

CERTIFIED TRANSLATION FROM THE POLISH LANGUAGE

Anna Trzepacz, sworn translator of the English language, TP/103/13

[comments in square brackets are the translator's comments]

File Reference Number: 7/S/2012

ARBITRAL AWARD
of the Court of Arbitration for Sports
at the Polish Olympic Committee
given on 26 June 2013

Adjudication Panel:

Chairperson	-	Romana Troicka-Sosińska
Arbitrator	-	Krzysztof Malinowski
Arbitrator	-	Ludwik Żukowski

having examined on 26 June 2013 the appeal lodged by the World Anti-Doping Agency (WADA) of 24 July 2012 against the decision of the Polish Rugby Union of 5 October 2011 in the case of Krzysztof Hotowski,

adjudicates as follows:

- 1) it partially amends the decision of the Games and Discipline Commission of the Polish Rugby Union of 5 October 2011 No. PZR/535/2011, so that the Player Krzysztof Hotowski is disqualified for the period of 6 months,
- 2) it dismisses the appeal with respect to the other points,

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- 3) it determines the court fee as PLN 4,000 (four thousand), which is due to be paid in full to the Court of Arbitration for Sports at the Polish Olympic Committee
- 4) it awards in favour of the World Anti-Doping Agency (WADA) the amount of PLN 1,000 (one thousand) from the Polish Rugby Union toward partial reimbursement of the proceedings costs.



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I hereby certify the conformity of the above translation with the original document presented to me in the Polish language.

Anna Trzepacz, sworn translator of the English language entered in the list of sworn translators kept by the Minister of Justice under number TP/103/13.

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Warsaw, 22 August 2013



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TAS 7/S/2012

STATEMENT OF GROUNDS

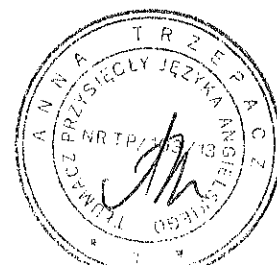
FACTUAL CIRCUMSTANCES

1. After the final match of the Rugby Extraleague played on 18 August 2011, the presence of a prohibited substance – oxilofrine – was detected in the body of Krzysztof Hotowski, player of Budowlani Łódź.
2. In his written explanations dated 19 September 2011, the Player Krzysztof Hotowski stated that he would never dare consciously resort to prohibited performance enhancers. He was greatly astonished and distressed to learn about the presence of oxilofrine in his body. The Player stated that several months earlier he had been getting ready to reduce weight for increased comfort. In consultation with a dietician, he selected a diet combined with supplements and fat burners (so-called thermogenics) as the best method of losing weight. The supplements the Player had taken were ALR Cindustries H.D30+ and THERMAL PRO WITH SDA. The Player stressed that it was only after the presence of oxilofrine had been detected in his body that he took a greater interest in professional opinions on the supplements he had been taking. It was only then that he learned that the manufacturers of those preparations had been suspected of adding substances prohibited in sports to their products for improved effects, which eventually led to a temporal withdrawal of such preparations from some of the Warsaw shops. The Player stressed once again that he had not been aware of the suspicious ingredients of those products, the stimulant oxilofrine included. In view of his impeccable record as player and member of the national team and the fact that he had never before been punished by the Anti-Doping Commission, the Player sought a penalty waiver.
3. By its decision of 5 October 2011, the Polish Rugby Union penalized the Player Krzysztof Hotowski with a reprimand, in the belief that such penalty would be an appropriate caution against the use of any supplements and preparations of unknown origin and would make it possible for the Player to continue his athletic career in the spirit of fair play.
4. On 24 July 2012, the World Anti-Doping Agency (WADA) lodged an appeal against that decision of the Polish Rugby Union. WADA argued that its appeal was admissible in the premises and had been lodged within the statutory time-limit. Not questioning the facts, WADA accused the challenged decision of insufficient grounds for shortening the period of disqualification, which

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should in principle amount to two years for the first violation of the anti-doping provisions. According to WADA, there were no exceptional circumstances justifying such



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shortening of disqualification. Moreover, WADA pointed to circumstances demonstrating the Player's significant fault/negligence:

- a) The Player's excuse is far from explicit: in particular, it remains unclear whether the Player wanted to feel better in the field or just to reduce weight for aesthetic or health reasons;
- b) The analytical finding was adverse during the match, which means that the Player must have taken the prohibited substance shortly before that match;
- c) The intention to reduce weight for improved sport performance is an intention to enhance sport performance for the purpose of Article 10.4 of the Model Anti-Doping Rules;
- d) The player's personal responsibility for what he is taking is the cornerstone of the anti-doping system;
- e) The player is guilty of a failure to take precautions;
- f) Even an absolutely basic Internet search would help the Player avoid the danger of taking a supplement with prohibited ingredients; therefore, the Player obviously took no precautions at all;
- g) The player may not rely on advice of his personal physician, especially if that physician is not a sports medicine specialist.

Ultimately, WADA moved for disqualification of the Player for two years from the effective date of the decision of the Court of Arbitration for Sports at the Polish Olympic Committee, and for the period of disqualification served by the Player before that date to be credited towards that penalty.

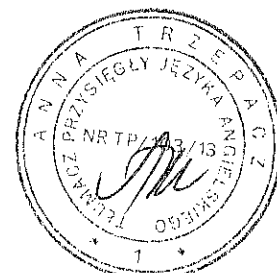
ADMISSIBILITY OF THE WADA APPEAL

5. In the first place, the Court of Arbitration considered it necessary to appraise the admissibility of its own jurisdiction, and also WADA's entitlement to lodge an appeal and the admissibility of that appeal.
6. Thus it should be stressed that Krzysztof Hotowski is not an International-Level Athlete within the meaning of the definition attached to the Model Anti-Doping Rules binding in Poland. The presence of prohibited substances in the Player's body had not been detected in relation to his participation in international sports events, either. Therefore, pursuant to Article 13.2.2 of the Model Anti-Doping Rules binding in Poland, *In cases involving National-Level Athletes under the jurisdiction of the Anti-Doping Committee in Poland who do not have a right to appeal under Article 13.2.1*

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(in matters related to participation in international sports events or in cases of International-Level Athletes), *the decision may be appealed against to an independent and impartial national-level appellate body, i.e. the Court of Arbitration for Sports at the Polish Olympic Committee.* Thus the above provision is the basis for jurisdiction of the Court of Arbitration in the discussed case.



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7. WADA's entitlement to lodge an appeal against the decision of the Polish Rugby Union follows from Article 13.2.3 of the Model Anti-Doping Rules binding in Poland.
8. In view of the fact that the Player had been punished with a disciplinary penalty by the Games and Discipline Commission of the Polish Rugby Union, and pursuant to paragraph 33 clause 5 of the Statutes of the Polish Rugby Union, *The body competent to consider appeals against decisions of the Games and Discipline Commission is the Board of the Union* (which also follows from § 14 clause 4 letter "b" of the Disciplinary Rules of the Polish Rugby Union), the Court of Arbitration considered the issue of exhaustion of the internal remedies as a condition of admissibility of WADA's appeal. Pursuant to Article 13.1.1 of the Model Anti-Doping Rules binding in Poland, *Where WADA has a right to appeal under Article 13 and no other party has appealed against a final decision within the Polish Sports Union's process, WADA may appeal against such decision directly to the Court of Arbitration for Sports (CAS) without having to exhaust other internal remedies in the Polish Sports Union's process.* The Court of Arbitration recognized that, since WADA is entitled to appeal to CAS without having to exhaust other internal remedies, it follows from the *a maiori ad minus* interpretation that WADA is also entitled to appeal directly to the Court of Arbitration in cases pertaining to National-Level Athletes. It should be added that in the light of Article 13.2.3 of the Model Anti-Doping Rules binding in Poland, *For cases under Article 13.2.2, WADA and the International Federation shall also have the right to appeal to the Court of Arbitration for Sports (CAS) with respect to the decision of the national-level reviewing body.* For this reason, WADA could pass over the Polish Rugby Union Board in the appeal procedure.
9. An issue of importance for admissibility of WADA's appeal is that of keeping the deadline for filing the appeal. Pursuant to Article 13.5 of the Model Anti-Doping Rules, *The time to file the appeal to the Court of Arbitration for Sports at the Polish Olympic Committee shall be twenty-one (21) days from the date of receipt of the decision by the appealing party. The above notwithstanding, the following shall apply in connection with appeals filed by a party entitled to appeal but which was not a party to the proceedings having led to the decision subject to appeal:*

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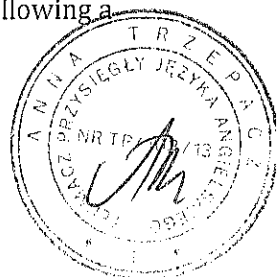
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- a) *Within ten (10) days from notice of the decision, such party shall have the right to request from the body having issued the decision a copy of the file on which such body relied;*
- b) *If such a request is made within ten (10) days, then the party making such request shall have twenty-one (21) days from receipt of the file to file an appeal to CAS.*

The above notwithstanding, the filing deadline for an appeal or intervention filed by WADA shall be no later than:

- a) *Twenty-one (21) days after the last day on which any other party in the case could have appealed, or*
- b) *Twenty-one (21) days after WADA's receipt of the complete file relating to the decision.*

WADA stated in its appeal that it had been notified of the challenged decision of the Polish Rugby Union in an e-mail from the Anti-Doping Commission of 15 March 2012. Following a



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further e-mail exchange, the Anti-Doping Commission provided WADA on 3 July 2012 with the Player's statement of 19 September 2011. Although, in WADA's opinion, the materials provided can hardly be treated as a complete file of the case ended with the decision, due e.g. to the fact that a printout of the analytical findings and the doping control form are missing, the 21 days' time-limit for filing the appeal referred to in Article 13.5 of the Model Anti-Doping Rules binding in Poland ran from 3 July 2012. On 24 July 2012, WADA's appeal was sent to the Court of Arbitration.

Analysing WADA's standpoint, the Court of Arbitration shared the appellant's opinion that the sole delivery of a letter containing the Polish Rugby Union's disciplinary decision cannot be treated as provision of the full file of the case leading to that decision. In the absence of a printout of analytical findings or the doping control form, it was only the Player's statement, in which he admitted that prohibited substances had been detected in his body, that made it possible for the appellant to desist from verification of the factual circumstances and to focus on the legal aspects of the case. WADA was therefore right to treat 3 July 2012 as the starting date of the time-limit for filing the appeal. As a consequence, the Court of Arbitration states that WADA's appeal was filed timely.

REASONS FOR PARTIAL GRANTING OF WADA'S COMPLAINT

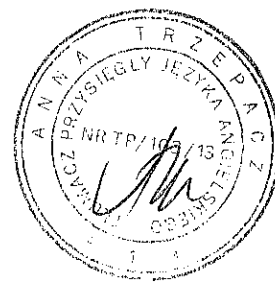
10. The Court of Arbitration found that WADA's complaint should be granted in part only in view of the fact that the Player committed the disciplinary offence before 1 September 2011, i.e. before the effective date of the Model Anti-Doping Rules binding in Poland. As follows from Article 18.7.1 of those Rules, *With respect to any anti-doping rule violation case brought after*

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the Effective Date based on an anti-doping rule violation which occurred prior to the Effective Date, the case shall be governed by the anti-doping rules in effect at the time the alleged anti-doping rule violation occurred unless the panel hearing the case determines the principle of "lex mitior" appropriately applies under the circumstances of the case.

11. Before 1 September 2011, the liability for doping was regulated at the Polish Rugby Union by § 13 clause 4 of the Disciplinary Rules, which provided for penalties ranging from disqualification for a period of at least 3 months to exclusion from the Union as well as supplementary penalties.
12. In the opinion of the Court of Arbitration, the disciplinary sanctions for doping that were in force at the Polish Rugby Union before 1 September 2011 were more lenient for the Player. Therefore, there are no grounds for penalizing the Player under the Model Anti-Doping Rules. Further, the disciplinary penalty of disqualification for six months for a violation of anti-doping regulations falls within the sanctions provided for by the Disciplinary Rules that were in force at the Polish Rugby Union until 31 August 2011.
13. When imposing the penalty, the Court of Arbitration took into account all circumstances mentioned by WADA and quoted in point 4 of this Statement of Grounds. Treated as a mitigating circumstance has been the Player's clean record as well as the fact that his guilt



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consisted in a failure to exercise due caution before taking a supplement containing a prohibited substance.

14. In view of the above, the Court of Arbitration granted WADA's appeal only in part, and charged the parties for costs of proceedings proportionally to the extent to which the appeal had been granted.

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