



FINA Doping Panel 03/19

2017-2021

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FINA Doping Panel

comprised of

Robert Fox	(SUI)	Chairman
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David Lech	(CAN)	Member

In the proceedings against

the swimmer **Ms Kira TOUSSAINT** (the "Athlete")

affiliated to the Royal Dutch Swimming Federation
("KNZB")

represented by: Mr. Michiel van Dijk, legal counsel.

I. THE PARTIES

1.1 The FEDERATION INTERNATIONALE de NATATION (FINA) is the International Federation governing disciplines related to swimming. FINA has established and is carrying out, *inter alia*, a doping control program, both for in-competition as well as out-of-competition testing.

1.2 The Royal Dutch Swimming Federation (KNZB) is a member of FINA.

KNZB is required to recognize and comply with FINA's anti-doping rules which are set out in the FINA Doping Control Rules ("FINA DC"). The FINA DC is directly applicable to and must be followed by *Competitors, Competitor Support Personnel*, coaches, physicians, team leaders, and club and representatives under the jurisdiction of KNZB.

1.3 The Athlete, is a member of the KNZB.

II. NATURE OF THE CASE

2.1 The Athlete was subjected to an in-competition test on 2 November 2018 during the FINA Swimming World Cup in Beijing, China. The analytical report indicated the presence of [REDACTED] [REDACTED] Tulobuterol (Class S3.Beta-2Agonists).

2.2 [REDACTED]
[REDACTED]
[REDACTED]

III. BACKGROUND OF THE ATHLETE

3.1 The Athlete is a Dutch Elite swimmer born on [REDACTED] who specialises in backstroke. She broke the Dutch record in a 100 meter backstroke (short course) of a time of 57.16s in the semi finals of the 2012 European Short Course Championships in Chartres, France. She finished 4th in the final of that competition.

She was a silver medallist in the 4x100m free style in 2018 European Championships in Glasgow, Scotland and silver medallist 4x100m mixed free style in the 2018 European Championships in Glasgow, Scotland. She won gold medal in the 2017 Copenhagen, Denmark European Championships 4x50m

mixed medley and silver medal in the 2017 European Championships Copenhagen, Denmark in the 100m backstroke.

IV. PROCEEDINGS

- 4.1 By letter dated 6 December 2018, the Athlete was informed of the adverse analytical finding. She was set a deadline of 10 days to request whether she wished the analysis of the B-Sample.
- 4.2 On 7 December 2018, the Athlete responded that she did not use any medication relevant to the adverse analytical finding and therefore requested the analysis of the B-Sample.
- 4.3 By letter dated 10 December 2018, the Executive Director of FINA informed the Athlete that the B-Sample opening would be done on Monday 17 December 2018. By letter dated 19 December 2018, the Executive Director of FINA confirmed the result of the A-Sample and formally charged the Athlete with a violation of the FINA Rules DC 2.1.1 and DC 2.1.2. She was given the opportunity to sign and return a voluntary provisional suspension, to be returned to FINA no later than 3 January 2019.
- 4.4 By letter dated 2 January 2019, Mr Michiel van Dijk informed FINA of his mandate to represent the Athlete and informed FINA that the Athlete wished to discuss the terms and conditions of the provisional suspension proposed since she withdrew from swimming as of 7 December 2018. The Athlete accepted a voluntary provisional suspension in force as of 7 December 2018 dated and signed on 14 January 2019.
- 4.5 By letter dated 18 January 2019, the Chairman of the FINA Doping Panel wrote to the attorney of the Athlete requesting whether the Athlete wished to have a hearing or in lieu of such to send a formal

defence in writing. A deadline to respond was set to 28 January 2019.

4.6 By letter of the same day, the attorney of the Athlete requested a hearing. This hearing was set for 13 March 2019 by the FINA Doping Panel and the Athlete was informed of this through her attorney by letter dated 30 January 2019.

4.7 A statement of defence and a detailed Brief was filed on behalf of the Athlete on 20 February 2019. Among other arguments in her defence, the Athlete raised the issue that one of the medicines she used contained the active substance Bupropion. The chemical structure of Bupropion is similar to that of Tulobuterol. Hence, the Athlete argued that the positive finding for Tulobuterol is explained by her use of Bupropion, or that such could not be excluded. This explanation would point to the existence of a claimed false positive result.

4.8 By letter dated 22 February 2019, on receipt of the Athlete's defence, a deadline to 5 March 2019 was provided to FINA to file any evidence or argument in light of the material submitted by the Athlete. By subsequent letter dated 27 February 2019, the FINA Doping Panel requested of FINA that the laboratory in Beijing confirm the method it uses to detect the prohibited substance Tulobuterol and more importantly its limit of detection. It also requested FINA to provide information from the laboratory in Beijing regarding the method of validation of the initial testing procedure for Tulobuterol.

4.9 FINA filed comments made by the FINA Doping Control Review Board (DCRB) relevant to the statement of defence of the Athlete within the set deadline.

4.10 By letter dated 6 March 2019, the attorney of the Athlete submitted additional information relevant to this case. It referred to an expert report establishing that one of the medicines used by the Athlete was *Wellbutrin* and that this medicine contained the substance Bupropion as an active ingredient. The expert consulted by the Athlete shared his findings with WADA and submitted his report to WADA who initiated an investigation. By correspondence dated 11 March 2019, FINA informed the FINA Doping Panel that the laboratory in Beijing had notified FINA that the reported adverse analytical finding for Tulobuterol in this matter was incorrect and the result was updated in ADAMS.

4.11 WADA was subsequently contacted by FINA and confirmed that the new laboratory reports from the Beijing laboratory were correct. As a result, FINA withdrew its case against the Athlete from the FINA Doping Panel as there was no proof of an anti-doping rule violation.

[REDACTED]

[REDACTED] By email dated 12 March 2019, the Chairman of FINA Doping Panel cancelled the hearing which was to have been held the next day. On the same day, the attorney for the Athlete submitted an overview of costs spent in this matter. In response, FINA wrote to the Chairman of the FINA Doping Panel pointing out FINA DC12.5 which states that except for costs and attorneys' fees which may be awarded by CAS, FINA and its representatives "*shall not be liable to an Athlete or Member Federation for any cost, damage or other loss resulting from actions taken by FINA under this anti-doping rules.*"

V. JURISDICTION

5.1 The jurisdiction of the FINA Doping Panel arises out of the following provisions of the FINA Rules: C 22.8, C 22.9 and DC 8.1.

- 5.2 The applicable Rules in this case are the FINA DC in effect since 1st January 2015 (accepted in November 2014 in Doha).

VI. LEGAL DISCUSSION

- 6.1 FINA, by letter dated 11 March 2019, officially withdrew its case against the Athlete from before the FINA Doping Panel as there was no proof of an anti-doping rule violation.

Hence, in light of the applicable rules, FINA Doping Panel had no alternative but to end the process and cancel the scheduled hearing as no anti-doping rule violation was asserted by FINA.

- 6.2 In connection with the request for an award on costs, FINA DC12.5 is clear that FINA and its representatives are not liable to an Athlete for any cost, damage or other losses resulting from actions taken by FINA under the anti-doping rules except for costs and attorney fees which may be awarded by CAS. Hence, FINA Doping Panel has no jurisdiction to award costs, damages or any fees to the Athlete, as requested.

VII. CONCLUSION

- 7.1 Ms Kira TOUSSAINT (NED) is found to have committed no anti-doping rule violation under FINA DC Rule 2.1.
- 7.2 The parties shall bear all their own costs.
- 7.3 Any appeal against this decision may be referred to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland not later than twenty one (21) days after receipt of this judgement (FINA Rule C 12.11.4 and DC 13.7.1).

Robert Fox
Chairman

Peter Kerr
Member

David Lech
Member

Signed on behalf of all three Panel Members



Robert Fox

