

**IN THE MATTER OF PROCEEDINGS BROUGHT
UNDER RUGBY FOOTBALL UNION
REGULATION 20 AND WORLD RUGBY
REGULATION 21**

Before:

Ms Michelle Duncan (Sole Arbitrator)

B E T W E E N:

RUGBY FOOTBALL UNION (RFU)

Anti-Doping Organisation

and

MAX DRAGE

Respondent

DECISION OF THE ANTI-DOPING TRIBUNAL

Introduction

1. The Applicant ("**RFU**") is the Rugby Football Union and has jurisdiction to prosecute this case.

2. The Respondent, Mr Drage (the "**Player**") is an amateur rugby union player from England and is registered with the RFU. As a licensed member of the RFU and a participant in competitions and other activities organised, convened, authorised or recognised by the RFU he was at all times bound by and required to comply with the Anti-Doping Regulations of the RFU ("**ADR**").
3. Pursuant to the ADR, a urine sample was provided by the Player on 16 November 2019, In-Competition. This sample returned an Adverse Analytical Finding ("**AAF**") for:

S4 Hormone and Metabolic Modulators

- Clomiphene and its metabolite hydroxy-methoxy-clomiphene; and
- Anastrozole and its metabolite hydroxy-anastrozole;

S1.1 Anabolic Androgenic Steroids

- Androsterone;
- Testosterone and at least one of the Adiol (5 α Adiol and/or 5 β Adiol);
- Etiocholanone;
- 5 α -androstane-3 α ,17 β -diol (5 α Adiol); and
- 5 α -androstane-3 α ,17 β -diol (5 α Adiol) and 5 β androstane-3 α ,17 β -diol (5 β Adiol).

4. These are Prohibited Substances as defined by the World Anti-Doping Agency ("**WADA**") Prohibited List 2019.
5. On 10 January 2020 the RFU issued a Notice of Charge (the "**First Charge Notice**") in relation to the Player's alleged Anti-Doping Rule Violation ("**ADRV**"). The RFU issued a further Notice of Charge on 13 February 2020 (the "**Second Charge Notice**").
6. The Player has been provisionally suspended since 10 January 2020.
7. The Player has not responded to either the First Charge Notice or the Second

Charge Notice and, save for an initial notification call from the RFU, has not been in contact with the RFU or the National Anti-Doping Panel ("**NADP**") in relation to the ADRV.

8. On 28 February 2020 the RFU contacted Sport Resolutions (UK) requesting that an NADP hearing panel be convened to determine the charge in this matter. The Player was copied on that correspondence.
9. Michelle Duncan was appointed as Chair of the Tribunal on 11 March 2020. On 27 April 2020, the RFU and the NADP President agreed that the matter would be determined by the Tribunal without a hearing.

Jurisdiction

10. The RFU is the National Governing Body of rugby union in England. As a Member Union of World Rugby (the International Federation for the sport of rugby union), the RFU, via part 20 of its Regulations (the "**RFU Regulations**"), has adopted World Rugby Regulation 21 (the "**WR Regulations**") as its own anti-doping rules.
11. As a licensed competitor who is registered with the RFU and a participant in competitions and other activities organised, convened, authorised or recognised by the RFU, the Player was at all times bound by and required to comply with the RFU Regulations, including the ADR.
12. UK Anti-Doping ("**UKAD**") are responsible for reviewing any potential ADRV and confirming whether a player has a case to answer (Regulation 20.13.3 of the RFU Regulations). UKAD notified the RFU on 10 January 2020 that the Player had a case to answer following which the RFU were responsible for bringing the charge, prosecuting this matter and instructing the NADP to appoint an independent panel to hear this case (RFU Regulation 20.13.4).
13. A player against whom an ADRV is asserted is deemed to have admitted the violation and to have waived his right to an oral hearing if he does not dispute with assertion within 14 days of having received notice (WR Regulation 21.7.10.2). Further, in circumstances where a player against whom an ADRV is asserted has

waived his right to a hearing, the independent panel may be authorised to review the matter on the papers and impose consequences as appropriate (WR Regulation 21.7.10.2).

14. The Player did not respond to either the First Charge Notice or the Second Charge Notice within the specified 14 day period, or at all. He has not communicated with the RFU or the NADP in relation to the charge. Accordingly, he is deemed to have waived his right to a hearing.
15. For the above reasons, it follows that the Chair has jurisdiction to determine this matter and to do so without a hearing.

Background

16. On 16 November 2019, a Doping Control Officer operating under mission number M-1059436555 collected a urine Sample from the Player In-Competition, at a match between Haywards Heath RFC and Maidstone RFC.
17. The Player provided a sample of urine that was split into two bottles. These were given the reference numbers of A1161493 (the "**A Sample**") and B1161493 (the "**B Sample**").
18. The Samples were transported to the WADA-accredited laboratory in London, the Drug Control Centre, Kings College London (the "**Laboratory**"). The Laboratory analysed the A Sample in accordance with the procedures set out in WADA's International Standard for Laboratories. This analysis returned an AAF for clomiphene and its metabolite hydroxy-methoxy-clomiphene and anastrozole and its metabolite hydroxy-anastrozole, although the anastrozole finding required further confirmation. Further analysis of the A Sample returned AAFs for Androsterone, Testosterone, Etiocholanone, 5 α -androstane-3 α ,17 β -diol and 5 β -androstane-3 α ,17 β -diol.
19. The Player did not request a test of the B Sample.
20. UKAD confirmed that the Player did not have a Therapeutic Use Exemption to

justify the presence of the Prohibited Substances in his Sample.

21. The First Charge Notice was sent to the Player on 10 January 2020. That letter explained that the analysis of his A sample had returned AAFs for Prohibited Substances and that the A Sample had also contained anastrozole but that further analysis was required on the Sample before a formal report was made. The First Charge Notice requested the Player to inform the RFU whether he wished to contest the Charge by 31 January 2020. The Player did not respond to the First Charge Notice.
22. The RFU sent the Second Charge Notice to the Player on 13 February 2020 charging him with AAFs regarding the S1.1 Anabolic Androgenic Steroids. The Second Charge Notice confirmed the Player's Provisional Suspension remained in effect and requested that the Player inform the RFU by 27 February 2020 whether he wished to contest the additional charge. The Player did not respond to the Second Charge Notice.
23. On 25 February 2020, a photograph was posted on Instagram by an individual who appeared to be the Player with the caption: "*Since stopping rugby Iv [sic] put on 6kg [emojis] #UKAD #FuckYou*". UKAD forwarded the Instagram post to Mr Watkins, the RFU Anti-Doping and Illicit Drugs Programme Manager on 16 March 2020.
24. On 17 March, Stephen Watkins of the RFU emailed the Player stating: "*UKAD forwarded me a tweet from your twitter account which hinted that you were accepting the charge against you. Can you please let me know if you are wishing to contest the charge or admit the violation and take a 4 year ban by 5pm Thursday? If you need additional time please let me know.*" The Player did not respond to that email.
25. On 31 March 2020, the RFU invited the Panel to deem that the Player has admitted the violation and waived his right to an oral hearing. That request was made pursuant to WR Regulation 21.7.10.2.

RFU's Submissions

26. The Player has not disputed the presence of the Prohibited Substances in his sample. There has been no communication with the Player at all. The RFU submitted that consequently, the position as per WR Regulation 21.7.10.2 is that the Player has "*admitted the violation*". The RFU also submitted that the Player's Instagram post is indicative of his knowledge, attitude and position in relation to the process.
27. With the exception of clomiphene and anastrozole, all of the Prohibited Substances set out in the Second Charge Notice are non-Specified Substances and therefore, pursuant to WR Regulation 21.10.2.1.1, the burden is on the Player to establish that his ADR violation was not intentional. The RFU submitted that given that the Player had not engaged at all in the process, he has not met the evidential burden of establishing how the Prohibited Substances came to be present in his system and accordingly the Panel cannot properly conclude that the violation was not "intentional".
28. The RFU referred to WR Regulation 21.10.2.3 which contains the definition of "intentional":
- "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 ... 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. 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..."*
29. The RFU also relied upon the decision in *UKAD v Buttifant (SR/NADP/508/2016)* in which the Anti-Doping 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."

30. The RFU submitted that the Player had not provided any evidence to support a contention that the violation was not intentional and has therefore not satisfied the evidential burden of proving how the Prohibited Substances entered his system. The RFU therefore submitted that the period of Ineligibility to be applied is four years in respect of all non-Specified Substances.
31. As regards the Prohibited Substances that are the subject of the First Charge Notice, the RFU submitted that in the absence of any account from the Player, the RFU is not in a position to assert that the Player's ingestion of the Specified Substances was intentional and that a four year period of Ineligibility should also be applied in respect of these substances. The RFU further submitted that WR Regulation 21.10.7.4 (in relation to multiple violations) does not apply in this case as all the AAFs arise from the same sample and that for the purpose of sanction the Panel should treat this case as a single first violation with the sanction to be based on the violation that carries the more severe sanction.
32. The RFU submitted that as a four year period of Ineligibility applies, there is no basis for any reduction of the period of Ineligibility for No Fault of Negligence or No Significant Fault or Negligence.
33. As regards the commencement of the period of Ineligibility, the RFU referred to WR Regulation 21.10.11.3 which provides that a Player shall receive credit for the period of any Provisional Suspension. The RFU accepts that as the Player has been provisionally suspended since 10 January 2020, the period of Ineligibility should start from that date.

Respondent's Submissions

34. No submissions were received from the Player who, as noted above, has not engaged with the RFU, UKAD or the Tribunal in connection with this process.

The Tribunal's findings

35. The Tribunal is satisfied that the Player committed an ADRV. The test results were clear and as the Player has not engaged with the RFU, UKAD or the Tribunal at all in relation to the Charge, pursuant to WR Regulation 21.7.10.2, he is deemed to have admitted the ADRV and to have waived his right to an oral hearing.
36. The Tribunal finds that, as regards the Prohibited Substances - S1.1 Anabolic Androgenic Steroids – set out in the Second Charge Notice, the ADRV was intentional. In this regard, the Tribunal notes, it is the Player who has the burden of proving that the ADRV was not intentional. In light of his failure to engage with this process, the Player has failed to discharge this burden. Accordingly, the Tribunal finds that the period of Ineligibility as regards the Prohibited Substances - S1.1 Anabolic Androgenic Steroids – set out in the Second Charge Notice is four years.
37. As regards the Prohibited Substances that were the subject of the First Charge Notice, these are Specified Substances and accordingly it is the RFU who has the burden of proving that the ADRV was intentional. The RFU has not discharged this burden and therefore the period of Ineligibility is two years. However, as all of the AAFs arise from the same sample, this matter is considered as a single first violation with the sanction to be based on the ADRV that carries the most severe sanction.
38. There is no basis for any period of reduction of the period of Ineligibility for No Fault or Negligence or No Significant Fault or Negligence.

The Decision

39. For the reasons set out above, the Tribunal makes the following decision:
 - An ADRV contrary to WR Regulation 21.2.1 has been established;
 - As the Player has failed to satisfy his burden to establish that the ADRV as regards the Prohibited Substances - S1.1 Anabolic Androgenic Steroids – set

out in the Second Charge Notice was not intentional, pursuant to WR Regulation 21.10.2.1.1 the standard sanction of 4 years Ineligibility shall apply to Mr Drage;

- As all of the AAFs arose from a single sample collected on 16 November 2019 they will be treated as a single first violation. In these circumstances it is not necessary for the Tribunal to consider whether a separate sanction should be imposed as regards the Prohibited Substances set out in the First Charge Letter.
- The period of Ineligibility will start on 10 January 2020, the date on which Mr Drage was provisionally suspended and shall therefore end at midnight on 9 January 2024.
- As such, Mr Drage shall not be permitted to participate in any capacity in a competition or other activity (other than Authorised Anti-Doping Education or Rehabilitation programmes) organised, convened or authorised by the RFU or any body that is a member of, affiliated to, or licensed by the RFU;
- Pursuant to WR Regulation 21.10.8, all competitive results Mr Drage obtained between the date of Sample Collection and commencement of his Provisional Suspension shall be Disqualified with all resulting Consequences, including forfeiture of any medal, title, points and prizes; and
- In accordance with RFU Regulation 20.14.1, the Parties have a right of appeal to the NADP Appeal Panel. Pursuant to Article 13.5 of the NADP Procedural Rules, any party who wishes to appeal must lodge a Notice of Appeal with the NADP Secretariat within 21 days of receipt of this decision.



Michelle Duncan

For and on behalf of the Tribunal

19 May 2020

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