



INTERNATIONAL HOCKEY FEDERATION

THE DISCIPLINARY COMMISSIONER

REFERRAL 5/2017

RESPONDENT:

Mohammed Hoobais Al Shar Jandal

DATE OF REFERRAL: 2nd October 2017

JURISDICTION FOR REFERRAL: FIH Statutes and the FIH Anti-Doping Rules

DECISION

Background

1. This Referral arose as a consequence of the Respondent, Mohammed Hoobais Al Shar Jandal (hereafter referred to as 'the Athlete'), having been found, as a consequence of in-competition testing, to have committed an anti-doping rule violation pursuant to Article 2.1 of the FIH Anti-Doping Rules ('the ADR').
2. On 17th July 2017, the FIH issued the Athlete with a Notice of Charge. The Notice of Charge was in relation to the FIH's determination that the Athlete had violated Article 2.1 ADR, by the presence of Prohibited Substances or its Metabolites or Markers in the Athlete's A Sample. The Notice of Charge included an outline of the facts, the consequences, the procedure for analysis of the B Sample and the imposition of a Provisional Suspension.
3. The Charge was in the following terms:
 - 3.1 The AAF in your A sample has been reviewed (in accordance with Article 7.2 ADR), and it has been determined that you have a case to answer for a violation of Article 2.1 ADR, namely the presence of a Prohibited Substance or its Metabolites or Markers in your A Sample.*
 - 3.2 You are hereby formally charged with the commission of an anti-*

doping rule violation (“ADRV”) for the presence of:

3.2.1 The prohibited Substances stated in paragraph 2.2 above in your A Sample provided by you on 26th April 2017 numbered A3974642, in violation of Article 2.1 ADR.”

4. Under Section 4 of the Notice of Charge it was explained that, pursuant to Article 10.2.2 ADR the maximum period of ineligibility of four years that could be imposed, and was being asserted by the FIH that should be imposed, could be reduced to two years if it was established that the ADRV was not intentional. Further, under Section 4.4, it was explained that any period of ineligibility imposed may be (a) Eliminated completely, if the Athlete could establish No Fault or Negligence pursuant to Article 10.4 ADR, or (b) Reduced by up to a maximum of one half of the period of ineligibility otherwise applicable, if the Athlete could establish No Significant Fault or Negligence pursuant to Article 10.5 ADR, or (c) Reduced to a minimum of two years, if the Athlete promptly admitted the Charge, as provided for in Article 10.6.3, or (d) Partially suspended if the Athlete assisted FIH in uncovering and/or establishing an ADRV by another Athlete or Support Personnel, as provided for in Article 10.6.1.1 ADR.
5. Under the ‘What happens next’ Section, Section 6 of the Notice of Charge, it was explained that, if the Athlete admitted the Charge, he would be deemed to accept the accuracy of the AAF made in respect of the A Sample, and to have waived the right to have the B Sample analysed. Sections 6.3 and 6.4 set out what the Athlete should do if he accepted the Charge, but did not agree to the Consequences, or if the Athlete denied Charge. The deadline for the Athlete’s detailed response was 31st July 2017.
6. Section 7 of the Notice of Charge explained the procedure for “Optional B Sample analysis”. The Athlete was required to confirm by 24th July 2017 if he would like his B Sample analysed.
7. The Athlete accepted the Provisional Suspension on 20th July, 2017. He did not request a B Sample analysis by 24th July 2017, or at all. He provided his detailed response to the Charge on 31st July 2017.
8. The Athlete has not requested analysis of his B Sample, and is therefore deemed to have waived his right to have his B Sample analysed. In his response on 31st July

2017, the Athlete did not request a hearing, and has therefore (pursuant to Article 7.10.2 ADR) waived a hearing. In any event, as explained below, the Athlete has admitted the Charge. The matter has now, pursuant to Article 7.10.3 ADR, been referred to me for adjudication.

Discussion

9. The Athlete is a 27 year old captain of the Oman hockey team. At all material times he was subject to the jurisdiction of the FIH and bound to comply with the ADR. Pursuant to the ADR, the Qatar Anti-Doping Commission (on behalf of the FIH) was empowered to conduct Doping Control in respect of the Indoor World Cup Qualification Tournament held in Doha.
10. On 26th April 2017, the Qatar Anti-Doping Commission Doping Control Officer ('DCO') collected an in-competition urine sample from the Athlete pursuant to the ADR. In accordance with WADA protocols, the sample was split into two separate bottles and transported to the WADA accredited laboratory in Doha for analysis. The A Sample returned an Adverse Analytical finding for the following:
 - (a) *Stanozolol and its metabolite 16B-Hydroxy-stanozolol, 4B-Hydroxy-stanozolol*
 - (b) *Trenbolone and its metabolite epitrenbolone*
 - (c) *Boldenone and its metabolite boldenone metabolite 5B-androst-1-en-17B-ol-3-one*
 - (d) *Mesterolone metabolite 1A-methyl-5A-androstan-3A-ol-17-one*
 - (e) *Oxandrolone metabolite 17A-hydroxymethyl-17B- Methyl-18-nor-2-oxa-5A-androst-13-ene-3-one*
 - (f) *1-testosterone and its metabolite 1-androstenedione*
 - (g) *Clenbuterol*
11. The substances listed, excluding Boldenone (c) and Clenbuterol (g) above, are listed as Exogenous Anabolic Androgenic Steroids (AAS) under S1.1a of WADA's 2017 Prohibited List. Boldenone and its metabolite boldenone metabolite 5B-androst-1-en-17B-ol-3-one is listed as Endogenous AAS when administered Exogenously under S1.1b of the Prohibited List. Further, Clenbuterol is listed under S1.2 Other Anabolic Agents of the Prohibited List. All listed substances are Prohibited Substances, classified as Non-Specified Substances and are prohibited at all times.
12. The Athlete does not have a Therapeutic Use Exemption ("TUE") to justify the presence of the substance.

13. Article 2.1.1 ADR is as follows:

“It is each Athlete’s personal duty to ensure that no Prohibited Substance enters his or her body. Athletes 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 Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.”

The comment on this Article is:

“An anti-doping rule violation is committed under this Article without regard to an Athlete’s Fault. This rule has been referred to in various CAS decisions as “Strict Liability”. An Athlete’s Fault is taken into consideration in determining the Consequences of this anti-doping rule violation under Article 10. This principle has consistently been upheld by CAS.”

14. In his response dated 31st July 2017, the Athlete stated:

“I take full acceptance that I have been using power supplements for bodybuilding. The sole purpose of this supplement intake was to prepare myself for a Bodybuilding Competition.....

15. The Athlete has therefore admitted the Charge.

16. Article 10.2 provides that, for a violation of Article 2.1:

“10.2.1 The period of Ineligibility shall be four years where:

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

10.2.1.2 The anti-doping rule violation involves a Specified Substance and FIH can establish that the anti-doping rule violation was intentional

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.”

ADR Article 10.2.3 states:

“As used in Article 10.2 and 10.3, the term “intentional” is meant to identify those Athletes or other Persons who cheat. The term, therefore, requires that the Athlete 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.”

17. The Athlete’s explanation to the FIH is contained in his response dated 31st July

2017, the deadline for his response. The Athlete stated in his response (his Statement), having accepted that he used the Prohibited Substances, that:

“it was beyond my knowledge that intake of such supplements is prohibited in playing hockey or general sports. I personally admit that I lack enough information on what substances are restricted to use as mandated by the FIH & WADA.”

“I personally hold myself liable for this action for I did this on my own will and desire to win in the body building competition. With this I express my heartfelt regret.”

“I have been playing international hockey for many years..... I have never used prohibited substances to enhance my performance in playing hockey. I have undergone doping tests in many international Hockey events like Asian Games, Asia Cup, and others, All my previous tests showed negative use of prohibited substances.”

“I hereby request your good office to kindly review my past records before FIH takes any final decision on my case. I appeal that you consider them as supporting details to prove that it was beyond my intention to use substances restricted by the organisation. I am willing to cooperate with FIH & WADA and give the support they need to prevent this kind of incident to happen again in future hockey events. This may also serve as an opportunity to educate athletes as regards use of supplements.”

18. Clearly the Athlete has admitted a doping offence for the purposes of Article 2.1 ADR. The violation includes the use of a Prohibited Substance. As is expressly stated in Article 2.1.1, it is the Athlete’s personal duty to ensure that no Prohibited Substance enters his body. Furthermore, as is clearly stated in the comment on Article 2.1.1, an anti-doping violation is committed without regard to an Athlete’s Fault. It is an offence where there is “strict liability”.
19. It is important to note, and for the Athlete to understand, that the ADR are not merely a set of Rules issued by the FIH but are a set of Rules adopted by the FIH intended to apply WADA’s World Anti-Doping Code.
20. It appears, although it is not clear, that the Athlete may not have had the benefit of legal advice when he produced his Statement (his response to the Notice of Charge). I make this observation because he does not refer in his response to any specific provision of the ADR that he relies on, notwithstanding that all the relevant provisions are summarised in the Notice of Charge. In coming to my decision I have

made due allowance for this.

21. As is expressly stated in Article 10.2, the period of ineligibility to be imposed for a violation under Article 2.1 shall be four years, unless it is not proved that the ADVR was intentional, as explained in Article 10.3.2. Thereafter, the period of ineligibility is subject to reduction (or suspension) if any of Articles 10.4, 10.5 or 10.6 is applicable.
22. The effect of Articles 10.4, 10.5 and 10.6 ADR were summarised in the Notice of Charge (see paragraph 4 above) which the Athlete had the opportunity to rely on in any representations and/or evidence he wished to produce in his response.
23. The first question that arises is whether there is anything in the Athlete's Statement that could justify a finding that the ADVR was not intentional within the meaning explained in Article 10.2.3 ADR.
24. I have considered the Athlete's Statement very carefully, much of which I have quoted above. The Athlete is a very experienced international player. He has even been Captain of his national team. He states that he has undergone doping tests in many international hockey events. The Athlete must have been aware that doping is a serious matter, and that the reason for doping tests is to test for the presence of Prohibited Substances. In my view, having regard to the personal responsibility imposed on an athlete, it was grossly negligent of the Athlete not to make himself aware of the kind of substances that he has been tested for over the years.
25. It is clear that the Athlete deliberately used a Prohibited Substance, albeit that he appears to have failed to enquire whether anything he was using was a Prohibited Substance. He intentionally used the Prohibited Substance in order to enhance his appearance for the purposes of a Body Building Competition. As he states himself:

"I personally hold myself liable for this action for I did this on my own and desire to win the body building competition."
26. It is not an acceptable excuse that *"I personally admit I lack information of what substances are restricted...."* I accept that the Athlete may well not have intended to 'cheat' in hockey, but, in my view, at the very least, the Athlete knew or ought to have known, that he was engaging *"in conduct [where] there was a significant*

risk that the conduct might constitute or result in an antidoping rule violation and manifestly disregarded that risk” (see Article 10.2.3). I am therefore satisfied that the ADVR was ‘intentional’ for the purposes of Article 10.2 ADR.

27. In his Statement the Athlete did not seek to rely expressly on either Article 10.4 or Article 10.5 ADR in order to eliminate or reduce the period of ineligibility that might otherwise be imposed. However, in view of my finding of at least gross negligence on the part of the Athlete, there is clearly no scope for the application of either Article 10.4 or Article 10.5.
28. Article 10.6 ADR provides for the possibility of an Athlete obtaining elimination, reduction, or suspension of a period of ineligibility where he/she is able to give ‘Substantial Assistance’ in Discovering or Establishing Anti-Doping Rule Violations. I note what the Athlete has stated in the present case about his willingness to cooperate with FIH & WADA, however, certainly at this stage, this is not sufficient for the Athlete to be able to rely on Article 10.6.
29. Finally, I note that it was not until the final day for responding to the Notice of Charge that the Athlete admitted the Charge. This was not therefore a ‘prompt’ admission for the purposes of Article 10.6.3 ADR, and I do not think there is any basis under this Article for me to recommend any reduction of the period of ineligibility
30. In the circumstances, I am not satisfied that there is anything in the Athlete’s Statement that justifies a reduction of the period of ineligibility stipulated in ADR Article 10.2.

Conclusion

31. The Respondent Athlete (‘Mr Mohammed’) has been subject to a Provisional Suspension since 20th July 2017, the date Mr Mohammed signed the acceptance of Provisional Suspension.
32. The period of Ineligibility is therefore deemed to have commenced on 20th July 2017 and will expire at midnight on 19th July 2021.
33. During the period of Ineligibility, in accordance with Article 10.12.1 ADR, Mr

Mohammed shall not be permitted to participate in any capacity in a Competition, Event or other activity (other than authorised anti-doping education or rehabilitation programmes) organised, convened, authorised or recognised 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.

34. Pursuant to Article 10.12.2 ADR, Mr Mohammed may return to train with a team or use the facilities of a club or other member organisation of FIH's member organisation during the last two months of his period of Ineligibility (i.e. from midnight on 19 May 2021).
35. In summary my Decision is as follows:
 - 35.1. Mr Mohammed has committed an anti-doping rule violation pursuant to ADR Article 2.1
 - 35.2. A period of Ineligibility of **four (4) years** shall be the Consequence imposed pursuant to ADR Article 10.2.1.
 - 35.3. The period of Ineligibility is deemed to have commenced **from 20 July 2017** and will end at midnight on 19 July 2021.
 - 35.4. Mr Mohammed's status during the period of Ineligibility shall be as detailed in Article 10.12 ADR, including that he may only return to train with a team or to use the facilities of a club or other member organisation of the FIH or a Signatory's member organisation during the last two months of his period of Ineligibility (i.e from midnight on 19 May 2021) pursuant to Article 10.12.2 ADR.
36. Mr Mohammed, the Oman Anti-Doping Organisation, the Oman Hockey Federation, and WADA each have a right of appeal against this Decision or any part of it in accordance with Article 13.2 ADR exclusively to the Court of Arbitration for Sport ("CAS").
37. The Decision on this Referral on the terms set out above will be publicly announced via FIH's website media release after any appeal period has expired and no appeal has been filed, or any appeal has been finalised.

Gordon Nurse
FIH Disciplinary Commissioner 24th October 2017