

Case 4 – Refusal or Failure to Submit to Drug Testing

Key words

Mental health; Refusal; Failure; Compelling Justification; Water Bottle; [Doping](#)

Summary

Player A was charged with an Anti-Doping Violation (ADRV) under Article 2.3 of the UKAD Anti-Doping Rules (ADR) of Rugby Football League for refusing or failing to submit to a drug test. Player A declined to undergo a drug test on the basis that he had drunk from an allegedly unsealed bottle of water prior to the test and was concerned about possible contamination. The matter was referred to the National Anti-Doping Panel for resolution.

Background Facts

Player A, a rugby league player, was selected for drug testing during a training session with his club. Player A was approached by a doping control officer (“DCO”) as he came off the training pitch and notified that he had been selected for doping control testing. The Player was also offered a bottle of water to drink as he left the pitch and drank three-quarters of the bottle. The bottles of water were purchased by the DCO and another DCO for the purpose of the test. The plastic shrink wrapping around the bottles was removed before being placed in the DCO’s cooler bags.

The Player consumed an additional bottle of water which he took from the DCO’s cooler bag in the changing room. Player A asked for more water and selected another bottle, again from the cooler bag. On this occasion, however, the Player commented that the bottled had not “cracked” (the seal had not broken). The Player opened a fourth bottle and maintained again that it had not “cracked” and

was worried the water might have been contaminated. As a result, the Player refused to submit a urine or a blood test and completed a Player refusal form confirming the same. On refusing to take the drug test the Player was reminded by the DCO that failure to provide a sample might result in an ADRV.

Reasoning and Decision of the Tribunal

UKAD argued that the Player had intentionally refused to submit to sample collection, and if this was not a refusal, there had certainly been a failure. Pursuant to ADR 2.3 the Player would have to show compelling justification for refusal. UKAD's position was that it could not be said that the Player lost all his cognitive functions to render him incapable to form any intention, or that this was an "exceptional" case based on the medical evidence advanced on behalf of the Player.

The Player argued that the testing procedure in general was so fundamentally flawed that the claim should be summarily dismissed by the NADP Tribunal. Secondly, it was argued that the Player's mental health affected his ability to think clearly, perceive events accurately and to make balanced decisions at the relevant time. Player A has a history of depression, has undergone several concussive injuries in the course of his career and on occasion exhibits unusual behaviour on the pitch. In the opinion of expert witnesses for the Player, Player A's concern over the allegedly unsealed water bottles was capable of producing a reaction in the Player depriving him of all ability to think rationally. If an intentional refusal was found against the Player, it was submitted that the Tribunal should conclude No Fault or Negligence, or, at least, No Significant Fault or Negligence when considering sanction.

The Tribunal first considered whether any procedural defects in relation to sample collection applied to this case. The ADR adopt and incorporate the International Standard of Testing and Investigation (ISTI). The Tribunal noted that the way the Sample was collected in this case was informal; however, they would have to determine whether the departures from ISTI identified in this case could have been causative of the "factual basis" of the Player's refusal to provide a sample. The Tribunal did not find any procedural errors on the facts.

Next, the tribunal considered whether Player A's conduct amounted to a refusal, or a failure, to submit a sample and noted that whilst a failure may be inadvertent, it would be hard to see how a refusal could be anything other than deliberate. It was found that Player A had been notified of a request to provide a sample, and that he intentionally refused to provide a sample. The Tribunal found that there was no valid reason for the Player to not take the test and as such the compelling justification was not established. The threshold for compelling justification is high and it is to be judged objectively rather than by reference to a Player's own perception. However, the Tribunal did not doubt that the Player genuinely believed the water might have been contaminated. The Tribunal dismissed the submission to have the case dismissed on procedural grounds. The Player's fault or negligence was assessed by reference to the Player's mental infirmity.

In light of the exceptional circumstances of this case, namely the Player's mental health, the Tribunal concluded that an ADRV had been committed by the Player but that the Player bore No Fault or Negligence. Consequently, the applicable period of Ineligibility was eliminated.

Learning points

Mental health issues may be relevant in determining whether a refusal to be tested was the fault (or a result of the negligence) of the Player. In its decision the Tribunal emphasised however, that the case was exceptional on its own facts and psychological evidence relating to the Player at issue. The ruling in this matter should not be taken as a precedent for other cases.

The defence of compelling justification as used in ADR Article 2.3 is to be viewed objectively (subjective issues, such as the mental state of the Player will be relevant only in mitigation of sanction). Once a prima facie violation is established, the Burden of Proof is on the Player to show that there was a compelling justification (i.e. that a reasonable person in his/her position has a compelling justification to refuse or for failing to provide a sample).