

**IN THE MATTER OF PROCEEDINGS BROUGHT UNDER THE ANTI-DOPING RULES OF  
THE RUGBY FOOTBALL LEAGUE**

Before:

Charles Hollander QC (Chair)  
Blondel Thompson  
Dr Tim Rogers

**BETWEEN:**

**Adam Carr**

**Appellant**

**and**

**UK Anti-Doping**

**Anti-Doping Organisation**

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**DECISION ON APPEAL**

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1. This is an appeal pursuant to ADR Article 13.4 by Adam Carr from a Decision of the National Anti-Doping Panel (“NADP”) Tribunal dated 30 July 2020 (Kate Gallafent QC, Chair, Colin Murdock and Professor Nicol Ferrier) when they found that:

- a. Mr Carr had violated ADR Article 2.1 by virtue of the presence of a Prohibited Substance in the Sample he provided on 9 December 2019;
  - b. Mr Carr had not discharged the burden on him under ADR Article 10.2.1(a) to establish that the Anti-Doping Rule Violation (“ADRV”) was not ‘intentional’, as that term is defined in Article 10.2.3;
  - c. A period of Ineligibility of four years was imposed under ADR Article 10.2.1, such period to run from the date of Sample collection on 9 December 2019, to expire on 8 December 2023.
2. Mr Simon McCann appeared for Mr Carr, together with his solicitor Mr Simon Eastwood, both of whom commendably acted pro bono. Ms Nisha Dutt appeared for UK Anti-Doping (“UKAD”). The appeal was well argued on both sides and we are very grateful for the oral and written submissions we received.

## **FACTUAL SUMMARY**

3. On 28 February 2020 UKAD charged Adam Carr with a violation of Article 2.1 of the Anti-Doping Rules of the Rugby Football League (“ADR”) arising from an Adverse Analytical Finding (“AAF”) indicating the presence of a Prohibited Substance or its Metabolites or Markers (Clenbuterol) in a Sample collected from him Out-of-Competition on 9 December 2019.
4. Mr Carr was a registered amateur rugby league player for Thatto Heath Crusaders (“THC”) from 2013 until the final game of the season on 28 September 2019. On about 11 October 2019 he began a programme of private gym sessions at the Evolution Gym in St Helens. He said that his personal trainer, Mr Duffy, recommended that he took fat burning supplements that would be helpful in his regime. He had originally said in answer to the Notice of Charge that Mr Duffy had recommended Clenox, but that was not his evidence before the Tribunal or in his witness statement. He obtained a packet of 100 tablets of Clenox from a friend, Mr Josh Kearsley for which he paid £30, who had apparently provided the tablets in response to Mr Carr asking if Mr Kearsley could obtain a fat-burning supplement for

him. Mr Carr said he trusted Mr Kearsley (he had gone to school with him and knew him his whole life). According to Mr Carr, he asked Mr Kearsley where he got the tablets from, to which he replied it was a third party at his gym, but Mr Carr did not ask who, or where the pills were from, or whether the third party had any medical qualifications. He did not google Clenox.

5. Mr Carr said Mr Kearsley had told him he had used Clenox himself, but Mr Kearsley said in his evidence that he had not.
6. Clenox contains Clenbuterol. Mr Carr's evidence was that he proceeded to consume 2 -3 tablets per day, as that was what he claimed Mr Kearsley had told him that Mr Kearsley had done himself. He said that he experienced side effects in the form of his hands shaking, but he did not check these out because he trusted Mr Kearsley's recommendation.
7. Mr Carr stopped taking the tablets on about 3 December 2019, which he said was the end of the tablets he had. That coincided with a call from Mr Craig Farrimond, the Assistant Coach at Rochdale Hornets, which led to a professional contract with Rochdale. Mr Carr attended his first training session with Rochdale on 5 December 2019, signed a contract on 7 December by which he agreed (among other things) to comply with the Regulations which included the ADR.
8. The Sample collection took place just two days later, on Monday 9 December 2019. In response to the "Declaration of Medication" box on the Doping Control Form, by which Mr Carr was asked to "*provide details of any prescription / non-prescription medication or supplements taken in the last seven days, including dosage where possible*" Mr Carr stated "paracetamol".
9. The issue before the Tribunal was whether the ADR was intentional. For this purpose the tribunal had to consider ADR Article 10.2 which provides 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.*

*10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes ... who cheat. The term, therefore, requires that the Athlete ... engaged in conduct which he ... 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...*

10. The issue was: had Mr Carr satisfied the burden of proof on him that the ADR was not intentional. If no, then there was a mandatory period of Ineligibility of four years. If yes, then the period could be reduced according to whether there was No Fault or No Significant Fault or Negligence under ADR Article 10.4 and 10.5.

11. The Tribunal concluded that Mr Carr had not satisfied the burden of proof on him under Article 10.2 and, with a measure of regret at the harshness of the sanction they were bound to impose, imposed the required four year period of Ineligibility. They concluded that whilst he had not intended to take drugs or to cheat, the case fell within the last part of Article 10.2.3 because he:

*"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. The Tribunal had the advantage of hearing all the witnesses. Our job as an appeal tribunal is not to rehear the matter. The proper approach to an appeal before the NADP Tribunal, is as follows (*Evans v UKAD* (July 2016)):

*"6 . . . In short, UKAD's submission which we endorse as correct, is that we should only interfere with UKAD/WADA's decision in the event that we decide that the exercise of their discretion was one that no reasonable decision maker could have*

*reached and/or where the process whereby it was reached was flawed or unfair and/or where the decision maker misapplied the rules or failed properly to analyse and apply matters of evidence.”*

## **THE ATHLETE’S SUBMISSIONS**

13. Before us, Mr McCann for Mr Carr submitted that no reasonable decision maker could have reached the decision of the Tribunal. He submitted:

- a. The Clenox tablets were taken at a time when Mr Carr was an amateur and he had ceased taking them prior to turning professional.
- b. As the Tribunal accepted, Mr Carr’s knowledge of anti-doping was pretty much non-existent. He did not know that the ADR applied to him as an amateur and thus he could not have appreciated that taking supplements as an amateur could have given rise to an ADR violation.
- c. In any event, the facts found by the Tribunal did not justify a conclusion that Mr Carr knew there was a significant risk of an ADR and manifestly disregarded that risk. The Tribunal accepted that Mr Carr did not take a Prohibited Substance deliberately. In the light of that finding, and having regard to the Tribunal’s acceptance of Mr Carr’s ignorance of anti-doping, there was nothing in the Decision which justified a finding that he manifestly disregarded a significant risk.
- d. Indeed, the Tribunal were critical of the lack of anti-doping education which Mr Carr had received.

14. In particular Mr McCann referred to the following facts found by the Tribunal:

- a. That the Respondent did not intend to cheat [37];
- b. That he took the Clenox with the primary aim of improving his body image (a *“reasonable response to the perceived pressures exerted by*

*being surrounded by images of athletes, models and influencers on social media . . . with what some might describe as ‘perfect bodies.’)* [37];

- c. That the Respondent did not know that ingesting Clenox constituted an ADRV [43];
- d. That he was not provided with any anti-doping education whilst at Thatto Heath Crusaders, and was not provided with the Anti-Doping Booklet when he signed for Rochdale [45].

## **ANALYSIS**

15. We now turn to consider the material on which the Tribunal reached the conclusion they did.

16. The Tribunal did not accept key evidence of Mr Carr.

17. Mr Carr was required to disclose on the Doping Control Form on 9 December:

*“details of any prescription / non-prescription medication or supplements taken in the last seven days, including dosage where possible”.*

18. Although he disclosed his use of paracetamol, he did not disclose his use of Clenox. When asked why he had not declared Clenox in response to that question Mr Carr stated that he thought it was medication, it was not in the forefront of his mind and he had never been in that situation before.

19. The Tribunal concluded at [49]:

*“Whilst we accept that random testing was a completely unfamiliar experience for him, we do not consider that he could have misunderstood the obligation to declare all medications and supplements that he had been taking in the previous seven days. His evidence to the Tribunal was that this included Clenox, which he had been taking for a period of some six weeks before stopping just a few days earlier.”*

20. We note that Mr Carr had taken 2-3 tablets a day, in total about 100 tablets since September 2019. This had given rise to significant side effects in the form of his hands shaking. Mr Carr expressed in evidence a very clear recollection as to the precise date when he ceased to take the Clenox tablets. In the course of his evidence he said as follows in answer to questions from the Tribunal Chair:

*“Chair (KG): And how long before you signed this form had you stopped taking the Clenox?”*

*AC: I couldn't tell you. If I was going to make a rough estimate, I would say the Tuesday or Wednesday before.*

*KG: So what ... I'm sorry, I don't know what day of the week the 9<sup>th</sup> of December was. Which ... what day of the week?*

*AC: Monday. Yes. So it would have been around the Wednesday.*

*KG: The Wednesday before?*

*AC: Yes.*

*KG: And how do you remember that so precisely?*

*AC: I just remember it was around the Tuesday and Thursday because I was contacted by Craig Farrimond about coming down to Rochdale around a similar time. That's how I remember.*

*KG: Just so that I'm clear, you say that you stopped taking the tablets ...*

*AC: They finished.*

*KG: They finished at almost exactly the same time as you were contacted by Craig, is it Farrimond?*

*AC: Yes.*

*KG: And that was on the Tuesday or Wednesday before the test the following Monday on the 9<sup>th</sup> of December.*

*AC: Yes.*

*KG: Did you read the doping control form before you signed it?*

*AC: No. It was more a glance.*

*KG: Did the doping control officer read any parts of it out to you?*

*AC: Yes.*

*KG: And did he read out to you the obligation to provide details of any medication or supplements taken the previous seven days? Because, as I understand it, Mr Carr, what you're saying is that you had taken the Clenox in the previous seven days.*

*AC: Yes. I'd never ... I've never been in an environment with testing before. I've never been in a situation testing before. I personally thought it was medication that I was on. I had no reason to think to put it down. It wasn't in the forefront of my mind when I was taking the test. It was more ... I ... all I can say is I've never been in that situation before. I didn't know the procedures that went on.*

*KG: But you remembered to say that you were taking paracetamol.*

*AC: But I thought it was medication. That's why.*

*KG: But the, the declaration is called a declaration of medication, and you were asked to provide details of any prescription or non-prescription medication or supplements. So you accept paracetamol as a medication, isn't it?*

*AC: Yes.*

*KG: And your evidence is that you understood Clenox to be a medication.*

*AC: Why would I know that Clenox is a medication? I don't anything about it.*

*KG: What did you think Clenox was?*

*AC: I just thought it was a fat-burning supplement.*

*KG: But if you were asked to provide details of all medication or supplements, whether you thought Clenox was a medication or a supplement, you should have declared it, shouldn't you?*

AC: *You could say that, yeah, but I've never been involved in this situation before. The way I thought he said it to me, the way I read it, was just medication.*

KG: *Can you remember, did he read out to you the declaration? And I asked you if he had...*

AC: *Yes.*

KG: *... but...yeah, he read that out.*

AC: *Yeah."*

21. Thus, on the one hand, the side effects of Clenox were such as to make Mr Carr's hands shake and he had been taking 2-3 tablets since September. Further, he was able when giving evidence to pinpoint precisely the date on which he had stopped taking Clenox, which was the exact date on which Mr Farrimond had telephoned him in relation to the possibility of him turning professional.

22. In our view the Tribunal were entitled to conclude that when he was asked to identify the medication and supplements he had taken in the previous seven days, Clenox must have been in the forefront of his mind, and they were entitled to conclude on the evidence that both the decision to stop taking Clenox and the decision not to disclose were deliberate decisions. As the Tribunal put it:

*"In all the circumstances we find that Mr Carr did not disclose his use of Clenox because he was concerned – although did not know – that it might be a substance which he was not permitted to use as a professional rugby player. It was for the same reason that he did not continue taking Clenox at the point when Mr Farrimond had suggested that he join Rochdale."*

23. We also note from the Tribunal decision:

- a. Mr Carr had originally claimed in the response to his Notice of Charge that the Clenox was recommended by his trainer Mr Duffy, but his witness statement merely indicated that Mr Duffy recommended fat burning supplements ([19]).
- b. He said he obtained the Clenox from his friend Mr Kearsley on the basis that Mr Kearsley had used it and recommended it. But Mr Kearsley's evidence was

that he had not used it himself [20]-[21]. In circumstances where Mr Carr made no checks himself on Clenox and emphasised how much he relied on Mr Kearsley's judgment, the fact that Mr Kearsley had not (contrary to what Mr Carr said) in fact used it and thus was most unlikely to have told Mr Carr that he had done so was significant.

24. That leaves the point that Mr Carr only took Clenox as an amateur. Mr Carr's evidence was that he had no idea the ADR applied to him as an amateur. If he did not know the ADR applied to him as an amateur, how could he have manifestly disregarded a risk that his conduct might constitute an ADR? But the Tribunal rejected Mr Carr's evidence on this point at [47]:

*"In considering Mr Carr's evidence on this point we note that, on any view, the statement made that he was unaware of "UKAD, drugs in sport and so on" until receipt of the Notice of Charge on 28 February 2020 is unsustainable. On his own evidence, he positively relies upon the fact that he had provided the Rochdale Club Physio with photographs of medication he was taking for an infection in January 2020, and they had a text exchange about their use whilst in pre-season."*

25. Thus whilst recognising that Mr Carr in general had no anti-doping education and was ignorant of anti-doping, they rejected his evidence that he did not know the rules applied to him as an amateur. In other words, they regarded his professed ignorance of ADR in other respects as overstated and in the light of that did not accept his evidence on this point. They concluded at [52]:

*"The question then becomes: does it follow from the fact that Mr Carr knew there was a significant risk that taking Clenox might constitute or result in an ADRV as a professional player that he also knew of such a risk whilst an amateur player? In our view it does. Even if he did not know for sure whether or not the anti-doping regime applied to amateur players he must have known that there was a significant risk that it did."*

26. Particularly given that the Tribunal had not accepted Mr Carr's evidence on the matters considered above, the Tribunal were entitled to take the same view on this point.

27. Mr McCann also referred in his submissions to the principle of proportionality, in the light of the regret expressed by the Tribunal as to the length of the ban, but there is no discretion open to us in this regard.

28. Thus we conclude that the Tribunal were entitled to reach the conclusions they did on the material before them.

## DECISION

29. In the event, this appeal is dismissed.



Charles Hollander QC, Chair

For and on behalf of the Tribunal

London

03 December 2020

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