



Arbitration CAS 2015/A/4272 World Anti-Doping Agency (WADA) v. Sri Lanka Anti-Doping Agency (SLADA) & Rishan Pieris, award of 31 March 2016

Panel: Mr Alexander McLin (Switzerland), Sole Arbitrator

Rugby

Doping (metandienone)

Intent to take the prohibited substance

Duty to inquire as to whether a product contains a prohibited substance

1. An athlete who ingested tablets in order to increase his body weight causing likely the positive analytical test, cannot be considered that he had no intent to take the prohibited substance solely on his stated ignorance as to the contents of the tablets.
2. The ability for an athlete to reduce a standard applicable period of ineligibility on the basis of an anti-doping rule violation on a “*no fault or negligence*” or “*no significant fault or negligence*” rationale is reserved for specific circumstances. Abundant CAS case law underscores the athlete’s responsibility with respect to whatever he or she ingests or otherwise administers to his or her body. Indeed, such case law is replete with language to the effect that an athlete has “*a duty of utmost caution to avoid that a prohibited substance enters his or her body*”. Failing to inquire as to whether a product contains a prohibited substance constitutes significant fault in and of itself, according to CAS precedent.

I. PARTIES

1. The World Anti-Doping Agency (“WADA” or the “Appellant”) is a Swiss private law foundation with its headquarters in Montreal, Canada, and its seat in Lausanne, Switzerland, whose object is to promote and coordinate the fight against doping in sport in all its forms.
2. The Sri Lanka Anti-Doping Agency (“SLADA” or the “First Respondent”) is the sole national anti-doping organization in Sri Lanka.
3. Mr. B.H. Rishan Premageeth Pieris (the “Athlete” or the “Second Respondent”) plays rugby for the Uva Vipers and is a member of the Sri Lanka Rugby Football Union.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found therein may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. The Athlete underwent an out-of-competition anti-doping test on 8 July 2014, at which he provided a bodily (urine) sample that subsequently tested positive to metandienone.
6. Metandienone is listed as a substance prohibited both in and out of competition according to the 2014 WADA Prohibited List, classified under "S1" (*Anabolic Agents*).

B. Proceedings before the Sri Lanka Anti-Doping Agency

7. SLADA Disciplinary Committee undertook the results management and issued a decision dated 3 November 2014 that imposed a one-year period of ineligibility on the Athlete, beginning on 8 July 2014 (the "Appealed Decision").
8. WADA requested, and ultimately received, a copy of the case file on 9 October 2015.
9. It is from the Appealed Decision that WADA now appeals to the Court of Arbitration for Sport ("CAS").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 30 October 2015, the Appellant filed its Statement of Appeal against the Respondents with the CAS with respect to the Appealed Decision in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). In its Statement of Appeal, the Appellant requested that the matter be submitted to a Sole Arbitrator pursuant to Article R50 of the Code.
11. On 5 November 2015, the CAS Court Office acknowledged receipt of the statement of appeal and, inter alia, invited the Respondents to state whether they agreed to submit this appeal to a Sole Arbitrator. They were notified that the absence of agreement or response, the issue would be resolved by the President of the CAS Appeals Arbitration Division, or her Deputy, in accordance with Article R50 of the Code.
12. On 9 November 2015, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

13. On 16 December 2015, having received no objection or response from the Respondents as to the Appellant's proposal to refer this case to a Sole Arbitrator, the parties were informed by the CAS Court Office that the Deputy President of the Division had decided to submit the matter to a Sole Arbitrator. The next day, on 17 December 2015, the CAS Court Office notified the parties that the Deputy President appointed Mr. Alexander McLin, Attorney-at-law in Geneva, Switzerland.
14. On 24 December 2015, the CAS Court Office wrote to parties referring to its letter of 19 November and stating that no answers had been received within the deadline, enclosing courier delivery reports of said letter and drawing the parties' attention once again to R55 para. 2 of the Code providing for the Sole Arbitrator's ability to render an award despite the lack of a response. In the same letter, the parties were invited to express their position on whether a hearing was necessary in this appeal.
15. On 28 December 2015, the Appellant responded that its preference was for the Sole Arbitrator to issue an award solely on the basis of written submissions. No response was received from the Respondents.
16. On 11 February 2016, the CAS Court Office informed the parties of the Sole Arbitrator's decision not to hold a hearing and decide the matter on the basis of the file alone.
17. On 11 February 2016, the Appellant signed and returned the Order of Procedure in this appeal to the CAS Court Office. The Respondents did not sign or return the Order of Procedure, and did not object to its contents.

IV. SUBMISSIONS OF THE PARTIES

18. WADA's submissions, in essence, may be summarized as follows:
 - Metandienone is an anabolic androgenic steroid that appears on the 2014 WADA Prohibited List, which indicates that it is prohibited both in and out of competition. Its presence was detected in the Athlete's bodily sample. Metandienone is not among the substances classified as "specified substances" by the 2014 WADA Prohibited List.
 - The presence of the prohibited substance in the Athlete's bodily sample (which is not challenged by the Athlete) constitutes a violation of Article 2.1 of the SLADA Anti-doping Rules ("SLADA ADR").
 - Article 10.2 of the SLADA ADR provides for a two-year period of ineligibility from competition unless specific conditions are met for a reduction in the period of ineligibility. These are provided for in Article 10.5 SLADA ADR and allow for the reduction of this applicable period of ineligibility in the event there is no significant fault or negligence by the athlete, or even its elimination in the event no fault or negligence is found.

- While the Athlete has provided an explanation as to how the prohibited substance entered his body (an element necessary to the establishment of no fault or negligence, or no significant fault or negligence under the SLADA ADR), this explanation actually indicates that his degree of fault is conversely very significant, as it involves the intentional ingestion of “Anabol” tablets.
 - Given that none of the Athlete’s actions or omissions could qualify as the exercise of utmost care that must be demonstrated when seeking to diminish degree of fault, one must conclude that he did not comply with his duty of care.
 - As a result and in order to be in compliance with the SLADA ADR, since the Appealed Decision declared the Athlete ineligible for one year, the Athlete must serve an additional year of ineligibility.
19. In its statement of appeal, WADA asserts the following request for relief:
1. *The Appeal of WADA is admissible.*
 2. *The decision rendered by SLADA Disciplinary Committee on 3 November 2014, in the matter of Mr Rishan Pieris, is set aside.*
 3. *Mr Rishan Pieris is sanctioned with a two-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of ineligibility, whether imposed on, or voluntarily accepted by, Mr Rishan Pieris before the entry into force of the CAS award, shall be credited against the total period of ineligibility to be served.*
 4. *WADA is granted an award for costs.*
20. The Respondents have not provided written submissions. The rationale for the Appealed Decision can only therefore be understood from the language contained within it.
21. From the Appealed Decision, it appears that the Athlete stated that prior to rugby matches held on 5 and 6 July 2014, he had gone to the physical fitness centre of his local community centre, where he took two tablets called “Anabole”, with the expectation that these would “help him to enhance his body weight”.
22. Apparently on the basis of a statement by the Athlete made at the time the tablets were taken (which does not appear in the file) to the effect that he had no knowledge of the contents of the tablet, the SLADA Disciplinary Committee found that “he did not take any prohibited substance wilfully nor intentionally”.
23. By virtue of the absence of any written submissions, the Respondents have not articulated any requests for relief.

V. JURISDICTION

24. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

25. Articles 13.1.1 and 13.2.3 (6) of the SLADA ADR grants WADA a direct right of appeal to CAS from a decision of the SLADA Disciplinary Committee, without having to exhaust any internal remedies.
26. The CAS, therefore, has jurisdiction to decide this appeal.

VI. ADMISSIBILITY

27. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

28. Article 13.2.3 of the SLADA ADR provides that “the filing deadline for an appeal or intervention filed by WADA shall be the later of:

(a) Twenty-one (21) days after the last day on which any other party in the case could have appealed,
or

(b) Twenty-one days after WADA’s receipt of the complete file relating to the decision”.

29. WADA received the case file on 9 October 2015, and filed its Statement of Appeal on 30 October 2015. It is therefore compliant with the time limit set forth in Article 13.2.3 of the SLADA ADR.
30. The Sole Arbitrator therefore confirms that this appeal is admissible.

VII. APPLICABLE LAW

31. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.

32. The applicable regulations are the SLADA ADR. In the event of relevant gaps in the SLADA ADR, Sri Lanka law applies as the domicile of both Respondents (that having issued the Appealed Decision, and the Athlete, its subject). Moreover, Article 20.3 SLADA ADR provides that “*Sri Lanka law governs these Anti-Doping Rules*”.

VIII. MERITS

33. The issue at hand is whether the SLADA ADR allow, in the present circumstances, for a period of ineligibility of less than two years. It is uncontested that the Athlete ingested the “Anabole” (or “Anabol” – the appropriate spelling is not exactly clear, but this is immaterial) tablets, did so with the stated intent to increase his body weight, and that this act likely caused the positive analytical test. The Appealed Decision, however, finds that he had no intent to take this prohibited substance. This finding appears to be based solely on the Athlete’s stated ignorance as to the contents of the tablets. If another basis exists, it does not appear in the Appealed Decision.
34. As the Appellant points out, the ability for an athlete to reduce a standard applicable period of ineligibility on the basis of an anti-doping rule violation on a “no fault or negligence” or “no significant fault or negligence” rationale is reserved for specific circumstances which are not present here. This is borne out not only in the comments to Article 10.5.2 SLADA ADR, but also in the now abundant CAS case law which underscore the athlete’s responsibility with respect to whatever he or she ingests or otherwise administers to his or her body. Indeed, such case law is replete with language to the effect that an athlete has “*a duty of utmost caution to avoid that a prohibited substance enters his or her body*” (CAS 2005/C/976 & 986). Failing to inquire as to whether a product contains a prohibited substance constitutes significant fault in and of itself, according to CAS precedent (see e.g. CAS OG 04/003; CAS 2006/A/1067).
35. In the present case, neither Respondent has attempted to meet its burden of proof with respect to establishing “no fault or negligence” or “no significant fault or negligence”. Moreover, even if deduced in the light most favourable to the Athlete, the facts arising from the Appealed Decision do not even allow for a *prima facie* possibility of reduced fault. If indeed an athlete has a duty to inquire as to the composition of a given product when it may appear innocuous, it is difficult to understand how a product whose very name could hardly be more descriptive of the prohibited substance it contains could somehow lead to a finding of “no significant fault or negligence”. If indeed the Athlete was unaware of what he was consuming, his blindness as to its contents was more likely to be wilful than inadvertent, especially when combined with the consideration that his stated purpose was to increase his body weight.
36. Since the SLADA ADR imposes a two-year period of ineligibility absent conditions that would meet the requirements of Articles 10.5.1 or 10.5.2, and these conditions are not met, the Appealed Decision cannot be deemed compliant with the applicable rules, and an additional period of ineligibility must be imposed in order to bring the sanction in line with the rules.

37. Consequently, the Sole Arbitrator determines that the Athlete has committed an anti-doping rule violation in accordance with Article 2.1 of the SLADA ADR (presence of a prohibited substance or its metabolites or markers in an athlete's bodily specimen) and therefore shall serve a two-year period of ineligibility from the date of this award in accordance with Article 10.2 of the SLADA ADR. Any period of ineligibility served by the Athlete as a result of the Appealed Decision shall be credited against the total period of ineligibility to be served.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by the World Anti-Doping Agency on 30 October 2015 against the Sri Lanka Anti-Doping Agency and Mr. Rishan Pieris with respect to the decision rendered by the Sri Lanka Anti-Doping Agency Disciplinary Committee on 3 November 2014 is upheld.
2. The decision rendered by the SLADA Disciplinary Committee on 3 November 2014 is set aside.
3. Mr. Rishan Pieris is sanctioned with a two-year period of ineligibility commencing on the date of this award with credit given for any period of ineligibility already served by Mr Rishan Pieris between 8 July 2014 and 7 July 2015.
4. (...).
5. (...).
6. All other motions or prayers for relief are dismissed.