

**IN THE JAMAICA ANTI-DOPING APPEALS TRIBUNAL
AN APPEAL FROM THE DECISION OF THE JAMAICA
ANTI-DOPING DISCIPLINARY PANEL**

**BETWEEN JAMAICA ANTI-DOPING COMMISSION APPELLANT
A N D YOHAN BLAKE, MARVIN ANDERSON,
 ALLODIN FOTHERGILL, LANSFORD SPENCE RESPONDENTS**

**BEFORE: MR JUSTICE R.G. LANGRIN (Rtd) - CHAIRMAN
 MR JUSTICE WESLEY JAMES (Rtd) - VICE CHAIRMAN
 DR. MARK MINOTT - MEMBER
 MS LISA PALMER - MEMBER
 MR ALI McNAB - MEMBER**

**APPEARANCES: MESSRS LACKSTON ROBINSON, CURTIS COCHRANE,
 MRS ALVITA KNIGHT for Appellant
 DR LLOYD BARNETT, LINCOLN EATMON, WILLIAM
 PANTON and MS MELROSE REID for Respondents**

DATES OF HEARING – AUGUST 31st, SEPTEMBER 2nd, 14th, 2009.

I This is an Appeal by the Jamaica Anti-Doping Commission from a decision of the Disciplinary Panel dated August 9, 2009, which found unanimously that it was not persuaded to the standard of proof, bearing in mind the seriousness of the allegations made, that the prohibited substance found in the athletes' A samples has that sufficient degree of nexus in terms of chemical or biological structure with tuaminoheptane

II. Facts

 "At the National Athletic Championship held 26 – 28th, June, 2009 in Jamaica at the National Stadium the Respondents were selected to engage in the in competition doping control process by the Jamaica Anti-Doping Commission (JADCO).

The doping control process for all Respondents was as follows:

1. Between the 27-28 June, 2009 samples were collected from the Respondents at the National Stadium.

2. On 29th, June, 2009, samples were sent to and on 30th, June, 2009 were received by the World Anti-Doping Agency accredited laboratory Laboratoire de controle du dopage INS-Institut Aramand-Frappier (the Lab).
3. On 20th, July, 2009 the Lab sent certificates of analysis (YB5, LS5, MA5, AF5) JADCO for samples 2381723, 2381084, 2381078, 2380982, reporting that each A-Sample had an adverse analytical finding. The certificate of Analyses stated the presence of 4-methyl-2-hexanamine.
4. By letter dated 24th, July, 2009 the athletes who represented the sample numbers that returned adverse analytical findings were notified in writing by JADCO.
5. All of the Respondents save Lanseford Spence sent letters authorizing persons to collect their notification letters as well as the Lab reports on the A-Sample.
6. The Respondents were summoned by the JADCO Disciplinary Panel and advised of the date of the hearing and on 7th, August 2009 the hearing commenced.”

III. At the commencement of the Hearing of the Appeal on September 2, 2009 Dr Barnett handed a memorandum, agreed on by both parties, to the panel. This joint memorandum states:

“There are two (2) substantive issues arising in this Appeal. First, is the decision of the Disciplinary Panel correct in that the evidence adduced did not satisfy the required standard of comfortable satisfaction, bearing in mind the seriousness of the allegation, that the Respondents committed an Anti-Doping Rule violation as asserted by the Appellant? Second, if any such Anti- Doping Rule violation has been committed, should the period of ineligibility prescribed by the relevant legal provisions be eliminated by reason of the establishment of specific or exceptional circumstances?”

The Respondents accept the Laboratoire De Controle Du Dopage INRS-Institut Armand-Frappier reported adverse analytical findings, which state that the substance 4-methyl-2-hexanamine was found in their “A” samples. This substance is not specified on the WADA Prohibited List for 2009. The Respondents are aware that WADA takes the view that 4-methyl-2-hexanamine has a similar chemical structure or similar biological effects to tuaminoheptane, which is present on the Prohibited List.

Notwithstanding WADA's view the Respondents submit that there are exceptional/special circumstances within the meaning of WADA's Rules 10.4 – 10.5 and JADCO's Rules 10.4 – 10.5 and that accordingly, no period of ineligibility should, in any event, be imposed.

The reasons advanced in support of this submission are that there was a paucity of readily available information with respect to the subject substance and the absence of any official publications with respect to 4-methyl-2-hexanamine prior to the alleged violations. On examination of the evidence with respect to the checks made by the athletes and their advisers, the responses given to the enquiries by pharmacists and the information available on the Websites we are satisfied that the Respondents did not act negligently. We note in particular that the athletes were misled by the manufacturer's warranty published on their website to the effect that Muscle Speed is WADA compliant. In addition there was evidence from an Executive of The Racers Tract Club of the safeguards, including consultations with a medical team, instituted by that organization so as to protect its members, including three of the Respondents from the dangers of taking a prohibited substance. There was also clear evidence that the athletes did not consider that the Muscle Speed tablets which they identified as the source as the 4-methyl-2-hexanamine substance found in their samples would enhance their performance and in fact they did not enhance their performance. "

Signed: L. BARNETT

Signed: L. ROBINSON

IV. We accept the concession contained in the joint memorandum which in effect has saved a great deal of time. However, we make the following observations:-

- (a) Strict Liability – is used exclusively to evaluate the evidence in a case to make a finding that a prohibited substance is contained in an athletes specimen.
- (b) The list of Prohibited Substances is derived after a series of consultations with persons including Scientists, Athletes International Federations, National Federations, Governments, National Anti-Doping Bodies. Each category ends with a statement, "and similar chemical structure or similar biological effects."

V. We find that the Respondents imbibed Muscle Speed which contained the substance 4-methyl-2-hexanamine, which WADA considers to have a similar chemical structure or similar biological effect to tuaminoheptane, which is on the Prohibited List. Therefore, applying the principle of Strict Liability, the Respondents have committed an Anti-Doping Violation.

VI. We now turn to the question of what sanctions should be applied:

Article 10.4 of JADCO Anti-Doping Rules states:

“10.4 Elimination or Reduction of the Period of Ineligibility for Specified Substances under Specific Circumstances

Where an Athlete or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Athlete's sport performance, or mask the use of a performance enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years' Ineligibility.

To justify any elimination or reduction, the Athlete or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Athlete or other Person's degree of fault shall be the criteria considered in assessing any reduction of the period of Ineligibility.”

VII. In arriving at the appropriate sanction we have taken the special circumstances contained in the agreed memorandum into consideration. Additionally, we have examined the evidence on the record and find the following mitigating circumstances.

- (1) The drug was not expressly stated on the WADA Prohibited List.
- (2) The athletes consulted their management team to avoid taking any banned substance. However this advice was flawed.

(3) This was a first violation.

VIII. The Appeal is therefore allowed:

IX. Accordingly, we conclude that each of the four Respondents committed an Anti-Doping Violation contrary to Article 2.1 of the JADCO Anti-Doping Rules.

Each Respondent is reprimanded and given a three months period of ineligibility from future events.

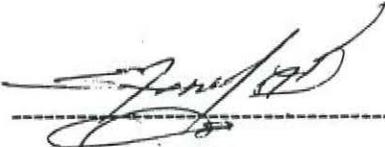


JUSTICE R.G. LANGRIN (Rtd)
Chairman

DR MARK MINOTT



JUSTICE WESLEY JAMES (Rtd)



MR. ALI McNAB



MISS LISA PALMER