

Issued Decision

UK Anti-Doping and Nathan Togun

Disciplinary Proceedings under the Anti-Doping Rules of the British Bobsleigh & Skeleton Association

This is an Issued Decision made by UK Anti-Doping Limited ('UKAD') pursuant to the British Bobsleigh & Skeleton Association ('BBSA') Anti-Doping Rules (the 'ADR'). It concerns a violation of the ADR committed by Mr Nathan Togun and records the applicable Consequences.

Capitalised terms used in this Decision shall have the meaning given to them in the ADR unless otherwise indicated.

Background and Facts

1. The BBSA is the national governing body for the sports of bobsleigh and skeleton in the United Kingdom. UKAD is the National Anti-Doping Organisation for the United Kingdom. The BBSA has adopted the UK Anti-Doping Rules as its own Anti-Doping Rules (the 'ADR').
2. Mr Togun is a 23-year-old Athlete who participates in the sport of bobsleigh. At all material times in this matter Mr Togun was subject to the jurisdiction of the BBSA and bound to comply with the ADR. Pursuant to the ADR, UKAD has results management responsibility in respect of all Athletes subject to the jurisdiction of the BBSA.
3. On 6 October 2018, UKAD collected an Out-of-Competition urine Sample from Mr Togun at the Sports Training Village, University of Bath, Bath BA2 7AY. The Sample was separated into two bottles which were given the reference numbers A1142686 ('the A Sample') and B1142686 ('the B Sample').
4. Both Samples were transported to the World Anti-Doping Agency ('WADA') accredited laboratory, the Drug Control Centre, King's College London ('the Laboratory'). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. The analysis returned Adverse Analytical Findings for three metabolites of stanozolol, namely 4 β -hydroxystanozolol, stanozolol-N-glucuronide and epistanozolol-N-glucuronide ('the AAFs').
5. Stanozolol (including any metabolites) is classified as an Exogenous Anabolic Androgenic Steroid under section S1.1(a) of the WADA 2018 Prohibited List. It is a non-Specified Substance and is prohibited at all times.
6. Mr Togun did not have a Therapeutic Use Exemption in respect of stanozolol.

7. On 13 November 2018 UKAD issued Mr Togun with a Notice of Charge and a Provisional Suspension. The Notice of Charge alleged the commission of an Anti-Doping Rule Violation ('ADRV') pursuant to ADR Article 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample).

Admission and Consequences

8. On 21 February 2019 Mr Togun formally admitted committing an ADRV pursuant to ADR Article 2.1 in his response to the Notice of Charge.
9. ADR Article 2.1 states as follows:

The following constitute Anti-Doping Rule Violations:

- 2.1 ***Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample, unless the Athlete establishes that the presence is consistent with a TUE granted in accordance with Article 4***

10. ADR Article 10.2 states as follows:

- 10.2 ***Imposition of a Period of Ineligibility for the Presence, Use or Attempted Use, or Possession of a Prohibited Substance and/or a Prohibited Method***

The period of Ineligibility for an Anti-Doping Rule Violation under Article 2.1, 2.2 or 2.6 that is the Athlete's or other Person's first anti-doping offence shall be as follows, subject to potential reduction or suspension pursuant to Article 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

- (a) *The Anti-Doping Rule Violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the Anti-Doping Rule Violation was not intentional.*
- (b) *[...]*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

11. With regards to the meaning of 'intentional', ADR Article 10.2.3. states as follows:

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she 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 manifestly disregarded that risk...

12. ADR Article 10.2.1(a) therefore provides that in relation to this matter (being a matter that concerns a non-Specified Substance) the period of Ineligibility to be imposed shall be four years, unless Mr Togun can establish, on the balance of probability, that the commission of the ADRV was not intentional.
13. Mr Togun provided an explanation for his ADRV on 26 March 2019 by indicating that in or around September 2018 he took medication that was provided to him by a friend for a back injury he had sustained. This medication consisted of Naproxen, Diclofenac and Winstrol, a brand name for stanozolol. Mr Togun asserts that he took the medication for two weeks due to ill-health, solely for the purpose of treating his swelling and inflammation. Mr Togun states that he was not aware that stanozolol is a banned substance and that in hindsight had he known it was, he would have consulted his team or someone within the sport of bobsleigh to ask for advice regarding the medication.
14. On the basis of the evidence provided by Mr Togun, UKAD did not accept that account. In assessing Mr Togun's explanation, UKAD took into account in particular that there are no preparations containing stanozolol that are licensed for use as a medicine in the UK. UKAD also noted that the General Medical Council recommends that use of an unlicensed medicine should only occur when a patient has special requirements that cannot be met by use of a licensed medicine and the prescriber judges use to be in the patient's best interest.
15. In those circumstances Mr Togun accepted that he is not able to establish that he did not commit the ADRV intentionally, as defined in the ADR, so as to discharge the burden on him and that as such the period of Ineligibility to be applied is four years.

Consideration of ADR Article 10.6.3 – Prompt Admission

16. UKAD has considered whether pursuant to ADR Article 10.6.3, a reduction to the period of Ineligibility should be applied following Mr Togun's admission of the ADRV.
17. ADR Article 10.6.3 states:

10.6.3 Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under 10.2.1 or Article 10.3.1:

An Athlete or other Person potentially subject to a four-year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing Sample Collection or Tampering with Sample Collection), may receive a reduction in the period of Ineligibility down to a minimum of two years, depending on the seriousness of the violation and the Athlete's or other Person's degree of Fault by promptly admitting the asserted Anti-Doping Rule Violation after being confronted with it, upon the approval and at the discretion of WADA and UKAD.

18. UKAD does not consider that Mr Togun's formal admission of the ADRV in his response to the Notice of Charge on 21 February 2019 was prompt.
19. In respect of the seriousness of the ADRV, UKAD takes the view that ingesting a powerful anabolic androgenic steroid, which has the effect of promoting lean body mass, enabling faster recovery and assisting repair of skeletal muscle, is a serious violation.
20. Furthermore, UKAD is not able to properly determine Mr Togun's Fault in respect of his ADRV in the absence of an accepted explanation as to how the AAFs for three metabolites of stanozolol came about.
21. In all the circumstances therefore, UKAD has not exercised its discretion to reduce the period of Ineligibility pursuant to ADR Article 10.6.3. The period of Ineligibility to be imposed is therefore four years, pursuant to ADR Article 10.2.1(a).

Commencement of period of Ineligibility

22. ADR Article 10.11 requires that the period of Ineligibility starts on the date Ineligibility is accepted or otherwise imposed where there is no hearing.
23. ADR Article 10.11.2 allows for the period of Ineligibility to start as early as the date of Sample Collection (in Mr Togun's case, 6 October 2018) where there is a timely admission of the ADRV. Mr Togun was charged on 13 November 2018 but did not formally accept the ADRV until 21 February 2019. UKAD does not consider this a timely admission, therefore ADR Article 10.11.2 does not apply.
24. However, ADR Article 10.11.3 allows for credit to be given against the total period of Ineligibility to be served where an Athlete has been provisionally suspended.
25. Mr Togun was provisionally suspended on 13 November 2018 and as far as UKAD is aware, has respected the terms of that suspension. As such, the time spent provisionally suspended should therefore be credited and taken into account in respect of the total period of Ineligibility to be served.
26. The period of Ineligibility is therefore deemed to have commenced on 13 November 2018 and will expire at midnight on 12 November 2022.

Status during Ineligibility

27. During the period of Ineligibility, in accordance with ADR Article 10.12.1 Mr Togun shall not be permitted to participate in any capacity in any Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised by:
 - a. The BBSA or any body that is a member of, or affiliated to, or licensed by the BBSA;

- b. Any Signatory;
 - c. Any club or other body that is a member of, or affiliated to, or licensed by a Signatory or a Signatory's member organisation;
 - d. Any professional league or any international-level or national-level Event organisation; or
 - e. Any elite or national-level sporting activity funded by a government agency.
28. Mr Togun may return to train with a team or to use the facilities of a club or other member organisation of the BBSA or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 12 September 2022) pursuant to ADR Article 10.12.4(b).

Summary

29. For the reasons given above, UKAD has issued this Decision in accordance with ADR Article 7.7.4 and records that:
- a. Mr Togun has committed an ADRV pursuant to ADR Article 2.1;
 - b. This constitutes Mr Togun's first ADRV and, as such, a period of Ineligibility of four years is imposed pursuant to ADR Article 10.2.1(a);
 - c. Acknowledging the provisional suspension, the period of Ineligibility is deemed to have commenced on 13 November 2018 and will expire at midnight on 12 November 2022; and
 - d. Mr Togun's status during the period of Ineligibility shall be as detailed in ADR Article 10.12.
30. Mr Togun, the BBSA, the International Bobsleigh and Skeleton Federation and WADA have a right to appeal against this decision or any part of it in accordance with ADR Article 13.4.
31. This Issued Decision will be publicly announced via UKAD's website in accordance with ADR Articles 8.4.3 and 14.1.2.

5 August 2019