

WORLD RUGBY

IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY OXANA KOROBCHUK CONTRARY TO WORLD RUGBY REGULATION 21 BEFORE A BOARD JUDICIAL COMMITTEE

Board Judicial Committee:

Christopher Quinlan QC (Chairman)

Steve Targett

Yoshihisa Hayakawa

DECISION OF THE BOARD JUDICIAL COMMITTEE

I. INTRODUCTION

1. World Rugby alleges that Oxana Korobchuk ('the Player') committed an anti-doping rule violation ('ADRV') as a result of an adverse analytical finding ('AAF') for the presence of 16 β -hydroxystanozolol, a metabolite of stanozolol.
2. Stanozolol is an anabolic steroid listed in category S1.1a Exogenous Androgenic Anabolic Steroids on WADA's 2016 List of Prohibited Substances (reproduced in Schedule 2, World Rugby Regulation 21). The substance was detected in an in competition doping control sample collected on 28 May 2016 at the Clermont-Farrant leg of the HSBC World Rugby Women's Sevens Series ('the Tournament').
3. The Player is a member and player of Russian National Sevens Team participating in the said HSBC Women's Sevens Series, and as a member and player of the Rugby Union of Russia who participates in competitions and other activities organised, convened, authorised or recognised by the Rugby

Union of Russia ('the Union') and World Rugby is subject to and bound to comply at all times with World Rugby Regulation 21.

4. The Player admitted the ADRV. The only issue was sanction. At the Player's request the matter was determined without a hearing.
5. This document constitutes the Board Judicial Committee's ('BJC') final reasoned Decision, reached after due consideration of the evidence, submissions, material and Arbitral Awards and authorities placed before it. It represents our unanimous conclusion.

II. FACTS

6. The facts were not in dispute. The Prohibited Substance was detected in In-Competition sample collected from the Player at the Tournament. She noted on her Doping Control Form that she was taking "Stimol", "Lactol Putem" "Xtend" and "Leciton".
7. The sample was split into two (A and B - 4000687)) and sent the WADA-accredited laboratory in Chatenay-Malabtry Hauts-de-Seine in Paris, France. The laboratory reported an AAF for for the presence of 16 β -hydroxystanozolol, which is a metabolite of stanozolol.
8. Stanozolol is an anabolic steroid and listed in category S1.1a Exogenous Androgenic Anabolic Steroids on WADA's 2016 List of Prohibited Substances
9. According to the records of World Rugby, the Player does not have a Therapeutic Use Exemption approving use of this Prohibited Substance.
10. In accordance with Regulation 21.7.2, Dr. Ismail Jakoet carried out a preliminary review of the case. He confirmed that a ADRV may have been committed.

11. The Player signed the Team Member Consent form as part of her participation in the HSBC Women's Sevens Series to confirm she had completed World Rugby's online e-Learning Programme and received World Rugby's Anti-Doping Handbook.

III. REGULATORY SCHEME

12. Regulation 21.2.1 provides that the following constitute anti-doping rule violations:

Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample

13. Regulation 21.2.1.1 makes it clear that

It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Player's part be demonstrated in order to establish an anti-doping rule violation under Regulation 21.2.1 (Presence)

14. Stanozolol is an anabolic steroid and a Prohibited Substance. It is not a Specified Substance.

15. The starting point is Regulation 21.10.2, headed *Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method*. It states:

The period of Ineligibility for a violation of Regulations 21.2.1 (Presence), 21.2.2 (Use or Attempted Use) or 21.2.6 (Possession) shall be as follows, subject to

potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

21.10.2.1 The period of Ineligibility shall be four years where:

21.10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Player or other Person can establish that the anti-doping rule violation was not intentional.

21.10.2.1.2 The anti-doping rule violation involves a Specified Substance and World Rugby (or the Association, Union or Tournament Organiser handling the case as applicable) can establish that the anti-doping rule violation was intentional.

21.10.2.2 If Regulation 21.10.2.1 does not apply, the period of Ineligibility shall be two years.

16. By Regulation 21.10.2.3 Intention is defined thus:

As used in Regulations 21.10.2 and 21.10.3, the term “intentional” is meant to identify those Players who cheat. The term therefore requires that the Player or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Player can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

17. Regulation 21.10.4 states

21.10.4 Elimination of the Period of Ineligibility where there is No Fault or Negligence

If a Player or other Person establishes in an individual case that he or she bears No Fault or Negligence, then the otherwise applicable period of Ineligibility shall be eliminated.

18. The burden is upon the Player to establish “no Fault or Negligence” on the balance of probabilities. Its meaning in Regulation 21 is taken from the WADC 2015 and reproduced in Appendix 1 to Regulation 21. It provides:

No Fault or Negligence: The Player or other Person's establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule. Except in the case of a Minor, for any violation of Regulation 21.2.1, the Player must also establish how the Prohibited Substance entered his or her system.

19. So far as “No Significant Fault or Negligence” once more the Player must establish it to the same standard. Regulation 21.10.5 provides:

“21.10.5 Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

[...]

21.10.5.2 Application of No Significant Fault or Negligence beyond the Application of Regulation 21.10.5.1

If a Player or other Person establishes in an individual case where Regulation 21.10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Regulation 21.10.6, the otherwise applicable period of Ineligibility may be reduced based on the Player or other Person's degree of Fault, but the reduced

period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Regulation may be no less than eight years. “

20. Regulation 21.10.5.1 (Specified Substances and Contaminated Products) has no application in this case.

21. Appendix 1 to Regulation 21 provides:

No Significant Fault or Negligence: The Player or other Person's establishing that his or her Fault or Negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Regulation 21.2.1, the Player must also establish how the Prohibited Substance entered his or her system.

22. As is apparent, in respect of both Regulations 21.10.4 and 21.10.5.2 the burden is upon the Player to establish (on the balance of probabilities) the basis for eliminating or reducing the otherwise applicable period of Ineligibility.

IV. PROCEEDINGS BEFORE THE BJC

23. Following a preliminary review of the case in accordance with Regulation 21.20.1, the Player was notified in writing via the Union on 7 July 2016 that she might have committed an ADRV contrary to Regulation 21.2.1. She was provisionally suspended, pending the outcome of these proceedings, with immediate effect.

24. By a document signed by her dated 21 July 2016, the Player admitted the ADRV. Therein she stated:

“According to the above, I am informing that in 2015 I seriously injured my hip. The diagnose was tenosynovitis of the left hip adductors, postcontusional edema of the left bone marrow. After the treatment in hospital I started to train in my rugby club.

Unfortunately, the treatment didn't help me and I could not continue to train in the club. I went to a private doctor, who cured me, made injections and didn't explain that there were banned substances in that treatment. During the injection I didn't know the name of the substances and simply trusted the doctor because I was worried about my health and did not suspect any risks. It was my unexcused mistake made by me as professional sportsmen, who always truly followed everything that I was prescribed. I regret I did not express enough vigilance in the assessment of this situation.

Right now I am suspended of all trainings in club and National team.

I understand my fault for what happened and refuse to open Sample “B”.

I kindly ask you for any possible indulgence, taking into consideration the fact that rugby is the main thing in life for me and not right treatment was not my aim to increase my strength index.”

25. As is clear she also waived her right to have the B sample tested.

26. On the 1 August 2016 the Anti-Doping Manager received from the Union the following email:

“Player O. Korobchuk waives hearing in her case. She is ready to take your decision. Write me what is required of the player.”

27. The BJC was appointed. By way of a Minute dated 9 August 2016 the Chairman issued Directions. Direction 1 provided:

“The matter will be considered and resolved on the papers without an oral hearing unless the Player notifies World Rugby no later than 16.00 BST on 16 August 2016 that she wishes to exercise her right to have an oral hearing. “

28. The Player did not comply with the Direction.

29. Direction 2 provided:

*“By **16.00 BST on 30 August 2016** the Players shall serve upon World Rugby, the following -*

- a. A written statement setting out, in such detail as she wishes to BJC to consider, the evidence upon which she relies and her submissions on sanction. Those submissions must address the specific grounds for reduction in the otherwise applicable period of Ineligibility as provided by World Rugby Regulation 21.10.4 and 21.10.15.*
- b. Any evidence (in addition to her own and that which she has already served) she proposes to rely upon. Such evidence must be in writing. Alternatively, confirmation that there will be none.*
- c. A list of any previous Arbitral Awards or Decisions upon which she will rely.”*

30. The Player did not comply with that Direction.

31. Direction 3 provided:

*“By **16.00 BST on 13 September 2016** World Rugby shall reply in writing and serve upon the BJC and the Player the following –*

- a. Its submissions.*
- b. Any further evidence (i.e. in addition to that already served) it wishes to rely upon. Such evidence must be in writing.*
- c. Copies any previous Arbitral Awards or Decisions upon which it wishes to rely.”*

32. Following receipt of World Rugby's written submission on 13 September 2016, the BJC Chairman issued the following further Direction:

"In light of the fact the Player has not filed any submissions, nor indicated an intention to do so, unless I hear from her or her Union by email by 16.00 (BST) on Monday 19 September 2016, we propose to deal with this matter on the papers, without an oral hearing and upon the materials presently available to us. I direct the Russian Union to bring this email to her attention immediately please."

33. On 16 September 2016 a Union official send the following email:

"I apologize for miscommunication, there was a mistake by Dmitry. All the documents in written form by Oksana Korobchuck were submitted to Mr. David Ho by Dmitry Shmakov. The player is not going to open sample B and the Union is fully waiting for your decision and the player accepts any of your decisions."

34. Direction 4 of the 9 August Direction provided:

"The BJC expressly reserves determination of the question as to whether there will be an oral hearing in this matter, whatever the position of the parties, until it has received and considered the evidence and submissions. If there is an oral hearing of this matter, it will take place by telephone conference call during the week commencing 26 September 2016."

35. On the basis of the available material and in light of the Player's position, the BJC decided an oral hearing was not necessary.

36. In light of all the evidence, including the Player's admissions, the BJC was comfortably satisfied that World Rugby discharged its burden and established that he Payer committed the ADRV as alleged.

V. SANCTION

37. The BJC considered all the material the evidence, submissions, material and Arbitral Awards and authorities placed before it.
38. The meaning of “*Intentional*” is found in the second sentence of Regulation 21.10.2.3, subject to two situations specifically provided for. The first sentence sets the context for the second, namely that it is aimed at those who intend to cheat. Intention means or requires (*per* the second sentence and subject to the two specific situations provided for) that the Player (or other Person) engaged in conduct (a) which she knew constituted an anti-doping rule violation or (b) she knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
39. Stanozolol is an anabolic steroid and a Prohibited Substance, proscribed at all times. Therefore, on those facts it was incumbent upon her to establish that she probably did not engage in conduct (a) which she knew constituted an anti-doping rule violation or (b) knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk.
40. The Player’s case is that she did not knowingly ingest Stanozolol. She asserts that it must have come from the injections she claims to have had.
41. In the relevant provisions of the 2009 WADC (and its derivatives) there was a specific requirement that the athlete must establish how the Prohibited Substance entered his system. That requirement remains in the 2015 WADC and Regulation 21 in relation to “*No Fault or Negligence*” and “*No Significant Fault or Negligence*”. It is not repeated in the Article 10.2.3 (Regulation 21.10.2.3) definition of “*Intentional*”. It follows that there is no such specific requirement in the definition of intention.

42. However, where the onus is on the Athlete to establish a lack of intent, he faces very significant hurdles in doing so where he cannot identify how the Prohibited Substance came to be in his system. The BJC agrees with the Tribunal's observations in *UKAD v Songhurst* (8 July 2015, SR/0000120248, §29):

"The scientific evidence of prohibited substance in the body is powerful evidence and requires explanation. It is easy for an athlete to deny knowledge and impossible for UKAD to counter that other than with reference to the scientific evidence. Hence the structure of the rule."

43. In *Songhurst* the athlete submitted that if the Tribunal accepted his firm denial that he had ingested intentionally the Prohibited Substance, that was sufficient to discharge the burden upon him. The Tribunal rejected that submission concluding that he had failed to provide any "*real explanation as to how the substance came to be found in his body*"¹. Therefore, he failed to discharge the burden under Article 10.2.

44. For those reasons the BJC considers it will be a rare, possibly very rare, case where the athlete will be able to satisfy the burden of proof as to intent without establishing the likely means by which the Prohibited Substance entered his system.

45. Turning to the Player's account:

- a. There is no evidence as to when or over what period she received injections.
- b. There is no evidence to suggest she took any steps whatsoever to ascertain what the injections contained.
- c. Further there is no evidence that any injection she received contained Stanozolol.

¹ §31

- d. It follows that she has not provided any evidence to support her case that the Stanozolol in her sample must have come from or is the result of injections she claims to have received from an unidentified doctor.

46. On those facts, the Player failed to satisfy the BJC that her conduct was not intentional.

47. The Player did not expressly rely upon Regulation 21.10.4 or 21.10.5. However, the BJC considered whether the Player had established that she bore “no Fault or Negligence” or “no Significant Fault or Negligence” for the AAF.

48. The context is important. Regulation 21.10.5.1.1 is derived from Article 10.5.1.1 WADC 2015. The commentary to Article 10.4 and 10.5 states is reproduced as Comment 30, Appendix 2 to Regulation 21. It states:

Comment to Article 21.10.4: This Article and Article 10.5.2 apply only to the imposition of sanctions; they are not applicable to the determination of whether an anti-doping rule violation has occurred. They will only apply in exceptional circumstances, for example, where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, No Fault or Negligence would not apply in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the Administration of a Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other Person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced

illustrations could result in a reduced sanction under Article 10.5 based on No Significant Fault or Negligence.

49. In the case of *Lesedi Ivan Chery and Emmanuel Ntshiwa* the BJC stated:

*"We appreciate that the commentary is just that but it is illustrative of the personal nature of individual responsibility and the demanding standard expected of athletes. The WADC (and by extension Regulation 21) imposes on an athlete a duty of utmost caution to avoid a Prohibited Substance entering his/her body. That standard of care is demanding."*²

50. In the circumstances the Player cannot properly be said to be without fault or negligence. She has failed to establish that the Stanazolol came from the claimed injections. She has therefore failed to establish the route of injection.

51. Further, even if she had established the route of injection, her conduct could not properly be characterised as bearing no significant fault or negligence. She does not come close to establishing that. She has completed anti-doping education. She is not ignorant of the regime, her responsibilities or of the risks. She took no steps whatsoever to establish what was being injected into her body. Her conduct falls far below that to be expected of an athlete who is subject to an anti-doping regime.

52. None of the provisions permitting elimination, reduction or suspension of the otherwise applicable period of Ineligibility have been established. Therefore, the BJC must impose a period of Ineligibility of four years.

53. As for commencement of that period of ineligibility, the Player was provisionally suspended by World Rugby on 7 July 2016. The information before the BJC is that she has not played since.

² §81

54. Therefore, in accordance with Regulation 21.10.11.3 we direct that the period of ineligibility imposed on the Player will commence on 7 July 2016.

55. Her status during the period of Ineligibility is as provided by Regulation 21.10.12.1.

56. This decision is final, subject to referral to a Post Hearing Review Body or an appeal, where the circumstances permit (Regulation 21.13).

VI. COSTS

57. The BJC makes no order for costs.

VII. SUMMARY

58. For the reasons set out above, the BJC determines:

- a. The anti-doping rule violation has been established.
- b. The period of Ineligibility is one of four years commencing on 7 July 2016.



Christopher Quinlan QC, Chairman,

Bristol, England

9 October 2016

Signed on behalf of the BJC