

In the matter between :

South African Institute for Drug-Free Sport (SAIDS)

Complainant

and

Willem Parker

Respondent

DETERMINATION

1. **CHARGE :**

The Respondent was charged on 7 November 2017 with the contravention of the World Rugby Anti-Doping Rules ("the Rules")¹ in that the Respondent's "A" urine sample presented at an in-competition test on 30 September 2017 was submitted to the Doping Control Laboratory, Gent (a WADA accredited laboratory, "the Laboratory"), produced an analytical report from the Laboratory confirming the presence of the **3'OH-stanazolol-glucuronide**, a metabolite of Stanozolol (being sample number 4012807). Furthermore, the said Laboratory also analysed the Respondent's "A" sample number 4012807 due to the additional analysis i.e. GC/C/IRMS and that analytical report confirmed the presence of **Testosterone** and its metabolites in addition to the presence of **3'OH-stanazolol-glucuronide**, a metabolite of Stanozolol. Both the presence of Testosterone and its metabolites and **3'OH-stanazolol-glucuronide**, a metabolite of Stanozolol in the

¹ Which has been adopted by the South African Rugby Union ("SARU") for whom the Complainant has the responsibility for testing and results management in accordance with the WADA Prohibited List.

Respondent's "A" sample 4012807 constitute separate contraventions of the Rules, in terms of Regulation 21.2.1 thereof, "*the presence of a Prohibited Substance or its metabolites or markers in a player's sample.*" Both are categorised under Class S1 "anabolic agents" on the World Anti-Doping Code Prohibited List January 2017.

2. JURISDICTION :

- 2.1 In terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No. 14 of 1997, National Sports Federations must adopt and implement Anti-Doping Policies and Rules which conform with the World Anti-Doping Code ("the Code") and thereby with the requirements as set out in the SAIDS Anti-Doping Rules.
- 2.2 The Code is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the harmonization of Anti-Doping Policies, Rules and Regulations, across all sports and within all countries around the world.
- 2.3 The South African Government has made a formal commitment to the Code and formally recognized the role of WADA through the Copenhagen Declaration of Anti-Doping in Sport (2003).
- 2.4 SAIDS is the statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.
- 2.5 SAIDS has formally accepted the WADA Code and has adopted and implemented its Anti-Doping Rules in accordance with its responsibilities under the Code.
- 2.6 The International Rugby Board ("IRB"), in June 2004, adopted the Code and following an International Review of the Code by all signatories, with the new WADA Anti-Doping Code 2009 having been

agreed with an effective implementation date of 1 January 2009 and these Rules (designed under the Code) were adopted and implemented in conformity with World Rugby's continuing efforts to eradicate doping in the sport of rugby.

- 2.7 The Respondent is a 23-year old amateur club rugby player who falls under and is bound by the Rules.
- 2.8 The Anti-Doping Rules so adopted by SAIDS and by World Rugby are sports rules governing the conditions under which sport is played. Athletes, including the Respondent, accept these Rules as a condition of participation and are bound by them.
- 2.9 The SAIDS Anti-Doping Rules apply to SAIDS, each National Federation of South Africa and each participant in the activities of the National Federations by virtue of the participants' membership, accreditation or participation in their National Federations or their activities and events. The Complainant in this matter has jurisdiction over World Rugby and its members, including the Respondent, all of whom are subject to the Rules.

3. DISCIPLINARY COMMITTEE :

- 3.1 A Disciplinary Committee was convened by the Complainant in order to determine whether, in this case, a doping violation in terms of the Rules as embodied in the charge aforementioned, was committed by the Respondent.
- 3.2 The Committee consisted of :
- Monty Hacker, Chairperson and an admitted attorney of some fifty-seven years standing;

Dr Rob Collins, a medical practitioner of some twenty-six years standing and currently practising as a sports physician over the past twelve of those years, and;

Yusuf Carrim, a long-standing sports administrator.

Ms Wafeekah Begg was the representative of the Complainant charged with the duty of prosecuting the Respondent.

The Respondent appeared personally, represented by Mr Leon Potgieter, the Deputy Chairman of the QBR Rugby Club of which the Respondent is a member.

4. HEARING ON 20 FEBRUARY 2018 :

4.1 Ms Begg, on behalf of the Complainant, put the charges of contravening the Rules, as adopted by SARU, to the Respondent.

4.2 The Respondent represented by his Club Deputy Chairman, Leon Potgieter, pleaded not guilty to the charges, although he did not dispute the Gent Laboratory findings analysing his "A" sample, for the presence of the Prohibited Substances aforementioned, namely **3'OH-stanzolol-glucuronide** (a metabolite of Stanozolol) and Testosterone and its metabolites.

4.3 In support of the Respondent's not guilty plea to the charges he faced :

4.3.1 He explained that his disclosed medication supplements contained in paragraph 39 of his Doping Control Form, were disclosed as Allergex and Monte Air;

4.3.2 Despite his rugby career spanning a 20-year period, the highest level at which he participated in the sport was at QBR Rugby Club level;

4.3.3 He produced and tabled a form setting out, as proof of the only other medications or supplements which he had been ingesting over the past year, the empty or partially empty containers from which the substances which he had ingested were extracted. This list which he distributed to the Panel and Ms Begg reflected the following :

- Pro Nutrition, being the substance labelled BCAA which he ingested from February 2017 until the present time;
- From BSNSA being :
 - Hungry (pre-workout) from February 2017 until June 2017;
 - Rock Hard egg protein from February 2017 until June 2017;
 - Mass On (post-workout) from February 2017 until June 2017;
- Evox :
 - Egg protein from June 2017 until November 2017;
- DS (Drive Sort) :
 - Craze (pre-workout) from June 2017 until August 2017;
- Biogen :

- Testoforte from March 2017 until August 2017;
- Crazybulk :
 - Winsol natural alternative – during March 2017, for one month only;
 - He explained that he was given Winsol natural alternative by a gym friend and only used it for one month, because it made him feel ill and he immediately discontinued using a small amount of this “fat burner” and gave the rest away;

4.3.4 He explained he was unable to identify any one or more of the substances and/or medications and/or supplements disclosed either in his Doping Control Form or in 4.3.1 above as the cause of him having tested positive for the presence of **3’OH-stanazolol-glucuronide**, a metabolite of Stanazolol and Testosterone and its metabolites;

4.3.5 He furthermore testified both in chief and under cross-examination that he, at no time, whether as a school rugby player or subsequent thereto as a club rugby player, had received any Anti-Doping education, was unaware of the existence of a WADA International Standard Prohibited List, but acknowledged that he was aware that certain products might contain Prohibited Substances. He explained that it was his belief that as the products which he had ingested, as disclosed in his Doping Control Form and in paragraph 4.3.1 above, were all purchased over the counter, that they could not possibly contain Prohibited Substances;

- 4.3.6 He had elected not to have his "B" sample tested, as his limited means did not enable him to do so;
- 4.3.7 He, upon reading the information supplied with the containers he had purchased, as referred to in paragraph 4.3.1 above, had satisfied himself that none of these containers contained banned or Prohibited Substances which could possibly have resulted in him testing positive for the presence of the anabolic steroids being the metabolites of Stanazolol and Testosterone;
- 4.3.8 Some of the supplements referred to in 4.3.1 were ingested by him in capsule form, but he did not intentionally contravene the World Rugby Anti-Doping Rules Regulation 21.10.2.1 for which the period of ineligibility shall be 4 (four) years in respect of the substances which the Laboratory analysed in his "A" sample;
- 4.3.9 When it was put to the Respondent that the term, "*intentional*", as used in Regulations 21.10.2 and 21.10.3 is meant to identify players who cheat, he was asked by the Chairman whether he was aware that he was engaged in conduct which he 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 that he manifestly disregarded that risk, the Respondent responded that he had not perceived that the ingestion by him of the aforementioned medications and/or substances constituted a risk that he might commit an Anti-Doping Rule violation, as set out in World Rugby Anti-Doping Regulation 21.10.2.3;
- 4.3.10 In support of the Respondent's testimony, Mr Potgieter confirmed that the members of the Club had not, to his

knowledge, received any Anti-Doping education and that until the time of the Respondent's Anti-Doping test which resulted in the present charge he was facing, none of the players at the Club had been tested for Prohibited Substances and they were unaware of the likelihood that they might be tested. In fact, at the same time as the Respondent was tested, one other player at the Club was also tested and his sample proved to be negative.

5. In her closing argument, Ms Begg drew attention to the fact that the Respondent's conduct constituted negligence by reason of his failure to perceive that any one or more of the substances which he had ingested might have contained Prohibited Substances, causing him to test positive to an Anti-Doping Rule violation and that he had simply ignored the possibility of the risk that he faced. She also pointed out that the Respondent's inability to identify any particular substance which was the cause of him testing positive to the presence of the metabolites of Stanozolol and Testosterone, made it impossible for him to establish absence of an intention on his part, pursuant to Anti-Doping Rule Regulation 21.10.2.3, in which he bore the onus of establishing that the commission of his Anti-Doping Rule violation was not intentional. She furthermore argued that he ought to have known that there was a significant risk that his conduct in ingesting a variety of supplements and medications without establishing what products they contained, ignored the significant risk that his conduct might constitute or result in an Anti-Doping Rule violation that he manifestly disregarded that risk. She consequently argued that in the circumstances, the Respondent was guilty of an Anti-Doping Rule violation for which the period of ineligibility to be imposed on the Respondent is 4 (four) years, pursuant to World Rugby Anti-Doping Regulation 21.10.2.1.1, asserting that there was no room for a lesser sanction in the present circumstances.

6. Responding to Ms Begg's closing argument, the Respondent, and on his behalf, Mr Potgieter, acknowledged that the Respondent's negligence could not be disputed, adding that it was the result of ignorance.

7. The Tribunal adjourned to deliberate on the evidence before it at approximately 18h30 on 20 February 2018. After due deliberation, the Tribunal found, unanimously, that the Respondent was guilty of the Anti-Doping Rule violation/s with which he was charged, in terms of the provisions of Regulation 21.10.2.1.1 of the World Rugby Anti-Doping Rules and sanctioned him to a 4 (four) period of ineligibility.

8. **CONCLUSION :**

8.1 The Tribunal's conclusion, in finding the Respondent guilty in terms of World Rugby Anti-Doping Rule 21.10.2.1.1 and in sanctioning him to a 4 (four) year period of ineligibility caused the Tribunal, when handing over this decision to the Respondent (at approximately 18h45 on 20 February 2018), to express its unanimous concern for the unfortunate situation in which the Respondent found himself as a young amateur rugby player, lacking in any Anti-Doping Rule education at any SARU or World Rugby level, and yet being subjected to the same Rules that apply to provincial and professional rugby players, at all levels. The Tribunal further pointed out that whilst its hands were tied by these World Rugby Anti-Doping Rules under which the Respondent was charged because these Rules applied to all rugby players at all levels. In the circumstances, the Respondent's claim for a mitigation of his sanction had to be pursued before SARU and/or World Rugby as the only body or bodies who could possibly make an exception to the gravity of the sanction which has been imposed upon the Respondent and/or for the inapplicability of the Rules to the Respondent.

8.2 That said, it is declared that this 4 (four) year sanction imposed upon the Respondent shall however commence with retrospective effect

from 20 September 2017, pursuant to the provisions of Regulation 21.10.11.1, being the date of the Respondent's sample collection.

- 8.3 During this period of ineligibility, the Respondent is suspended from competing and/or participating in any authorised or organised sport by any amateur or professional league or at any international or national level event falling under SARU and/or WADA Rules.
- 8.4 Any awards which the Respondent might have received after providing his sample on 20 September 2017 until he was provisionally suspended in the SAIDS letter to him dated 7 November 2017, are hereby forfeited and must be returned.
- 8.5 Both the Complainant and the Respondent shall bear their own costs arising from and during this hearing.

DATED at JOHANNESBURG ON THIS THE 28TH DAY OF FEBRUARY 2018.



MONTY HACKER
Chairman

**With DR ROB COLLINS and YUSUF
CARRIM concurring.**