



CASE 12 – Decision

NATIONAL ANTI-DOPING PANEL

Introduction

1.1 This is the final decision of the Anti-Doping Tribunal convened under the Anti-Doping Rules of the British Boxing Board of Control ("the BBBOC"). The BBBOC has adopted the UK Anti-Doping Rules with supplemental provisions (together "the Rules"). All boxers who are licensed by the BBBOC are subject to the Rules.

1.2 Article 2 and 2.1 of the Rules provide that the following shall constitute an Anti-Doping Rule Violation under these rules:

"The 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." Boxing is an international sport and draws competitors from a number of nations. If a bout takes place in the UK under the auspices of the BBBOC, then regardless of the nationality of the competitors, the BBBOC will ensure that those competitors are 'licensed' to compete subject to the jurisdiction of the BBBOC. It does this by ensuring that such competitors specifically accept its jurisdiction before competing. The process whereby a licence to fight is granted by the BBBOC follows the provision by the Athlete of certain documentation and the paying of a fee. Once the Athlete is approved and enters a competition controlled by the BBBOC he is under the insurance of the BBBOC although he is not issued with a physical licence.

1.3 The Tribunal was made up of David Casement QC (Chairman), Dr Kitrina Douglas and Lorraine Johnson. On behalf of UK Anti-Doping ("UKAD") there appeared Stacey Shevill as advocate, Jason Torrance, Tony Jackson and Matt Perry (observing). The Athlete did not attend nor did anyone on his behalf. I will return to this below under procedural history. On behalf of Sport Resolutions Jenefer Lincoln (Case Manager) attended. The interpreter Leon Abramovici was on standby in a different room should the Athlete attend but in the event he was not required.

1.4 Where abbreviations or capitalised words and phrases are used in this decision they shall have the same meaning as is set out in the Rules unless the contrary

is provided herein.

Procedural History

2. The Athlete, Athlete L, is an experienced boxer who is a German national. He is resident in Germany and his first language is German. His command of English is limited. The Athlete was licenced by the BBBOC to fight in the BBBOC Heavyweight Prize Fighter event in London on 23 February 2013 ("the Competition").
3. By a charging letter dated 21 May 2013 ("the Charge Letter") UKAD alleged that on the evening of the Athlete's participation in the Competition the Athlete provided a urine sample which tested positive for ephedrine. Ephedrine is classified as a specified stimulant and is expressly identified in Section S6.b of WADA's 2013 List of Prohibited Substances where its concentration in a urine sample is above 10 micrograms per millilitre. The Charge Letter asserted that the Athlete did not have a Therapeutic Use Exemption ("TUE") to justify the use of ephedrine in his system and went on to charge the Athlete with a breach of Rule 2.1 of the Rules. At the hearing it was explained by UKAD that the reason for the delay between the adverse analytical finding (8 March 2013) and issuing the Charge Letter (21 May 2013) was that steps had to be taken to locate the Athlete to enable him to be served with the Charge Letter.
4. Given that the Athlete is resident in Germany and speaks limited English there has been substantial co-operation between the National Anti-Doping Agency Germany (NADA) and UKAD. NADA has assisted with the translation and service of documents and has provided a conduit for communication between UKAD and the Athlete. This case is but one example of the international co-operation between National Anti-Doping Organisations to implement the WADA Code.
5. The Athlete acknowledged receipt of the Charge Letter and requested an extension of time until 30 June 2013 to respond due to the well publicised flooding in Germany. That extension of time was agreed. A response was provided through NADA on 30 June 2013 and raised a number of points:
 - 5.1 there had been delay in serving the Charge Letter. The Anti-Doping Rule Violation was said to have occurred on 23 February 2013 but the Charge Letter was only dated 21 May 2013 and received by the Athlete on 5 June

2013;

5.2 the Athlete purchased Vicks MediNait and Asprin Complex at the airport pharmacy on the way to the bout as he had a bad cold. He did not expect over-the-counter medicine to contain "doping agents";

5.3 there was no interpreter at the official weigh-in on 22 February 2013 but the Athlete informed an official or a doctor present that he had taken Vicks MediNait to which the official or doctor replied "ok". Had he been informed by the official or doctor present that the product contained a prohibited substance the Athlete says he would not have entered the competition and would have left. The Athlete assumes that the comment "ok" was either due to a "lack of language capabilities or a lack of interest";

5.4 by the time the Athlete had received the Charge Letter he had already competed in another competition and on 11 May 2013 the Athlete had retired as a boxer although he intends to continue in other areas connected with boxing and sport including being a youth coach;

5.5 the finding of the Tribunal that he has committed an Anti-Doping Rule Violation would be very damaging to his career.

6. On 27 November 2013 there was a telephone directions hearing that was chaired by David Casement QC. UKAD was represented by Jason Torrance and Stacey Shevill. The Athlete represented himself and was assisted by an independent interpreter, Gunter Dancu, whose assistance had been arranged by the Secretariat of the National Anti-Doping Panel. The Athlete expressed the difficulty that he had in recovering a laptop which had been retained by the German police and which was essential to the Athlete's defence of the charge. Whilst it was not clear what assistance the laptop might provide to the Athlete in respect of the charge the Chairman decided to extend the timetable. The Athlete was directed to serve by 4pm 31 January 2014 a full written response upon UKAD setting out all objections to the Adverse Analytical Finding and/or relevant facts for reducing or eliminating the sanction. The Athlete was also directed to serve upon UKAD by 4pm 7 March 2014 all relevant documents, written witness statements and any expert report he wished to rely upon in respect of any challenge to the Adverse Analytical Finding and all facts relied upon to eliminate or reduce sanction. Directions were also

given for UKAD to respond to these documents and also in respect of case management generally. Most importantly it was agreed by all parties and directed by the Chairman that the final hearing of the matter would take place at 10:30GMT on 28 March 2014 at the offices of Sport Resolutions in London and that the Athlete and any witness relied upon by him would appear at the hearing by video conference from a location to be determined.

7. At the directions hearing the Athlete was made fully aware as to the importance of the steps that were directed within the timescale set out and was clear as to the date and time of the hearing and that the location for his video-conference was to be determined. The normal timescales for directions were extended at the request of and to accommodate the Athlete thereby ensuring he would have a fair hearing.
8. Despite numerous calls to the Athlete and email communications to the Athlete's email address there has been no further response from the Athlete with one exception referred to below. The Athlete failed to comply with any of the directions given on 27 November 2013.
9. At the final hearing of this matter UKAD filed a witness statement of Jason Torrance dated 28 March 2014 solely directed to presenting the Tribunal with information and documents concerning the steps taken by UKAD and NADA to contact the Athlete and to provide him with documents that UKAD had been directed to provide. The witness statement exhibits an email from NADA dated 5 February 2014 stating that NADA had received a letter from the Athlete which stated that he was having difficulty in recovering his laptop or notebook from the police and was not able to defend himself properly. On 10 March 2014 NADA relayed an email from the German police stating that the Athlete had been asked to collect the exhibits in the criminal proceedings including the notebook but "he declared by his attorney that he is currently not willing to come for these court exhibitions (sic). Athlete L will be receiving the complete court exhibitions (sic) after the close of the proceedings." No application to vary the directions or to adjourn the final hearing was made.
10. On 24 March 2014 the Athlete was sent an email to his usual email address by the administration of the National Anti-Doping Panel to give him the precise location of the video-link facility. He of course has known of the date and time of the hearing since 27 November 2013. There was no response to that email from the Athlete.

On the same date the trial bundle was posted and emailed to the Athlete. Again there was no response.

11. At the hearing on 28 March 2014 the Athlete did not attend. There was no communication to explain why he was not in attendance. The Tribunal is entirely satisfied that the Athlete knew of the time, date and location of the hearing and there is no material before the Tribunal to justify his non-attendance. The Athlete's non-attendance is consistent with his non-cooperation in respect of the directions. In these circumstances the Tribunal continued with the hearing in the absence of the Athlete.

Issues

12. In the absence of anything further from the Athlete beyond his brief response letter of 30 June 2013 the following issues fall to be determined:

- 12.1 Has the Athlete committed an Anti-Doping Rule Violation in breach of Article 2.1 of the Rules;
- 12.2 What are the consequences of such a breach.

Anti-Doping Rule Violation

13. UKAD relied upon the witness statement of Tony Jackson dated 4 March 2014. Mr Jackson exhibited the Analysis Result Record in respect of the sample advising that a Prohibited Substance was detected in the Athlete's sample, namely ephedrine. A comprehensive bundle of documents - namely the "Documentation to accompany the Analytical Report" - was also exhibited to the statement. Mr Jackson carried out his initial review in accordance with Article 7.2 of the Rules to identify any apparent departure from the Rules. Following the review he was able to confirm that there did not appear to be any departure from the International Standard for Testing that affected the validity of the Adverse Analytical Finding.
14. Also exhibited to the witness statement is the confirmation of Professor James, a member of the UKAD external Scientific Expert Group, that in his opinion there was no departure from the International Standard for Laboratories.
15. It was also confirmed that there was no existing Therapeutic Use Exemption in

respect of the Athlete for this substance. It is clear that enquiries were limited to the UK and did not include Germany. However the Athlete has never suggested he held a relevant TUE and in any event the burden of proving such rests upon the Athlete.

16. At the directions hearing the Athlete was not prepared to admit that he had breached Article 2.1 but rather wished to reserve his position, which was of course never clarified by him. In the circumstances it was necessary for UKAD to prove its case. UKAD has established to the comfortable satisfaction of the Tribunal that the Athlete committed an Anti-Doping Rule Violation in that he breached Article 2.1 of the Rules by reason of the presence of ephedrine in his system.

Consequences

17. The only submission or evidence from the Athlete in respect of the consequences is the letter in response of 30 June 2013. The letter seeks on the one hand to assert ignorance on the part of the Athlete as to the possibility of a Prohibited Substance being present in an over-the-counter pharmaceutical product used for relieving the cold and on the other hand to blame an unidentified official or doctor at the weigh-in for not advising him. We find it difficult to accept such a statement from any athlete let alone an experienced one such as in this case. The Core Responsibilities set out in Article 1.3 rest upon the Athlete himself and include:

(a) to acquaint him/herself, and to ensure that each Person (including medical personnel) from whom he/she takes advice is acquainted, with all of the requirements of these Rules, including (without limitation) being aware of what constitutes an Anti-Doping Rule Violation and of what substances and methods are on the Prohibited List; and

(b) to comply with these Rules in all respects, including:

i) taking full responsibility for what he/she ingests and uses;

ii) ensuring that any medical treatment he/she receives does not infringe these Rules;

18. The normal sanction for a first Anti-Doping Rule Violation is a period of Ineligibility of two years under Article 10.2 of the Rules. It may in certain cases be possible to reduce that period or extend it. There is no basis suggested by UKAD for extending

the two year period. We have also concluded that there is no basis for reducing that period of Ineligibility.

19. The possibility of reducing the period of Ineligibility arises principally under Articles 10.5.1, 10.5.2 and 10.4 of the Rules. However there is a threshold criterion for each of those provisions which is that the Athlete establishes, on the balance of probabilities, how the Prohibited Substances entered his body. The Athlete has asserted that ephedrine entered his body by his use of Vicks MediNait. There is no evidence from the Athlete that ephedrine is present in Vicks Medinait. UKAD accept that on the cover of Vicks Medinait it refers to ephedrine but in the information published by the manufacturer it refers to "pseudoephedrine hydrochloride" which whilst similar it is nonetheless distinct from ephedrine. The Athlete has not given evidence or allowed himself to be the subject of cross-examination in respect of his account as to how the Prohibited Substance entered his body. In the absence of any proper reason for the Athlete not giving evidence we draw the inference that he would not be able to substantiate his explanation. The burden of establishing how the Prohibited Substance entered the Athlete's body rests upon the Athlete and he has failed to discharge it in this case.
20. In any event had we accepted that the use of Vicks Medinait was the means by which ephedrine entered the Athlete's body there is no suggestion that the Athlete made any enquiry as to the ingredients of that product or made any enquiries to ascertain if they were on the Prohibited List. If the presence of ephedrine was clear from the packaging of the product purchased by the Athlete it would have been a very easy matter to cross refer to the Prohibited List which would immediately have placed the Athlete on notice that above a certain level of concentration ephedrine was a Prohibited Substance. In the circumstances the requirements of neither Article 10.5.1 (which requires there to be no fault or negligence on the part of the Athlete) or 10.5.2 (which requires no significant fault or negligence on the part of he Athlete) have been made out by the Athlete.
21. If the threshold criterion had been established by the Athlete then Article 10.4 of the Rules may have been relevant so as to reduce the period of Ineligibility. That would require the Athlete to prove to the comfortable satisfaction of the Tribunal that he did not intend to enhance his performance by ingesting the product. That is a matter on which he would clearly have been subject to cross-examination had

he attended the hearing. In the absence of any evidence on this point from the Athlete which can be tested in cross-examination we find that Article 10.4 also unavailable for that reason.

Summary

22. The Tribunal finds that the Athlete has committed an Anti-Doping Rule Violation contrary to Article 2.1 of the Rules.
23. The period of Ineligibility imposed upon the Athlete shall be a period of two years commencing from 9am (BST) 21 May 2013 and ending at 9am (BST) 21 May 2015.
24. The Athlete's results of the BBBOC Heavyweight Prize Fighter event in London on 23 February 2013 are automatically disqualified in accordance with Article 9.1 of the Rules and any prize money obtained by the Athlete in that Competition is hereby forfeited in accordance with Article 9.3 of the Rules.

Costs

25. In accordance with the discretion of the Tribunal under the 2010 Rules of the National Anti-Doping Panel Rule 11.2 we order that each party shall bear their own costs of these proceedings.

Rights of Appeal

26. In accordance with Article 13.4 of the Rules, the following parties shall have the right to appeal against this decision to the National Anti-Doping Appeal Tribunal: the Athlete, BBBOC, UKAD, NADA and WADA.
27. Any party that wishes to exercise such rights must file a Notice of Appeal with the National Anti-Doping Panel Secretariat no later than 21 days from the date of receipt of this decision, in accordance with Article 13.7 of the Rules.



David Casement

Signed by the Chairman on behalf of the Tribunal:

David Casement QC (Chairman)

Dr Kitrina Douglas (Specialist Member)

Lorraine Johnson (Specialist Member)

Dated 31 March 2014



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