

## Case 16 – Refusal to Submit to Blood Sample Collection

### Key words

*Blood sample; mental health; Compelling Justification; Failure; Refusal; [Doping](#)*

### Summary

Player B was charged with an Anti-Doping Rule Violation (“ADRV”) under Article 2.3 of the Tennis Anti-Doping Programme 2017 (“TADP”). The player refused to submit to blood Sample collection citing a fear of giving blood. Player B sought to avoid a violation on the grounds that he had a compelling justification for refusing to provide a blood sample. Alternatively, he sought a reduction to the sentence on the grounds that he did not intend to cheat or that he had displayed no significant fault. The case was referred to the International Tennis Federation’s (“ITF”) Independent Tribunal for resolution.

### Background Facts

Player B participated in an international tennis competition in Portugal and was randomly selected to provide an Out-of-Competition blood sample. When requested, Player B did not provide blood at the request of the Doping Control Officer. His reason for this was that he had suffered an epileptic attack the last time he gave blood, and was scared to have any blood drawn. Player B volunteered to provide a urine sample instead of blood. As a matter of fact, it was accepted that Player B’s reason for refusal was due to a genuine fear of giving blood. There were also problems with the testing process.

### Reasoning and Decision of the Tribunal

Player B 's position was that he did not provide a blood sample because he had suffered an epileptic attack the previous time he gave blood. However, he did not have any corroborating evidence of this. Player B also argued that the ITF representatives did not provide proper warning as to the consequences associated with not providing a blood sample, and he believed the request for a blood sample was replaced by his offer to give the urine sample instead.

Witnesses for the ITF stated that they warned Player B that there might be consequences for refusal to provide a blood sample and that it was never the case that the urine sample would be accepted in place of a blood sample. The ITF presented evidence, in context, to explain that urine and blood tests are not interchangeable because some substances and methods on the Prohibited List can only be tested in blood.

In reaching their decision the Tribunal considered a number of issues relating to the application of the substantive TADP provisions including: the player's state of mind, intention, whether the act constituted a refusal or failure to submit a Sample, compelling justification, whether the player acted with No Significant Fault or Negligence. It also considered whether minor problems in the sampling process and the information provided to Player B during the process meant that the request for blood was effectively waived by the acceptance of the urine sample.

In relation to Player B's intention, The Tribunal found that Player B deliberately *refused* to provide the sample and had no objective evidence (such as a medical record) which might support the contention that his fear, objectively viewed, was a compelling justification for his refusal. To establish a compelling justification, a player needs to demonstrate evidence beyond expressing a genuine fear that he might be ill, such as by seeking treatment for, and obtaining a medical certificate to corroborate, his physical or mental incapability of giving blood. Player B had not done this and, therefore, the Tribunal determined that Player B had committed an ADRV under Article 2.3 of the TADP.

The distinction between *refusal* and *failure* to submit was potentially important because under TADP (as opposed to the 2015 WADA Code) the provisions allowing for a reduction in sanction where a player could show no "intention to cheat" (Art.

10.2.3) only applied to failure to submit. As a result, Player B could not rely on this provision. Nevertheless, they also found that Player B's genuine fear of giving blood could be considered in the context of whether the player acted without significant fault or negligence (Art. 10.5.2) since he believed he had a genuine reason not to give blood. For these reasons a two-year period of Ineligibility was imposed.

In relation to the procedural issues, it was noted that the ITF Representatives did not state as clearly as they could have, that the urine sample would not be treated as a substitute for blood. However, the Tribunal found that this was not sufficient as a basis for waiver or withdrawal of the request for a blood sample by the ITF, particularly given that the Player B had clearly not changed his position or relied on the alleged waiver; it was clear that the Player would not have given a blood sample under any circumstances. Furthermore, other minor deviations from ideal procedure had no consequential effect of the player's refusal.

### **Learning points**

- Urine and blood tests are not interchangeable. Some substances are only detected in blood and consequently blood samples are required to be collected from players.
- A player's intention (not to cheat), if proved, can be considered in the context of provisions reducing sanction under ADR on the grounds of 'no fault' or 'no significant fault'.
- Compelling Justification for refusal to give a sample will be judged objectively.
- Player's should reasonably expect from time to time to undergo the requirements of an anti-doping programme and as such should prepare themselves accordingly; if they have a genuine reason for not providing a sample (such as fear of needles) then they should ensure they have objective evidence (such as medical reports) that confirm this problem which are available at point of sampling.