

HEINEKEN CUP 2008/2009

Decision of Judicial Committee

Held at offices of Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street, Glasgow

Thursday 26 February 2009

IN RESPECT OF:

Matt Stevens (“the Player”) and a charge that the Player committed an anti-doping rule violation in terms of the Heineken Cup 2008/2009 Anti-Doping Programme (“the Programme”).

MEMBERS OF THE JUDICIAL COMMITTEE (“the Committee”)

Rod McKenzie (Scotland)
Professor Stewart Hillis MB FRCP FRCS (Scotland)
Gareth Williams (Wales)

DECISIONS OF THE COMMITTEE:

1. That the Player committed an anti-doping rule violation in respect that on 14 December 2008 at Firhill Arena, Glasgow the Player provided a sample of urine containing benzoylecgonine and methylecgonine, metabolites of cocaine which is a Prohibited Substance, for the purposes of in-competition testing only, in terms of the Programme and IRB Regulation 21; and
2. In respect this was the Player’s first anti-doping rule violation imposed a period of Ineligibility of two years from all rugby playing and rugby related activities from 19 January 2009 until up to and including 18 January 2011.

INTRODUCTION

The Committee was convened by Professor Lorne D Crerar, the Chairman of the ERC Disciplinary Panel pursuant to the Programme in respect of a charge of the Player having committed an anti-doping rule violation.

Present at the hearing, in addition to the members of the Committee, were:-

The Player
Richard Smith QC (Counsel for the Player)
Roger O’Connor (ERC Anti-Doping Manager)
Max Duthie (Solicitor for the ERC Anti-Doping Manager)
Gavin Dovey (RFU – observing)
Carolyn Morgan (Harper Macleod LLP – notetaker)

FACTS ADMITTED OR ESTABLISHED

As part of in competition doping control the Player was required to provide a urine sample immediately following the match between Glasgow Warriors and Bath RFC on 14 December 2008 at Firhill Stadium, Glasgow following a match in the 2008/2009 Heineken Cup. The Player’s urine sample was numbered 3015303.

The sample of urine was divided between a “A” sample and a “B” sample. The A sample was analysed by Laboratoire Suisse d’Analyse du Dopage, which is a WADA accredited laboratory.

The A sample was found to contain metabolites of cocaine, benzoylecgonine and methylecgonine. Cocaine is a stimulant and a Prohibited Substance in terms of the Programme (category S6, 2008 Prohibited List). This constituted an Adverse Analytical Finding.

On receipt of the Adverse Analytical Finding the ERC Doping Control Officer arranged for a Preliminary Review of the case to be undertaken. On 18 January 2009 a review board reported that no TUE had been granted or filed that would explain the Adverse Analytical Finding and that there was no apparent departure from the International Standard for Testing which undermined the Adverse Analytical Finding.

On 19 January 2009 the ERC Anti-Doping Manager notified the Player by letter and e-mail that an anti-doping rule violation may have occurred and that with effect from that date the Player was Provisionally Suspended in accordance with paragraph 15 of the Programme.

The Player elected not to require that the B sample be analysed.

The Player requested that the matter would be dealt with at a hearing before a Judicial Committee and by letter dated 12 February 2009 the ERC Anti-Doping Manager requested Professor Crerar to appoint a Judicial Committee.

By e-mail dated 19 February 2009 Professor Crerar notified parties of the appointment of the Committee and that the Player was invited to attend at a hearing on 26 February 2009.

By e-mail dated 19 February 2009 detailed pre-hearing directions were given to each of the Player and the ERC Anti-Doping Manager to be complied with by 5pm on Monday 23 February 2009 and 12 noon on Wednesday 25 February 2009 respectively.

Each of the Player and the ERC Anti-Doping Manager complied with the directions.

In their respective responses parties confirmed that neither had any preliminary issues. The Player admitted the commission of an anti-doping rule violation for the purposes of paragraph 3.2 on 11 of the Programme. The Player also accepted the applicable sanction was a two year period of Ineligibility as set out in paragraph 18.1 of the Programme.

The Player submitted that the period of Ineligibility should commence from the date on which the Player was first Provisionally Suspended, on 19 January 2009. The ERC Anti-Doping Manager accepted that the Player was to receive credit for the period of Provisional Suspension and that the period of Ineligibility should commence on 19 January 2009 and end on and including 18 January 2011.

THE HEARING

Mr Duthie, on behalf of the ERC Anti-Doping Manager provided the Committee with copies of the decision of an Australian Rugby Union Judicial Committee in the case of *Wendll Sailor* and a Rugby Football Union Judicial Committee in the case of *Paul Price*.

Mr Smith made submissions on behalf of the Player. He acknowledged that the mandatory penalty for the commission of a first anti-doping rule violation where the Prohibited Substance

was cocaine, or metabolites of cocaine, was a two year period of Ineligibility as required by the Programme. Mr Smith acknowledged that it was not open to the Judicial Committee to mitigate the period of Ineligibility in any way other than to give due credit for the period of Provisional Suspension commencing on 19 January 2009. Mr Smith confirmed that the Player did not contend that there was no fault or negligence or no substantial fault or negligence.

The Player made representations to the Committee on his own behalf. The Player acknowledged his fault and expressed his deepest regret for the harm caused both to his friends, family and teammates and supporters and to the wider rugby community.

The Player did not seek to excuse his own behaviour but accepted full responsibility for what he had done.

The Player explained that he had become depressed about a number of professional and personal matters and instead of seeking assistance and counselling had dealt with his depression by binge drinking and by taking cocaine in “recreational” settings away from rugby.

He acknowledged that he had become distracted by his problems and stated that he had, in the week prior to the match in Glasgow, taken cocaine closer to a match than he had previously done. He explained that he had taken cocaine whilst drinking on the Thursday immediately prior to the match. He explained there was no intention to enhance his performance.

He went on to explain that in his view his random selection for testing in Glasgow was “in one sense a blessing” because it has caused him to have to confront his addictive behaviour and to seek professional counselling and help.

During his period of Provisional Suspension he explained that he had had time for reflection and that with his public humiliation had become a realisation that he would not be playing rugby again for some considerable time. He had found this devastating and was particularly frustrated that the nature of the Ineligibility which would be imposed on him meant that he could not be involved in any way with the rugby community. This included him not being able to be involved in coaching, including coaching young people.

He explained that at the age of 26 he was in his prime as a rugby player and that it was his hope that in two years time he would be able to return to top flight professional rugby as a better person and a better rugby player.

He closed by repeating his personal regret for the harm that he had caused to his sport and to his international and club teammates, family, friends and the supporters of rugby. In response to a question from the Chairman he re-iterated his public statements that he considered that he had become addicted to cocaine.

His statement to the Committee was delivered with striking sincerity and obvious contrition. The Player did not require to attend at the hearing. He could have declined the hearing and the period of Ineligibility would have been imposed on him administratively. It is to his considerable credit that he insisted on a personal attendance before an Judicial Committee to deliver the apology which he gave.

DISCUSSION

Cocaine is a powerful central nervous systems stimulant responsible for the death of a number of professional and non-professional sportspersons. It has a long history of use as both a narcotic

and a doping agent in sport. The dangerous effects of cocaine are part of the reason for its prohibition. Whether snorted or smoked as crack, cocaine damages the nervous, respiratory and circulatory systems and its use can lead to addiction, dependency, anxiety and psychotic disorders. It is abused in sport both for its properties as a stimulant and for the psychological effects which can “permit” enhanced short term extreme physical activity.

On use cocaine breaks down spontaneously into its metabolites. Those metabolites can remain detectable in urine for periods in excess of seven days. It is not possible to determine from testing undertaken for doping control purposes whether cocaine has been taken immediately prior to a sporting event in an effort to enhance performance or whether the detected metabolites are as a consequence of “recreational” use unconnected with the playing of sport.

As a consequence of its capacity to act as a powerful central nervous system stimulant and the risk of serious injury resulting from its use it remains on the Prohibited List, including the 2009 Prohibited List, and it is not a Specified Substance.

We have no reason to doubt the Player’s contention that in this particular case the cocaine was taken some days prior to the match at which the in-competition testing took place. However, this cannot be verified by laboratory analysis because of the way in which cocaine is metabolised by the body.

It is to be hoped that rugby players in particular and sportspersons in general, who may be tempted to use cocaine and other narcotics for “recreational” purposes realise the very substantial risk that they run of an Adverse Analytical Finding as well as appreciating the serious dangers to their physical and psychological health associated with the use of cocaine.

The example of the Player should serve to illustrate to all sportspersons tempted to use such narcotics of how an internationally renowned athlete at the peak of his professional career can have his health damaged by addiction to cocaine as well as losing his livelihood and ability to take part in the sport he excels in by an Adverse Analytical Finding.

DISPOSAL

In accordance with paragraph 18.1 of the Programme a two year period of Ineligibility is imposed in respect of the first anti-doping rule violation of the Player. The period of Ineligibility commences on the first day of his Provisional Suspension i.e. 19 January 2009 and extends up to and including 18 January 2011. During the period of Ineligibility the Player is prevented from being involved in any way and to any extent in any rugby playing and rugby related activities.

The Player was advised of his right to refer his case to an Appeal Committee in accordance with paragraph 20 of the Programme at the hearing.

SIGNED:
Rod McKenzie
Chairman

DATE: 16 March 2009