

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

Before:

Christopher Quinlan QC (Chair)

Blondel Thompson

Professor Dorian Haskard

B E T W E E N:

RUGBY FOOTBALL UNION ('RFU')

National Governing Body

and

LEIGH DEARDEN

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

A. Introduction

1. The Rugby Football Union ('RFU') is a Member Union of World Rugby. Pursuant to RFU Regulation 20, the RFU has adopted World Rugby Regulation 21 as its anti-doping rules ('the ADR'). The RFU has, pursuant to World Rugby Regulation 21.7.13 and RFU Regulation 20.13.4 elected to refer cases to the National Anti-Doping Panel ('NADP') for resolution.
2. This is the final reasoned decision of the Anti-Doping Tribunal ('The Tribunal') convened pursuant to Article 5.1 of the National Anti-Doping Panel Procedural Rules to hear and determine the charge brought against Leigh Dearden ('the Respondent') for a breach of World Rugby Regulation 21.2.1 for the Presence of a Prohibited Substance or its metabolites.
3. This final reasoned decision is reached after due consideration of the evidence, submissions and the arbitral awards placed before us. It is necessarily a summary of that material. We had proper regard to it all.

B. BACKGROUND

4. The Respondent is a Player registered with Lincoln RFC and with the RFU. On 23 March 2019, he provided a urine sample. That sample was analysed and returned Adverse Analytical Findings for Drostanolone and a metabolite, 2 metabolites of Oxymetholone, and cocaine metabolite benzoylecgonine.
5. By letter dated 31 May 2019 the Respondent was charged by the RFU. The letter informed the Player that: (i) he was being charged with a breach of World Rugby ("WR") Regulation 21.2.1 (Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample) (the "ADRV") and (ii) he was provisionally suspended pursuant to RFU Regulation 20.13.2 and WR Regulation 21.7.9 from the date of the letter.
6. On 01 July 2019 the Respondent sent an email to Stephen Watkins, RFU Anti-Doping Manager. Therein he identified the source of the positive test as having taken medication from "*an associate outside of rugby*" which the Player had assumed to be "*painkillers of some variation*". He also stated, *inter alia*:

"Regarding the matter at hand I would firstly like to apologise for the inconvenience I have caused to those involved, and thank sincerely those that have aided me in trying to understand this process, as it is a subject I know little to nothing about, having never come across it in over 20 years of playing the game I love. I was horrified when I received your call informing me that I had failed a drugs test that was carried out back in March this year, I hadn't given it a second thought until I received your phone call.

As we discussed on the telephone, I do not understand what the results of the test are showing which isn't an excuse but more ignorance on my behalf. I can categorically say that never once in my career have I or would I knowingly take any substance that would go against all of my beliefs of playing the game fairly and in a sportsman like way and would like to make it very clear that I am not and never have been a user of either recreational or performance enhancing drugs. I have no designs on performance enhancement or furthering my rugby career, or anything so futile. My work is my only concern...

My only concern now is that I don't do detriment to my club or undo any of the good work and progress we have made by tarnishing the name. I will do as bid by the RFU. Even if it means my early retirement from the game..."

C. HISTORY OF ANTI-DOPING PROCEEDINGS

7. On the following dates NADP Case Managers (Alisha Ellis and Anna Thomas) emailed the Respondent on 03 July, 09 July, 11 July, and 22 July 2019. In those emails Ms Thomas informed about the possibility of the pro bono services of a lawyer and sought his availability for a directions hearing. He did not reply to any of those emails.
8. The Respondent emailed Ms Thomas on 15 July 2019 in these terms:

"As a retired amateur rugby player, and the only person partaking in this in an unpaid capacity. Are there any financial gains to be achieved for me to continue? Up to now I have helped as I can, being honest and forthcoming to be helpful to those I may have caused inconvenience, as is my nature. I'm disinclined to continue to disclose more of my person [sic] life to others, and give more of my valuable time for no gain, to a number of strangers whom I'm not entirely satisfied value discretion and confidentially as I do. I say this as it has come to my attention others, connected with rugby and the RFU in

Lincolnshire, seem to presume or assume to know of matters regarding myself that were supposedly in confidence at this stage."

9. Ms Thomas replied by email on 15 July, attaching a copy of the Procedural Rules and drawing his express attention to Article 11.5 which deals with the confidentiality of these proceedings.

10. In the first email Ms Thomas sent on 01 August she said, inter alia: *"We have not had any contact from you regarding availability, please contact me as soon as possible to discuss the progression of your case"*. He has not done so.

11. At the Tribunal Chair's direction on 01 August 2019, Ms Thomas emailed the Respondent in these terms:

"Further to the below, the Chair has directed me to inform you that the Tribunal has the power to proceed in the absence of engagement from the Athlete as per article 8.5 of the 2019 NADP Procedural Rules. This means that failure to take part in the process will not stop the matter from proceeding.

The Chair has set a deadline for your response by 16.00 (BST) on Tuesday 6 August. Should you fail to get in contact with us by this time, the Chair will consider holding and may very well proceed to conduct a Directions Hearing in your absence."

12. The Respondent did not reply to that email.

13. On 08 August 2019 pursuant to Article 7.8 of the Procedural Rules the Tribunal Chair conducted a Directions Hearing by telephone conference call. Present were -

13.1. Stuart Tennant, RFU

13.2. Anna Thomas, NADP Case Manager

14. By email sent by Ms Thomas on 07 August 2019 the parties were asked for their availability for a direction hearing to be held on 08 or 09 August 2019. The RFU replied; the Respondent did not. The parties were informed by email sent at 10.02 on 08 August 2019 that the directions hearing would take place at 15.30 the same day. The Respondent did not reply, nor did he attend the directions hearing. He did not answer his mobile telephone when it was called at the start of the directions hearing.

15. In light of the history of these proceedings, the Tribunal Chair was satisfied that the Respondent knew of these proceedings, had been given proper notice of the directions hearing and that he had deliberately declined to engage with the proceedings. Therefore, it was appropriate to proceed in his absence with the direction hearing pursuant to Article 7.9 of the Procedural Rules and accordingly he issued Directions.
16. Direction 1 was that by noon 09 August 2019 the RFU must serve written Notice on the Respondent to the terms provided for by World Rugby Regulation 21.7.10 ('the 21.7.10 Notice'). The RFU served the 21.7.10 Notice as directed.
17. Direction 2 required the Respondent to serve upon Ms Thomas, NADP Case Manager, a written response to the 21.7.10 Notice and, in summary, his case. He did not do so.
18. Direction 3 By 17.00 (BST) on 30 August 2019 the RFU shall reply in writing and serve upon Ms Thomas its written submissions and further evidence it wished to rely upon. The RFU complied with that Direction.
19. Direction 4 required the Respondent to reply to the RFU's submissions by 6 September 2019. He did not do so.
20. Paragraph 7 of the RFU's written submissions, dated 30 August 2019 ('The RFU's Submissions') invite us to deem the Respondent to have admitted the ADRV and to have waived his right to an oral hearing.
21. World Rugby Regulation 21.7.10.2 provides:

"21.7.10 Resolution Without a Hearing

21.7.10.1 A Player or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and/or accept the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been or are asserted by World Rugby. The chairman of the Judicial Panel (appointed pursuant to Regulation 18) may appoint either a legal member of the Anti-Doping Judicial Panel set out in Regulation 21.8.2 or a Judicial Committee to review the

matter on the papers and impose the Consequences as appropriate. Where the Player or other Person waives his right to a hearing but wishes to make submissions in relation to sanction he shall have seven days in which to make such submissions in writing. In any case World Rugby shall be entitled to make submissions in writing to the Judicial Officer or Judicial Committee as applicable.

21.7.10.2 If the Player or other Person against whom an anti-doping rule violation is asserted fails to dispute that assertion within 14 days of the notice sent by World Rugby, then he shall be deemed to have admitted the violation and to have waived his right to an oral hearing. In such case the Player or other Person shall have seven days in which to make submissions in writing in relation to the sanctions to be applied. In the absence of a response the chairman of the Judicial Panel (appointed pursuant to Regulation 18) may appoint either a legal member of the Anti-Doping Judicial Panel set out in Regulation 21.8.2 or a Judicial Committee to review the matter on the papers and impose the Consequences as appropriate. World Rugby shall be entitled to make submissions in writing to the Judicial Officer or Judicial Committee as applicable."

22. This 21.7.10 Notice also complies with the requirements in WR Regulation 21.8.2.6(h) as set out below:

"(h) The Judicial Committee shall endeavour to ensure that proceedings are not heard in the absence of the Player, or other Person subject to the proceedings. However, the non-attendance of a Player, or other Person or his representative, after notice of the hearing has been provided, will not prevent the Judicial Committee from proceeding with the hearing in his absence. In arriving at its decision, the Judicial Committee may, however, take into account any written statement submitted by the Player, or other Person or his representatives."

23. In light of the 21.7.10 Notice and the history of these proceedings we are satisfied pursuant to World Rugby Regulation 21.7.10.2, the Respondent has waived his right to an oral hearing. It is appropriate to proceed in his absence and to do so on the basis of the written materials before us.

D. ANTI-DOPING VIOLATION

24. The Respondent has not disputed the presence of the Prohibited Substances in his sample. In light of the materials before us we are comfortably satisfied that the RFU has established the ADRV.
25. Further, and in any event, by virtue of the service of the 21.7.10 Notice and his failure to respond, if the Player or other Person against whom an Anti-Doping Rule Violation is asserted fails to dispute the assertion that he committed the ADRV, we deem him to have admitted the said violation.

E. SANCTION

(a) Ineligibility

26. World Rugby Regulation 21.10.7.4 (multiple violations) does not apply in this case. This is a single and the Respondent's first violation.
27. By virtue of World Rugby Regulation 21.10.2:

"The period of Ineligibility shall be four years where:

21.10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.

21.10.2.1.2 The anti-doping rule violation involves a Specified Substance and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable)

can establish that the anti-doping rule violation was intentional.

21.10.2.2 If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years."

28. Each of the three Prohibited Substances present in the Respondent's sample are Non-Specified. Therefore, pursuant to World Rugby Regulation 21.10.2.1.1, the burden is on the Respondent to establish that the ADRV was not intentional.

29. By virtue of World Rugby Regulation 21.10.2.3 intentional means:

"As used in Regulations 21.10.2 and 21.10.3, the term "intentional" is meant to identify those Players who cheat. The term therefore requires that the Player 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. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance."

30. In *UKAD v Buttifant* (SR/NADP/508/2016) the National Anti-Doping Appeal Panel held:

"That evidential burden requires the athlete to put forward an explanation of the conduct which he asserts resulted, or might have resulted, in the violation of article 2.1. If the athlete cannot prove the conduct which resulted, or might have resulted, in the violation then the facts and circumstances specified in article 10.2.1.1 are not established. In such a case the tribunal, which must act on evidence,

has no evidential basis on which to make a finding that the violation was not intentional.”¹

31. The Respondent has not submitted any evidence to support such a contention. He has not satisfied the evidential burden on him of proving how the Prohibited Substances entered his system. There is no evidential basis for us to conclude the ADRV was not intentional. Therefore, the Respondent has not satisfied the burden of establishing that the ADRV was not intentional and the starting point is a period of Ineligibility of four years.
32. There is no basis for a reduction of that period of Ineligibility pursuant to World Rugby Regulation 21.10.5.2 (No Fault or Negligence).
33. The provisions in World Rugby Regulation 21.10.5.2 (No Significant Fault or Negligence) which in any event would only be applicable if we had found that the Respondent’s conduct was not intentional.

(b) Commencement

34. World Rugby Regulation 21.10.11 provides that the standard position regarding the starting period for a period of Ineligibility is that, *“the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed”*.
35. World Rugby Regulation 21.10.11.3 provides that a Player shall receive credit for the period of any Provisional Suspension. The Respondent was provisionally suspended on 31 May 2019, which is the appropriate start date for the period of Ineligibility.

¹ §24

F. SUMMARY

36. For the reasons set out above, the Tribunal finds:

(a) The Anti-Doping Rule Violation has been established.

(b) The period of Ineligibility imposed is four years commencing on 31 May 2019.

G. RIGHT OF APPEAL

37. In accordance with ADR Article 13 the parties may appeal against this decision by lodging a Notice of Appeal according to the applicable time limits.

A handwritten signature in black ink, appearing to read 'Christopher Quinlan', is positioned over a large, light blue circular graphic that is partially obscured by the text.

Christopher Quinlan QC, Chairman

For and on behalf of the Tribunal

16 September 2019

London, UK



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