

BEFORE THE ANTI-DOPIING APPEAL TRIBUNAL OF SOUTH AFRICA
(Instituted in terms of Section 17(2)(s) of Act No. 14 of 1997, as amended by Act No.
25 of 2006)

Case No.: AT 04/2012

In the matter between:-

WORLD ANTI-DOPING AGENCY (WADA) (APPELLANT)

versus

Mr SLOANE GOOSEN (Athlete) (FIRST RESPONDENT)

and

SOUTH AFRICAN INSTITUTE FOR
DRUG-FREE SPORT (SAIDS) (SECOND REPENDENT)

DECISION

1. This is an Appeal by WADA against the Decision of the SAIDS Disciplinary Tribunal in respect of a hearing held on 19th January 2012.
2. The Athlete is a wrestler and was charged with a violation of an anti-doping rule under Article 2.1 of the 2009 Anti-Doping Rules (the Code) of SAIDS, it being alleged that a prohibited substance, Furosemide, was found to be present in the Athletes' urine sample in an in-competition test at the South African Wrestling Championship on the 22nd October 2011.
3. The tribunal found that there was indeed a contravention of Article 2.1. Insofar as the sanction is concerned the Tribunal was of the view that the Athlete had satisfied the requirements for Article 10.4 to be applicable, in that the Athlete established how the Specified Substance entered his body and that it was not intended to enhance his sport performance or mask a performance enhancing substance.

4. Consequently the Tribunal was at liberty to impose a sanction ranging from a reprimand to a period of 2 years ineligibility.
5. The Tribunal was of the view that taking into account the Athletes' degree of fault a sanction of ineligibility of one year commencing on 22 October 2011 and which will expire at midnight on 21 October 2012 should be imposed.
6. The WADA appeal covers two aspects, namely,
 - 6.1 That the Athlete took the Lasix pill (which contained Furosemide) in order to enhance his performance therefore Article 10.4 is not applicable; and
 - 6.2 That the Athlete failed to satisfy the requirements for a reduction in the Sanction under Article 10.5.2 in that he acted very negligently by ingesting a medicine without taking reasonable precautions to ensure that it was safe to do so.
7. Consequently WADA submits that a sanction of 2 years ineligibility starting on 22 October 2011 would be appropriate and that any results, medals, points, prizes and other benefits from 22 October 2011 should be forfeited.
8. Advocate Leslie who appeared for the Athlete filed Heads of Argument and made an oral submission as well.
9. Advocate Leslie submitted that an Appeal Board would not interfere with the findings of fact, credibility, demeanour and impressions of witnesses unless such findings are patently wrong as will appear from the evidence presented.
10. Advocate Kock who appeared for SAIDS submitted that the requirements of Article 10.4 were not satisfied as the Athlete had taken the specified substance to reduce weight and so allow the Athlete to compete at a weight he would otherwise not have been able to qualify for. This would give the Athlete a significant advantage over lighter Athletes in the particular weight range.
11. We are satisfied that one cannot apply an absolute rule that by attempting to reduce weight, an Athlete has only one aim, namely , to enhance his/her sport performance.

12. Accordingly, each case has to be decided on its own facts and circumstances. A football, rugby or cricket player may well attempt to enhance his performance by taking prohibited substances which reduces weight and it's obvious that a gymnast will perform better by reducing weight when he or she is overweight. Here the agility of the athlete is the aim.
13. In the present matter it has been suggested by WADA and SAIDS that we should conclude that the Athlete took the Lasix to enhance his performance. The argument advanced is that by reducing his weight to enable him to participate in his usual weight category can only be interpreted as an attempt to enhance his performance as he may just make the weight category and therefore lighter competitors will be at a disadvantage.
14. We do not agree with this contention as neither the evidence nor logic supports such a finding. If the Athlete normally competed in a higher weight category and went on a weight reducing programme solely to compete in a lower weight category then one might be able to argue that it was for performance enhancing purposes. On the contrary the evidence is that the Athlete was injured and picked up weight as he could not train. He was 7kg overweight and struggled to lose weight. This was partly due to the fact that he was using creatine which had the effect of causing unnatural water retention.
15. It is illogical to suggest that, in this matter, the mere fact that the Athlete reduced his weight will be performance enhancing and will give him an unfair advantage over his competitors. By WADA's own admission, it is **WEIGHT** per se that provides the added advantage in a wrestling competition. The fact that the athlete had lost the weight means that he did not have the **WEIGHT** to provide him with the advantage. Having been at a higher weight and reducing to the weight of the lower weight division does not hold latent benefits.
16. The fact that his performance on the day was poor is irrelevant. It is his intention that matters.
17. We are therefore comfortably satisfied that the Athlete has met the requirements of Article 10.4 for the purpose of imposing a discretionary sanction.

18. When imposing an appropriate sanction we must consider the Athlete's degree of fault.

19. In this regard we also take cognisance of the following statement of the tribunal:

"Firstly, in assessing the evidence, it is necessary to say that Mr Goosen, and his father, impressed the Committee as honest witnesses. There is little doubt that the facts related are correct and that consequently the circumstance in which Mr Goosen came to take the water pill are as he said they were"

From the record of proceedings we can find no reason to reject this finding.

20. In our view the following factors should be taken into account in determining the degree of fault of the Athlete.

20.1 he is a national Athlete;

20.2 he was tested twice in the past;

20.3 he received no formal anti-doping education from his federation;

20.4 he is 22 years old;

20.5 he was injured in training and could not train thereafter;

20.6 he picked up weight and struggled to lose weight, this being as a result of the water retention properties of creatine;

20.7 he lives with one Kobus who acts as his informal guardian; and

20.8 he naively relied on the advice of Kobus.

21. Having regard to the fact that the Athlete is a national Athlete, that he was tested twice previously we are of the view that he should have done more to satisfy himself that it was safe to take Lasix. He cannot depend on the advice of someone (Kobus) who is not a medical practitioner or pharmacist and who has no knowledge of the SAIDS or WADA list of prohibited substances. The Athlete cannot shift the responsibility he has to someone else.

22. At the same time it must be said that the degree of fault in this matter cannot in our view be the worst of its kind and therefore in the imposition of an

appropriate sanction we are of the opinion that the imposition of the maximum sanction of 2 years would be inappropriate.

23. In our view an appropriate sanction having regard to the degree of fault should be one of 18 months ineligibility.

24. Our ruling is therefore as follows:

24.1 The Appeal of WADA is admissible.

24.2 The decision of the SAIDS Anti-Doping Disciplinary Committee relating to sanction is set aside.

24.3 The Athlete is sanctioned with an 18 month period of ineligibility as from 22 October 2011.

24.4 All competitive results obtained by the Athlete from 22 October 2011 through the commencement of the applicable period of ineligibility shall be disqualified with all of the resulting consequences including forfeiture of any medals. Points and prizes.

24.5 No order is made as to costs.

DATED AT NEWLANDS ON THIS 5th DAY OF JULY 2012.



ALEX ABERCROMBIE

Dr E Nematswerani

Prof. D Hendricks