

WORLD RUGBY

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF AN ALLEGED ANTI-DOPING RULE VIOLATION BY LEONID KALININ (RUSSIA) CONTRARY TO REGULATION 21

BEFORE AN INDEPENDENT JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.8.2

Judicial Committee:

Nicholas Stewart QC (England - Chairman)
Dr Stephen Targett (New Zealand)
Joseph de Pencier (Canada)

Representatives and Participants:

Ben Rutherford (Counsel for World Rugby)

Leonid Kalinin (the Player)

David Ho (Anti-Doping Science and Results Manager, World Rugby)

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Decision made on written evidence and submissions only (by agreement of the parties)

DECISION AND REASONS

Overview

[1] Mr Leonid Kalinin (the 'Player') is a member and player of the Rugby Union of Russia Federation ("RUR") participating in competitions and other activities organised, convened, authorised or recognized by the RUR. He was a member of the Russian 15-a-side National Squad which competed in the World Rugby Nations Cup 2019. He was bound to comply at all times with Regulation 21 of the World Rugby Regulations ('the Regulations').

[2] World Rugby alleges that the Player committed an anti-doping rule violation ('ADRV') as a result of an adverse analytical finding ('AAF') for the presence of

dehydrochloromethyl-testosterone ('DHCMT') metabolite 4 α -chloro-17 β -hydroxymethyl-17 α -methyl-18-nor-5 α -androst-13-en-3 α -ol ('the DHCMT Metabolite').

[3] The DHCMT Metabolite is not a primary metabolite but is a long-term excreted metabolite of either:

- (i) DHCMT itself, which is a Prohibited Substance in category S1.1 Androgenic Anabolic Steroids on the World Anti-Doping Agency 2019 List of Prohibited Substances ('the Prohibited List') and in Schedule 2 to World Rugby's Regulation 21; or
- (ii) another substance (such as methylclostebol) with a similar chemical structure or similar biological effect(s) to DHCMT (a 'Related Substance'), which by the express terms of that category S1.1 would also be a Prohibited Substance.

DHCMT is not a Specified Substance under Regulation 21.4.2.2 (for which the sanction for an ADRV would generally be lower). The same applies to any Related Substance.

[4] Under Regulation 21.2.1.3, excepting those substances for which a quantitative threshold is specifically identified in the Prohibited List, the presence of any quantity of a Prohibited Substance or its Metabolites or Markers in a Player's Sample shall constitute an ADRV. DHCMT is a non-threshold substance, not falling within that exception, meaning that detection of any amount will constitute an AAF, and it is prohibited at all times. Again, the same applies to any Related Substance.

[5] The DHCMT Metabolite was detected in a sample collected from the Player on 18 December 2019 by an Out of Competition Doping Control in Sochi, Russia, as part of World Rugby's Out of Competition Testing Programme.

[6] A preliminary review of the case was performed by Professor David Gerrard MB ChB FACSEP FFSEM in accordance with Regulation 21.7.2. The Player was notified by World Rugby in writing through the RUR on 10 February 2020 that his A sample had returned an AAF and that he may have committed an ADRV. The Player was provisionally suspended under Regulation 21.7.9.1, pending the outcome of these proceedings, with effect from 10 February 2020.

[7] On 9 March 2020 the Player, by email from his then acting counsel Mr Artem Patsev, a Russian lawyer in Moscow, had informed the JC that he admitted the ADRV in breach of Regulation 21.2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Players' Sample).

[8] World Rugby arranged for the B sample to be tested at no cost to the Player. That test was done on 18 March 2020 at the WADA accredited laboratory Institute of Doping Analysis and Sports Biochemistry in Dresden, Germany. World Rugby notified the Player by email dated 19 March 2020 that the result of that test confirmed the presence of the DHCMT Metabolite which had also been present in his A sample.

[9] The Player has no previous finding of an AAF or ADRV.

[10] Pursuant to Regulation 21.8.2.1, on 11 March 2020 the Judicial Panel Chairman, Christopher Quinlan QC, appointed a Judicial Committee ('JC') consisting of Nicholas Stewart QC (chairman), Mr Gregor Nicholson and Dr Stephen Targett to determine the Player's case. On 3 April 2020 Mr Nicholson stated that he was unwilling to continue to hear the case and on 21 April 2020 the Judicial Panel Chairman appointed Mr Joseph de Pencier as a replacement under World Rugby Regulation 21.8.2.3.

[11] By email dated 15 May 2020 Mr Patsev notified the JC and World Rugby that he no longer represented the Player and stated that in a telephone call that day between the Player and Mr Patsev:

"Mr Kalinin was absolutely clear that he did not want to continue his defense before the World Rugby JC. He also said that he does not want to take part in the hearing scheduled for 3 July 2020 and would be ready to accept the sanction"

[12] The JC had issued written directions on 1 May 2020 which included directions for a hearing by video conference and after consultation with the parties had fixed that hearing for 3 July 2020.

[13] In the light of Mr Patsev's 15 May 2020 email, the JC asked the Player by email sent direct to him on 21 May 2020 to inform the JC by email on or before 29 May 2020 if he confirmed the three points:

1. He did not want to continue his defence before the JC.
2. He did not want to take part in the hearing scheduled for 3 July 2020.
3. He would be ready to accept "the sanction" (not specified in Mr Patsev's 15 May 2020 email)

and, if he did so confirm, whether he wished to have the further opportunity of making a written submission to the JC.

[14] That email also stated that if confirmation of those three points was received from the Player, the JC proposed to cancel the 3 July 2020 hearing and proceed without a hearing. If World Rugby had any objection to that proposal, it was directed to inform the JC by email also on or before 29 May 2020.

[15] By email dated 21 May 2020 the Player did confirm his agreement with all three points and that he did not intend to make a written statement. World Rugby made no objection to cancellation of the 3 July 2020. By email dated 2 June 2020 the JC notified the parties the hearing fixed for 3 July 2020 was cancelled and the JC would proceed to a written decision entirely on the written material already supplied.

World Rugby's position

[16] World Rugby counsel Mr Ben Rutherford submitted written Sanction Submissions of World Rugby dated 19 May 2020.

[17] World Rugby's position was that as the ADRV did not involve a Specified Substance, by Regulation 21.10.2.1 the Player must be sanctioned by a period of ineligibility of four years unless he could establish (on the balance of probability) that the ADRV was not intentional. WR submitted that there was no basis for elimination or reduction of the four years ineligibility on the ground of No Fault or Negligence (Regulation 21.10.4) or No Significant Fault or Negligence (Regulation 21.10.5).

The Player's position

[18] The 9 March 2020 email from Mr Patsev had informed the JC that the Player admitted the ADRV in breach of Regulation 21.2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample). He has never withdrawn that admission. Although that email indicated that the Player intended to argue for a reduced sanction, it is clear to the JC from the exchanges of emails mentioned above that the Player is no longer asking for a reduced sanction. He has submitted no arguments or evidence in support of any reduction from the four years' period of ineligibility sought by World Rugby.

The Judicial Committee's findings and conclusion

[19] The Player having admitted the ADRV, and DHCMT (or any Related Substance) not being a Specified Substance, under Regulation 21.10.2.1 the sanction in this case must be a period of ineligibility of four years:

- subject to potential reduction or suspension pursuant to Regulations 21.10.4 (Elimination of the Period of Ineligibility where there is No Fault or Negligence), or 21.10.6 (Elimination, Reduction, or Suspension of Period of Ineligibility or other Consequences for Reasons Other than Fault); or
- unless the Player can establish that the ADRV was not intentional, in which case under Regulation 21.10.2.2 the period of ineligibility shall be two years.

[20] However, the Player has made no submission and has provided no evidence to support any of the grounds mentioned in paragraph [19] above for reducing or suspending the period of ineligibility of four years. He has therefore not discharged the burden of proof on the Player to establish No Fault or Negligence under Regulation 21.10.4 or that the ADRV was not intentional so as to bring Regulation 21.10.2.2 into operation and reduce the period of ineligibility to two years. There is also no evidence at all to support any of the grounds under Regulation 21.10.6, which involve either Substantial Assistance in Discovering or Establishing Anti-Doping Rule Violations or Admissions in circumstances which do not apply here.

[21] Accordingly, the Player has failed to prove that his ADRV was not intentional or that there is any other basis for elimination or reduction of the four year sanction applied by Regulation 21.10.2.1

[22] The Player committed an anti-doping rule violation as a result of the presence in his tested sample of the DHCMT Metabolite, being a metabolite of the Prohibited

Substance dehydrochloromethyl-testosterone or of another substance with a similar chemical structure or similar biological effect(s).

[23] World Rugby's 10 February 2020 letter mentioned in paragraph [6] above stated: "In accordance with Regulation 21.7.9 you are now provisionally suspended". There is no suggestion that he has not fully respected the terms of that suspension. In accordance with Regulation 21.10.11.3 credit will therefore be given for the period of provisional suspension since 10 February 2020

[24] As a result, the applicable sanction is a period of ineligibility of four years, starting on 10 February 2020 and ending at midnight on 9 February 2024.

[25] The Player's attention is drawn to Regulation 21.10.12 (Status During Ineligibility) which provides (so far as relevant here):

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".

[26] The full text of Regulation 21.10.12 and the related commentaries should be consulted. In the case of the Player, he would be able to return to training at the start of month 47 of the four-year period of Ineligibility, so on 10 December 2023.

Right of Appeal

[27] This unanimous 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 Regulations set out the timelines within which any referral or appeal must be commenced.

Costs

[28] Should World Rugby wish the Judicial Committee to exercise our discretion in relation to costs under Regulation 21.8.2.10 or 21.8.2.11, its 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.

A handwritten signature in black ink, appearing to read 'Nicholas Stewart', written in a cursive style.

Nicholas Stewart QC
Chairman

10 June 2020