to rest, as he needed the match fee. His personal circumstances pressured him into taking this course of action. He admitted that he had been naïve and stupid in trusting an unknown individual at the gym.

On the issue of anti-doping education, the Athlete testified that he had received limited education from school level through academy level to provincial level.

Mrs Gwynneth Maree, the mother of the Athlete, testified that the Athlete was not allowed to purchase supplements without her assistance. He was encouraged to speak to her if he had an issue and he had made a terrible error in respect of this matter. The support system that he had in Gauteng was not ideal, and this contributed to him making this mistake.

Mr Maree (father of the Athlete) gave evidence on the career of his son, and the passion which his son had for the game.

FINDING ON THE CHARGE

The presence of the prohibited substances identified as *Methasterone*, and a metabolite *Stanozolol* was proven. The Panel has therefore determined that the Athlete is Guilty of the offence as set out, and is in violation of Article 21.2.1 of the 2017 World Rugby Anti-Doping Regulations.

DISCUSSION ON EVIDENCE AND ARGUMENT AS TO SANCTION

Regulation 21.2.1 of the Rules reads as follows:

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 violation under Regulation 21.2.1.

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.

The Athlete has been found guilty of a doping offence in respect of the substances identified as *Methasterone*, as well as a metabolite of *Stonozonol*. *Methasterone* and *Stonozonol* are categorised under Class S1-Anabolic Agents on the World Anti-Doping Code 2017 Prohibited List International Standard.

Regulation 21.10.2 provides that the period of ineligibility for a violation of Regulation 21.2.1 shall be as follows:

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 Specific 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 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.

The offence *in casu* relates to a Non-Specified Substance and as such Regulation 21.10.2.1.1 is applicable. The question therefore is whether or not the Athlete has established that the violation was not intentional. Article 21.10.2.3 states that the term “intentional” is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete 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. The Athlete must prove that there was no intention on a balance of probabilities, and as such persuade the panel that “the occurrence of a specified circumstance is more probable than its non-occurrence”¹.

The Athlete has not overcome this burden of proof and was not able to produce evidence to prove that the anti-doping violation was unintentional.

In taking the pills from the stranger, he engaged in conduct that he must have known constituted significant risk in that it might result in an anti-doping rule violation. This is clear from his evidence where he states that the individual had informed him that the pills would be out of his system by Friday. He was therefore conscious of the risk and discussed the probabilities of it materialising. He himself stated that he had been “naïve” in this regard.

Whilst the Athlete has put forward a version of events that the pills received from the unknown individual were the source of the prohibited substance, he has not provided any actual evidence in this regard and has presented the panel with an unverified hypothesis². He has no information as to the identity of the individual, and did not retain any of the pills to be

¹ CAS 2009/A/1817 WADA & FIFA V. CYPRUS FOOTBALL ASSOCIATION (CFA), CARLOSMARQUES, LEONEL MEDEIROS, EDWARD ERANOSIAN, ANGELOS EFTHYMIIOU, YIANNIS SFAKIANAKIS, DMYTRO MYKHAILENKO, SAMIR BENGELOUN, BERNARDO VASCONCELOS AND CAS 2009/A/1844 FIFA V. CYPRUS FOOTBALL ASSOCIATION AND EDWARD ERANOSIAN

² WADA v DAMAR ROBINSON , CSA 2014/A/3820; MECA-MEDINA v FINA, CAS 99/A/234.

tested. However, even if the Panel accepts his version of events on the source of the prohibited substance, it in no way diminishes the extent of significant risk he exposed himself to.

As stated, the evidence of the Athlete does not meet the onus required, as the Athlete has engaged in conduct knowing that there was a significant risk that it might result in an anti-doping rule violation. He disregarded this risk.

Given the above, a possible reduction in the period of ineligibility (Regulation 21.10.5) is not applicable.

SANCTION

In reviewing the above, the Panel has determined that the sanction on the finding of Guilty is as follows:

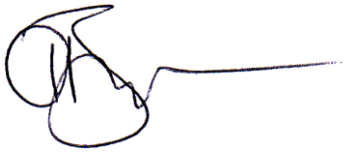
1. The Athlete is ineligible to participate in any organised sport, club or higher level or as envisaged in Regulation 21.10.2 of the Rules, for a period of four years;
2. The period of four years will be effective as of 16 October 2017 (being the date of notification of the adverse finding and implementation of provisional suspension), to terminate on the 15 October 2021;

The Panel wishes to note the following point:

- The Athlete is a young professional rugby player. He has played age group rugby throughout his school career, and thereafter played in the academy structures and at u20 provincial/franchise level. Despite his extensive career, he has not undergone comprehensive anti-doping training and has superficial knowledge of the topic of anti-doping. This despite being a professional within a high risk doping sport. It is incumbent upon schools, academies and franchises to ensure that comprehensive anti-doping training be included in the professional training of rugby players. This

matter is evidence of a failure of the relevant rugby institutions to undertake this duty in a professional manner.

This done and signed at Cape Town this 20 day of February 2018.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Mr Andrew Breetzke on behalf of Dr Jason Suter and Mr Norman Brook