

WORLD RUGBY

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATION BY KESWICK WRIGHT (CAYMAN ISLANDS) CONTRARY TO REGULATION 21

BEFORE AN INDEPENDENT JUDICIAL OFFICER APPOINTED PURSUANT TO REGULATION 21.7.10.2

Judicial Officer:

Hon. Graeme Mew (Canada)

Representative of World Rugby:

David Casserly (Counsel)

REASONS FOR DECISION

(Determination of an alleged anti-doping rule violation without a Hearing)

[1] Keswick Wright (the “Player”) was a member of the Cayman National Men’s Sevens Team and participated in the 2019 Rugby Americas North (RAN) Sevens Championships / Olympic Qualifier Tournament (“the Tournament”).

[2] On 7 July 2019 the Player provided an In Competition urine sample pursuant to the Doping Control rules applicable to the Tournament.

[3] The Player subsequently returned an Adverse Analytical Finding for Carboxy-THC (Tetrahydrocannabinol) greater than the Decision Limit of 180 ng/mL as reported by the Sports Medicine Research and Testing Laboratory (SMRTL) in Salt Lake City, Utah, USA, a World Anti-Doping Agency (“WADA”) accredited laboratory

[4] Carboxy-THC (Tetrahydrocannabinol) is a Specified Substance classified in category S8 Cannabinoids on WADA’s 2019 List of Prohibited Substances (which appears at Schedule 2 of World Rugby Regulation 21). The Use of this substance is prohibited In Competition.

Procedural History

[5] A Preliminary Review was undertaken in accordance with Regulation 21.7.2, resulting in the conclusion that without any valid Therapeutic Use Exemption for use of this substance by the Player an Anti-Doping Rule Violation may have been committed.

[6] On 7 August 2019, the Anti-Doping Science and Results Manager of World Rugby wrote to the Player via the Cayman Rugby Union (“the Union”), advising him of the Adverse Analytical Finding, that he was now Provisionally Suspended from rugby and that he had the opportunity to request his B Sample to be opened and analysed.

[7] The time within which the Player was entitled to request testing of his B sample elapsed and on 11 September 2019 he was informed by World Rugby that he was deemed to have waived that right.

[8] In the same letter, World Ruby informed the Player he was entitled to have his case heard by a Judicial Committee (JC), to make submissions to the JC, and participate in the hearing.

[9] E-mail messages were exchanged between the Player and the Anti-Doping Science and Results Manager of World Rugby in late September 2019 in which the Player asked for, and World Rugby provided, information about the hearing process and possible sanctions.

[10] The Player did not, however, request a hearing. World Rugby therefore requested a resolution of the Player's case without a hearing, as provided for in Regulation 21.7.10.2.

[11] I was appointed by the chairman of the Judicial Panel of World Rugby, Christopher Quinlan QC, as a sole independent Judicial Officer to consider this matter.

[12] On 9 December 2019, I gave the following directions:

- a. The Player is deemed by operation of Regulation 21 to have waived his right to a hearing in respect of the anti-doping rule violation that he is alleged to have committed.
- b. The Player has not exercised his right to make submissions in writing in relation to the sanctions to be applied.
- c. I believe that I am in possession of the complete evidentiary record relied upon by World Rugby (if I am wrong about that please advise).
- d. It would be of assistance to me to have any written submission World Rugby wishes to make concerning this case by Monday 23 December 2019.
- e. A copy of this direction is to be provided to the Union (for onward transmission to the Player) and a copy of any submission that World Rugby delivers is also to be provided to the Player via his Union.
- f. Following receipt of World Rugby's submission, I will proceed to render a written decision in accordance with Regulation 21.8.2.
- g. World Rugby or the Player may request a variation of these directions.

[13] Written submissions were received from counsel for World Rugby on 23 December 2019. Although the Player either chose not, or failed, to exercise his right to participate in this stage of the process, the record includes correspondence between the Player and World Rugby, which I have taken into account in deciding this case.

Anti-Doping Rule Violation Established

[14] Regulation 21.2.1.1 provides that the Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample constitutes an Anti-Doping Rule Violation.

[15] By virtue of Regulation 21.7.10.2, the Player, having failed to dispute the assertion that he committed an anti-doping rule violation within fourteen days of the notice sent by World Rugby, is deemed to have admitted the violation and to have waived his right to an oral hearing.

Additional Facts and Discussion

[16] The Player having not, within seven days of the date that he was notified that he was deemed to have admitted the anti-doping rule violation, made any submissions in writing in relation to the sanctions to be applied, my consideration of his case has proceeded on the basis of the written record provided by World Rugby and the submissions of counsel for World Rugby.

[17] The record did, however, include the following account, provided by the Player in an email which he sent to World Rugby on 2 October 2019:

Apologies for the delay in response, regarding the sample, i stopped playing for a long time because of severe chronic pains. I used the cannabis for pain relief which i didnt disclose to crfu. It was an selfish act in all honesty and im truly sorry for the embarrassment to my club and sport.

[18] The Player has, accordingly, admitted to using cannabis out of competition.

[19] The mean concentration measured by the laboratory was 210 ng/mL, with

[20] As already noted, the use of Carboxy-THC (Tetrahydrocannabinol) is prohibited in-competition only.

[21] As a Specified Substance within the meaning of Regulation 21.4.2.2., the presumptive sanction for an ADRV involving its Use is two years' Ineligibility: Regulation 21.10.2.2.

[22] Regulation 21.10.5.1.1 provides, in relation to an ADRV involving the Use or Presence of a Specified Substance:

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

[23] The Comment on the definition of "No Significant Fault or Negligence" in Appendix 1 of the *World Anti-Doping Code* provides that:

For Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance.

[24] World Rugby's position is that based on the Player's explanation and the concentration found in his sample, it does not contest that the Prohibited Substance was used out-of-competition for non-sporting reasons. Nor does World Rugby assert that the Player intentionally committed an ADRV.

[25] The Player has the onus of establishing No Significant Fault or Negligence. Although he was clearly advised of his right to adduce evidence and make submissions on his own behalf, he did not do so. Fortunately for the Player, World Rugby was prepared to accept on its face value what the Player represented in his 2 October 2019 email.

[26] World Rugby submits that the Player should be sanctioned with a period of ineligibility of between 6-9 months pursuant to Regulation 21.10.5.1.1, with credit for time already served since the commencement of the Provisional Suspension on 7 August 2019.

[27] While the recreational or other non-sporting use of cannabis in would typically attach a lesser sanction that that proposed by World Rugby, its position is reasonable given the Player's lack of engagement with the process and the absence of anything more than the barest explanation from him of the circumstances which gave rise to the ADR.

Findings and Conclusions

[28] The Player committed an anti-doping rule violation as a result of the presence in the sample which he provided of Carboxy-THC (Tetrahydrocannabinol), a Specified Substance. The record supports a finding that the Presence or Use of this substance was unrelated to sport performance.

[29] I have determined that a sanction of six months' Ineligibility is, in all of the circumstances, appropriate.

[30] Those circumstances include the Player's lack of engagement with the process. He gave me nothing upon which I could have based a lesser sanction.

[31] The Player's period of Ineligibility will end at midnight on 6 February 2020.

[32] The Player's attention is drawn to Regulation 21.10.12 which provides, inter alia, that:

21.10.12.1 Prohibition Against Participation During Ineligibility

No Player or other Person who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorized anti-doping education or rehabilitation programmes) authorised or organised by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union, or in Competitions authorised or organised by any professional league or any international-

or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency".

...

A Player or other Person subject to a period of Ineligibility shall remain subject to Testing.

21.10.12.2 Return to Training

As an exception to Regulation 21.10.12.1, a Player may return to train with a team or to use the facilities of a Union, Club, Rugby Body or other member organisation of World Rugby, an Association or a Union during the shorter of: (1) the last two months of the Player's period of Ineligibility, or (2) the last one-quarter of the period of Ineligibility imposed".

[33] The full text of Regulation 21.10.12 and the related commentaries should be consulted. In the case of the Player, as he would have been able to return to training 47 days (i.e. one quarter of six months) prior to the end of his suspension, he may return to training immediately.

Right of Appeal

[34] This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.13.8) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.13.2). The regulation sets out the timelines within which any referral or appeal must be commenced.

Costs

[35] Should World Rugby wish us to exercise our discretion in relation to costs under Regulation 21.8.2.10 or 21.8.2.11, written submissions should be provided to the JC via Mr. Ho within 10 business days of the receipt by World Rugby of this decision. The Player will then have 10 business days to respond.

7 January 2020



Graeme Mew
(Judicial Officer)