WORLD RUGBY

IN THE MATTER of the Regulations Relating to the Game

AND

IN THE MATTER of an alleged doping offence by **Jayson Smith** ("the Player")

Judicial Committee

Joseph de Pencier Canada

1. This is a decision made under World Rugby's Regulation 21 (as updated to May 18, 2015), the federation's anti-doping regulation ("Regulation"). I find that the Player committed an anti-doping rule violation and is to be sanctioned to two year's ineligibility in addition to forfeiture of results and prizes.

Background

2. The Player represented Turks & Caicos at the NACRA Men's U19 15-a-side Tournament 2015 in Miami ("Tournament"), which was a qualifier for the World Rugby U20 Trophy 2016. At the Tournament, he provided a doping control urine sample in-competition on July 11, 2015. It subsequently tested positive for Cannabinoids/Carboxy-THC at 226ng/mL, greater than the decision limit of 180ng/mL. Copies of the Analysis Result Records for the A Sample from the World Anti-Doping Agency ("WADA") accredited laboratory at Salt Lake City, USA, were transmitted to World Rugby via the Anti-Doping Administration and Management System ("ADAMS"), dated 14 August 2015.

3. Cannabinoids/Carboxy-THC are listed in Section 8 of the WADA Prohibited List for 2015 and are Specified Substances. The WADA Prohibited List is incorporated as Schedule 2 to Regulation 21. The Tournament Manual in Section 10 confirms that Regulation 21 is the applicable anti-doping regulation for the Tournament. The Player signed the Team Member Consent Form for the Tournament. By it, he acknowledged Regulation 21 and World Rugby's jurisdiction over him in relation to anti-doping.

4. The Preliminary Review was conducted by Dr. Ismail Jakoet (South Africa) on August 19, 2015, confirming that an anti-doping rule violation may have been committed.

5. The Player was notified of an Adverse Analytical Finding by way of a letter from World Rugby via the Turks & Caicos Rugby Union ("Union") dated August 19, 2015, and was provisionally suspended.

6. The Player responded by way of a letter dated October 19, 2015, in which he stated:

   "I Jayson Smith am writing to you concerning the drug test I did in Miami. I would like to say that I did smoke before I travelled to Miami with the team to represent Turks & Caicos Islands. I sincerely apologize for the drugs found in my system at the testing. I did not realize how serious this was and I have brought shame and embarrassment…"

   This is the only substantial communication from the Player in these proceedings.

7. I was appointed according to Regulation 21.7.10.1 to consider the Player's case. The case was to be decided "on the papers" and neither Party objected. The only point in issue was the possible sanctions for the anti-doping rule violation. I issued a Minute on January 10, 2016 ("Minute") setting out how this case would be decided under the Regulations and giving guidance to the Player as to what he should address and how. The Minute is attached as Annex 1.

8. No submissions were received from the Player according to the timeframe set out in the Minute (by January 20, 2016). In response to a query from me whether the Player wanted to file written submissions, on January 21 I received this e-mail from his Union:

   "Dear Mr. Joseph de Pencier,

   I have forwarded the paperwork to Mr. Dickesnon, who is the rugby representative from Grand Turk. Mr. Smith lives in Grand Turks, which is an Island 60 miles away. Mr. Dickenson is liaising with Mr. Smith on this matter as he has better relationship with the player and is more frequent contact than I.

   I have ccd this message to Mr. Dickenson so he can comment on what Mr. Smith wishes to do.

   Please recognize that the TCIFU is a small volunteer only union with no paid staff that receives no support from World Rugby. I realize that you gentlemen have a task to do, but everybody in the TCIRFU is a full time worker at another job that takes priority over these matters. Mr. Smith is repentant and ashamed that he has brought disrepute to the TCI, but he is not very good at expressing himself in writing. I have no seen Mr. Smith in several months as he works and lives on another Island. I would hope that he will respond shortly, but I have limited influence on his actions.

   Regards
   Keith Burant,
   President – TCIRFU"

   On January 28, 2016, I received this further e-mail from the Union:

"Dear Mr. de Pencier,

I have spoken with Mr. Dickenson and he is communicating with Mr. Smith. However as I explained earlier Mr. Smith is not an eloquent speaker and finds this process a bit overwhelming. He is apologetic for his actions and has stated the same. He does not know what more he can do in the circumstances. The TCIRFU has taken steps to eliminate this type of behavior going forward and has used Mr. Smith as an example of poor decision making to our other players.

Regards

Keith Burant
President – TCIRFU"

9. World Rugby filed written submissions on time on January 27, 2016.

Analysis

Anti-Doping Rule Violation

10. The Regulation sets out the framework under which players can be subjected to Doping Control and the procedures for any alleged infringements of those Regulations. The Regulation adopts the mandatory provisions of the World Anti-Doping Code 2015 ("Code").

11. The Regulation and the Code are based on the principles of personal responsibility and strict liability for the presence of Prohibited Substances or the use of Prohibited Methods.

12. Under Regulation 21.2.1.1, the *"Presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample"* constitutes an anti-doping rule violation. A violation does not require "*intent, Fault, negligence or knowing Use*" on the part of the Player.

13. In accordance with Regulation 21.3.1, *"World Rugby shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether World Rugby has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made."*

14. Taking into account the Adverse Analytical Finding and the Player's letter of October 19, 2015, World Rugby has discharged the burden of proof that the Player is in breach of Regulation 21.2.1 due to the presence of a Prohibited Substance, namely Cannabinoids/Carboxy-THC, in his Sample. The Player has committed an anti-doping rule violation.

Sanctions

15. This is the Player's first anti-doping rule violation, which has an important bearing on the sanctions.

16. The sanctioning regime in the Code (and accordingly, Regulation 21) was revised in 2015 pursuant to a strong lobby from the sporting world to WADA to increase the sanctions on athletes who are found to have used Prohibited Substances. There was also an increase in the decision limit for Cannabinoids to the level of 180ng/mL in 2014 (the threshold changed in 2013 from 15ng/mL to 150ng/mL and the decision limit from 19ng/mL to 175ng/mL) such that only cases where players consume a significant amount of cannabis very proximate to participation would ordinarily test positive.

17. World Rugby has dealt with a number of cases involving the same Prohibited Substance over the years. They include, with the reported concentrations:

    a. *Geldenh*uys (2013: 42.7ng/mL);
    b. *Fletcher* (2013: 31.2ng/mL);
    c. Jamaluddin (2010: 32ng/mL);
    d. *Tu'ipulotu* (2013: 36ng/mL);
    e. *Van Staveren* (2009: 40ng/mL);
    f. *Chvihivivadze* (2009: 38.3ng/mL);
    g. *Pupuke* (2008: 79ng/mL);
    h. *Mdzinarishvili* (2008: 912ng/mL);
    i. *Ward* (2008: 41ng/mL);
    j. *Venegas* (2008: 64ng/mL);
    k. *Zhamutashvili and Todua* (2007: 31.3ng/mL and 91.2ng/mL).

    Only one of the previous cases would breach the present threshold. However, the amount (of 226ng/mL) recorded by this Player is the second highest ever recorded in a World Rugby test. The citations for these eleven cases are in Annex 2.

18. The rationale for the prescriptive sanctioning process is set out at the head of the Code:

    "The purposes of the World Anti-Doping Code and the World Anti-Doping Program which supports it are:

    - *To protect the Athletes' fundamental right to participate in doping-free sport and thus promote health, fairness and equality for Athletes worldwide, and*
    - *To ensure harmonized, coordinated and effective anti-doping programs at the international and national level with regard to detection, deterrence and prevention of doping.*

    The Code

    The Code is the fundamental and universal document upon which the World Anti-Doping Program in sport is based. The purpose of the Code is to advance the anti-doping effort through

universal harmonization of core anti-doping elements. It is intended to be specific enough to achieve complete harmonization on issues where uniformity is required, yet general enough in other areas to permit flexibility on how agreed-upon anti-doping principles are implemented. The Code has been drafted giving consideration to the principles of proportionality and human rights."

19. Regulation 21's basic sanction rules for this violation are:

*"**21.10.2 Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method***

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.*

***21.10.2.3** 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."

20. World Rugby does not argue in the present case that there is evidence that the Player intended to cheat. The Judicial Committee accepts this. Accordingly, Regulation 21.10.2.2 applies in this case and the required sanction is two years unless there are grounds for a reduction. The Player has the burden of proof.

21. World Rugby submits that there is no evidence that the Player bears No Fault or Negligence pursuant to Regulation 21.10.4. The Judicial Committee must agree. With respect to No Significant Fault or Negligence, World Rugby submits that Regulation 21.10.5.1.1 would only potentially have application, pursuant to Comment 55, where *"For Cannabinoids, a Player may*

establish No Significant Fault or Negligence by clearly demonstrating that the context of the Use was unrelated to sport performance." The Judicial Committee must also agree with that analysis. Notwithstanding the lack of evidence of the Player's intent to commit an anti-doping rule violation, the Player did not demonstrate that his Use of Cannabinoids/Carboxy-THC was unrelated to sport performance. He was given every opportunity to do so. So No Significant Fault or Negligence cannot apply in this case.

22. With respect to the other parts of the Regulation which allow for the consideration of reductions, World Rugby submits that the Player has admitted to smoking cannabis and accordingly cannot rely upon Regulation 21.10.5.1.2 with respect to Contaminated Products. World Rugby also submits that Regulation 21.10.6.1 (Substantial Assistance) and Regulation 21.10.6.2 (Admission in the Absence of Other Evidence) do not apply based upon the evidence (or lack thereof) in the case. In World Rugby's submission, the period of Ineligibility cannot be eliminated or reduced below applicable the two years except if the Player can bring his case within Comment 55 as noted above. But the Player did not. Again, the Judicial Committee must agree on all these points.

23. Having had regard to all of the circumstances, and having carefully considered the arguments of counsel and the authorities placed before us, the appropriate sanction must be a period of Ineligibility of two years.

Decision

24. The Player has committed an anti-doping rule violation contrary to Regulation 21.2.1 as a result of an adverse analytical finding for the Presence of a Prohibited Substance, namely Cannabinoids/Carboxy-THC.

25. Under Regulation 21.10.1 (Disqualification of Results in the Event During which an Anti-Doping Rule Violation Occurs), the Player's individual results obtained in the Tournament shall be disqualified, including forfeiture of all medals, points and prizes.

26. The Period of Ineligibility will be two years, starting from the date the Play was Provisionally Suspended (August 19, 2015) (see Regulation 21.10.11.3). Therefore, the Player will become eligible again to participate in rugby on August 19, 2017.

27. The restrictions on the Player's status during his Period of Ineligibility are set out in Regulation 21.10.12.

Costs

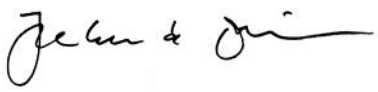
28. If World Rugby wishes me to exercise my discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to me Mr. Ho by 17:00 Dublin time on February 26, 2016, with any responding written submissions from the Player to be provided by

no later than 17:00 Dublin time on March 1, 2016.

Review

29. This decision is final, subject to referral to a Post Hearing Review (Regulation 21.13.8) or an Appeal (Regulation 21.13.1 - .7).

February 19, 2016



Joseph de Pencier, Chairman

Annex 1

MINUTE OF THE BOARD JUDICIAL COMMITTEE: DIRECTIONS

1. According to Regulation 21.7.10.1 of World Rugby's Anti-Doping Regulations ("Regulations"), I have been appointed as a Judicial Committee ("JC") to consider the Player's case. These Directions set out how this case will be decided under the Regulations. They also give guidance to the Player as to what he should address and how.

2. World Rugby asserted an anti-doping rule violation against the Player by a notice dated 19 August 2015. (That notice included a copy of the Regulations.) World Rugby asked the Player if he wished an oral hearing by notice dated 12 October 2015. The Player responded by a letter dated 19 October 2015 admitting the violation. The Player did not request an oral hearing. Therefore, this matter will be disposed of according to Regulations 21.7.10.1 and 21.7.10.2 "on the papers." This means that the JC will only seek written submissions from the Player and from World Rugby.

3. The anti-doping rule violation involves the prohibited substance cannabis, which is a "specified substance" as defined by the Regulation 21.4.2.2. It is prohibited in-competition (Regulations, Schedule 2, category S8). Because the Player has not contested the anti-doping rule violation asserted against him, and has admitted to it, the only matter the JC must determine is the appropriate consequences of the violation involving a "specified substance." According to World Rugby, this appears to be the Player's first anti-doping rule violation.

4. The World Rugby notice to the Player asserting the anti-doping rule violation set out the possible consequences under the Regulations for a first anti-doping rule violation. One possible consequence is forfeiture of any awards, prizes or medals the Player at the competition where the sample was collected, and from the time the sample was collected to the date of the provisional suspension (see Regulation 21.10.8).

5. The second possible consequence is a four year period of ineligibility (see Regulation 21.10.2). The notice went on to point out that:

   "During that period of Ineligibility, your status would be as set out at Regulation 21.10.12, that is, you would not be entitled to participate in any capacity in a Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by World Rugby or any Member Union, Association or a Club, Rugby Body or other member organisation of World Rugby or any Association or Member Union, or in Competitions authorised or organised by any professional league or any international or national-level Event organisation or any elite or national-level sporting activity funded by a governmental agency."

6. However, there are ways for the Player to secure a lesser sanction. The first has to do with intention, which can result in a two year and not a four year period of ineligibility. The second has to do with grounds for reducing a period of ineligibility for other reasons.

7. Concerning intention, the World Rugby notice to the Player asserting the anti-doping rule violation stated that if the Player could demonstrate that the anti-doping rule violation was not intentional the period of ineligibility may be two years, in accordance with Regulation 21.10.2.1.1. The notice explained:

"As provided for in Regulation 21.10.2.3, 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. …"

8. As for grounds for reducing a period of ineligibility, the World Rugby notice to the Player asserting the anti-doping rule violation also referred to Regulation 21.10.2 and noted a number of possibilities depending on the circumstances of the case:
"4.1.2 …

"(a) Provision for the complete elimination of the period of Ineligibility, pursuant to Regulation 21.10.4 if you can establish No Fault or Negligence (as defined), that you did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that you had used or been administered the Prohibited Substance.

"(b) Provision for the reduction of the period of Ineligibility, pursuant to Regulation 21.10.5, if you can establish No Significant Fault or Negligence (as defined) that is, when viewed in the totality of the circumstances and taking into account the criteria for No Fault and Negligence, was not significant in relationship to the anti-doping rule violation committed.

> "(i) Specified Substances (Regulation 21.10.5.1.1) – Where the anti-doping rule violation involves a Specified Substance, and the Player or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Player's or other Person's degree of Fault.
>
> "(ii) Contaminated Products (Regulation 21.10.5.1.1) – In cases where the Player or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Player's or other Person's degree of Fault."

"(c) In addition, discretion exists pursuant to Regulation 21.10.6 to suspend no more than three quarters of the period of Ineligibility if you provide Substantial Assistance (as defined) to the Judicial Committee (or the Judicial Body of the Member Union or Tournament Organiser), criminal authority or professional disciplinary body which results in World Rugby discovering or establishing an anti-doping rule violation by another Person or which results in a criminal or disciplinary body discovering or establishing a criminal offence or the breach of professional rules by another Person."

9. To summarise, if the Player can demonstrate that

   a. the anti-doping rule violation was not intentional, or
   b. he can demonstrate "no fault or negligence" as definined in Regulation 21, Appendix 1, or
   c. he is entitled to a reduced period of ineligibility because this this case involves a "specified substance" and he can establish "no significant fault or negligence" as defined in Regulation 21, Appendix 1, or
   d. he is entitled to a reduced period of ineligibility because this this case involves a "contaminated product" and he can establish "no significant fault or negligence," both as defined in Regulation 21, Appendix 1, or
   e. he has provided or can provide "substantial assistance," as defined in Regulation 21, Appendix, as set out in Regulation 21.10.6

   then the JC would be authorised to impose a period of ineligibility of less than 4 years. The JC is bound by the Regulations and cannot take into account a Player's circumstances that do not fit within one of these possibilities.

10. The Player must prove his entitlement to any of these five possibilities based on a balance of probabilities (Regulation 21.3.1).

11. For the Player to meet that burden of proof, it is best in his written submission to state the facts first, and then state how the Regulations apply in light of the facts. Facts require evidence. The Player should provide his evidence with his written submission. That might include the Player's own statement of facts, or documents, or the factual statements or documents of other individuals. The Player's own statement of facts, and those of any other individual, are stronger if corroborated by other evidence as much as possible.

    Based on the facts as proven by evidence, the Player can state how one (or possibly more) of the five possibilities set out in paragraph 9 above apply to his case and what he thinks would be the appropriate period of ineligibility.

12. The Player will provide his written submissions on the possible consequences by 20 January 2016. It should be sent to the JC and to World Rugby through its legal counsel, Ben Rutherford (ben.rutherford@worldrugby.org).

13. World Rugby will provide its written subsmissions on the possible consequences to the JC and to the Player by 17:00 GMT on 27 January 2016.

14. If the Player has any rebuttal of World Rugby's submissions, he will provide it to the JC and to World Rugby by 17:00 GMT on 3 February 2016.

15. Once all written submissions are received, the JC will make its decision.

16. If either the Player or World Rugby think that these Directions are unclear or incomplete, please contact the JC by e-mail by 17:00 GMT on 14 January 2016 stating the issue and requesting adjustment to the Directions.

Joseph de Pencier
Chairman
10 January 2016
jdep@inado.org

Annex 2

Cases Cited by World Rugby

1. *Geldenhuys* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/80/130501%20IRB%20v%20Geldenhuys%20Reasoned%20Decision.pdf

2. *Fletcher* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/76/130116%20IRB%20v%20Fletcher%20BJC%20Decision.pdf

3. *Jamaluddin* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/50/110214%20Jamaluddin%20Decision.pdf

4. *Tu'ipulotu* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/48/J-101202-GM-TuipulotuDecision.pdf

5. *Van Staveren* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/33/Van%20Staveren%20-%20Canada%20-%202009.pdf

6. *Chvihivivadze* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/31/j-09602-gm-chvihivivadze_8981.pdf

7. *Pupuke* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/19/jovanpupukecookislandscannabis_5986.pdf

8. *Mdzinarishvili* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/21/vakhtangmdzinarishviligeorgiacannabis_5988.pdf

9. *Ward* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/24/bjcdecision-ward_6130.pdf

10. *Venegas* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/30/j-090317-gm-venegasdecision_7506.pdf

11. *Zhamutashvili and Todua* Decision available at: http://keeprugbyclean.worldrugby.org/downloads/cases/15/j-070927-gm-georgiaplayers_4155.pdf