

SA INSTITUTE FOR DRUG FREE SPORT (SAIDS)

ANTI DOPING DISCIPLINARY HEARING

PLAYER: BAREND STEYN

PLAYER'S REPRESENTATIVE: ATTORNEY BJ KELLERMAN

SPORTS FEDERATION: RUGBY UNION

DATE: 31st JULY 2017

PLACE OF HEARING: SAIDS OFFICES, 4 TH FLOOR, SPORTS SCIENCE
INSTITUTE OF S.A., BOUNDARY ROAD, NEWLANDS

TRIBUNAL MEMBERS: ATTORNEY JEROME VINCENT THOMAS
(CHAIRPERSON & LEGAL REPRESENTATIVE)
DR. PIERRE VIVIERS (MEDICAL REPRESENTATIVE)
MS. NORMA NONKONYANA (SPORTS
ADMINISTRATOR REPRESENTATIVE)

PROSECUTOR: MS. WAFEEKAH BEGG

RECORDING OF MINUTES: VERITAS A DIVISION OF EOH LEGAL SERVICES

1. LEGAL FRAMEWORK

SAIDS is an independent body established under Section 2 of the South African Institute for Drug-Free Sport Act 14 of 1997 (as amended). SAIDS has formally accepted the World Anti-Doping Code adopted and implemented by the World Anti-Doping Agency in 2003. Following an international review of the Code by all Signatories a new World Anti-Doping Code 2015 has been agreed with an effective implementation date as of 1st January 2015.

The purpose of the Code is to advance the anti-doping effort through universal harmonisation of core anti-doping elements. The Code represents the first level of the WADA programme to ensure optimal harmonisation and best practice in international and national anti-doping programmes. The other elements include the International Standards and the Models of Best Practice & Guidelines. Federations and athletes are subject to the jurisdiction of SAIDS and are required to comply with the Anti-Doping Rules as a matter of law and contract.

All provisions of the Code are mandatory in substance. The SAIDS Anti-Doping Rules ("the Rules") were adopted and implemented in 2009. These proceedings are governed by the SAIDS Rules and the Anti-Doping Disciplinary Panel has been appointed in accordance with these Rules.

2. HEARING

The hearing took place on the evening of the 31st July 2017 at the SAIDS offices in Newlands, Cape Town, South Africa.

The Chairperson opened the hearing and agreed to follow the procedure which the two parties had agreed with each other.

3. BACKGROUND AND CHARGES

Mr. Barend Steyn is a 27 year old provincial rugby player for the Falcons Rugby Union.

He was tested during an out-of-competition test on 25th January 2016. Rugby Union has in place Anti-Doping Rules which accord with those of the South African Institute for Drug Free Sport and the World Anti-Doping Agency Code ("the Regulations" for convenience). Mr. Steyn provided a urine sample (3926748) that was submitted for analysis to the Anti-Doping Control Laboratory in Qatar, a World Anti-Doping Agency accredited Laboratory.

On the 27th June 2016, the Laboratory reported the presence of **19-norandrosterone (14,8ng/ml)** and its **metabolite 19-noreticholanolone**.

The substance is prohibited substance categorised under **Class S.1, Anabolic Agents** on the WADA Prohibited List International Standard 2016 (the WADA Prohibited List is incorporated in the World Rugby Anti-Doping Regulations and for ease we will refer simply to "the Prohibited List"- both are the same).

4. SUBMISSIONS AND CONCESSIONS MADE BY THE ATHLETE AND HIS LEGAL REPRESENTATIVE

Further the athlete's legal representative made the following submissions which I paraphrase hereunder:

- 4.1 In terms of Regulation 21.2.1.2 and 2.2.1.3, Mr Barend Steyn is guilty of an Anti - Doping Rule Violation strictly on the basis that the presence of the Prohibited Substance was proven to be present in his urine sample.

- 4.2 The hearing before this Disciplinary Panel deals with the consequences arising from Anti- Doping Rule Violation - more specifically: whether Barend Steyn is to be imposed with the 4-year period ineligibility prescribed by Regulation 21.10.2.1 (in the event that it is found that he *intentionally* ingested the prohibited substance), or whether he should receive the 2-year period of ineligibility prescribed by Regulation 21.10.2.2.
- 4.3 In terms of Regulation 21.10.2.1.1 read with 21.10.2.2, Mr Steyn bears the onus of proving that the doping rule violation was not intentional, for him to qualify for the 2-year ban as opposed to the 4- year ban.
- 4.4 Regulation 21.3.1 states that wherever the player bears the burden of proof to rebut a presumption (in this instance the presumption that substance was ingested intentionally), the standard of proof shall be by a balance of probability.
- 4.5 Mr Steyn contends that he did not take the prohibited substance intentionally. He contends that he must have ingested it from a supplement or medication that he had taken at some time prior to the sampling of his urine. At the time that Mr Steyn was notified of the AAF, he of course no longer had the benefit of testing the supplements that he was taking at that time (except for the chocolate flavoured Biogen Mass Builder, of which there was some still left).
- 4.6 All he could do, was to obtain containers of the supplements that he had been using, to have these tested on the odd chance that samples from other batches may have been similarly contaminated. The test results were unfortunately negative.
- 4.7 Had the test results been made available to Mr Steyn within a month after the sampling of his urine, it may well have been a very different story and he would not have been left to speculate over the origin of the banned substance for which he tested positively.

4.8 It is submitted that the Player's right to present evidence has been violated in that it took SAIDS 6 months to inform him of the AAF. He no longer had the evidence available through which to discharge the burden of proof required to convince this Judicial Committee that he did not take the banned substances intentionally.

4.9 The Promotion of Administrative Justice Act, Act 3 of 2000, defines "*administrative action*" as follows :

"*administrative action*" means any decision taken, or any failure to take a decision, by-

(a) Organ of state, when-----

- (i) exercising a power in terms of the Constitution or a provincial constitution ;
or
- (ii) exercising a public power or performing a public function in terms of any legislation; or

(b) a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which is direct, external legal effect....."

4.10 It is submitted that SAIDS and these disciplinary panels or judicial committee constituted by it in terms of the SAIDS Act, resort under the purview of subparagraph (b) and, as such, the decisions of these panels are subject to Promotion of Administrative Justice Act.

4.11 In terms of section 3 of this Act, which deals with procedurally fair administrative action affecting any person, the Act prescribes as follows :

“3 (1) Administrative action which materially and adversely affects the rights or legitimate expectations of any person must be procedurally fair.

2(a) A fair administrative procedure depends on the circumstances of each case.

(c) In order to give effect to the right to procedurally fair administrative action, an administrator, subject to subsection (4) must give a person referred to in subsection (l) – (a) (b) (c) (d) adequate notice of the nature and purpose of the proposed administrative action; a reasonable opportunity to make representations; a clear statement of the administrative action ; adequate of any right of review or internal appeal, where applicable; and adequate notice of the right to request reasons in terms of section 5.

(3) In order to give effect to the right to procedurally fair administrative action, an administrator may, in his or her or its discretion, also give a person referred to in subsection (1) an opportunity to –

- (a) obtain assistance and , in serious or complex cases , legal representation ;
- (b) present and dispute information and arguments ; and
- (c) appear in person.

(4) (a) If it is reasonable and justifiable in the circumstances, an administrator may depart from any of the requirements referred to in subsection (2).

(b) In determining whether a departure as contemplated in paragraph (a) is reasonable and justifiable, an administrator must take into account all relevant factors, including

–

(i) the objects of the empowering provisions ;

(ii) the nature and the purpose of, and the need to take, the administrative action ;

(iii) the likely effect of the administrative action ;

(iv) the urgency of taking the administrative action or the urgency of the matter ; and

(v) the need to promote an efficient administration and good governance.

4.12 It is submitted that Mr Steyn has been deprived of the right entrenched in section 3 (3) (b): "to present and dispute information and arguments...." The entire success of his entitlement to a reduction of the prescribed 4-year period of ineligibility to 2 years, depends on his ability to adduce concrete evidence to this panel of the source of the banned substances.

4.13 The urine sample was taken on 25th January 2016. The laboratory received the sample on 7 June 2016. What happened in the six months between the sample collection and the delivery of the sample to the laboratory? Why must Mr Steyn be made to suffer from this significant delay? Had the laboratory test results been made available earlier, he would have been in a position to adduce concrete evidence to this effect.

4.14 Regulation 21.7.3.1 requires that World Rugby shall "promptly notify *the Player and simultaneously the Player's Union, National Anti-Doping Organisation and WADA*" of the AAF. This prescript was not adhered to in this instance and this departure from the rules caused significant prejudice to the player.

An evaluation of the evidence in order to determine whether Mr Steyn had the intention for purposes of regulations 21.10.2.1.1 read with 21.10.2.3 to cheat.

4.15 It is submitted that the explanation for this is two- fold :

4.15.1 Young people's judgment is poor – the older and more experienced we get, the better our judgment becomes; and

4.15.2 More experience athletes have more resources at their disposal- on the one hand to avoid inadvertent doping and on the other hand perhaps to dope more sophisticatedly.

4.16 He exercised the judgment of a 26 year old adult man, with the knowledge and experience that he had attained at that point in his life. What may appear reckless to middle- aged professional people sitting around a table, would not necessarily have appeared reckless to a 26-year old young man.

5. PRINCIPLE SUBMISSIONS BY THE PROSECUTION:

The Prosecution set out its case as follows:

5.1 Mr. Steyn is not disputing the adverse analytical finding. That being the case, and in accordance with Regulation 22.1.2, sufficient proof of an ADRV has therefore been established.

5.2 Consequently, Mr. Steyn is guilty of an anti-doping rule violation. Thus, we are only here to argue what the appropriate sanction would be for Mr. Steyn to serve.

5.3 Ineligibility for presence of a non-specified substance

Regulation 21.10.2 provides as follows: - The period of Ineligibility for a violation of Regulations 21.2.1 (Presence)... shall be as follows, subject to potential reduction or suspension pursuant to Regulations 21.10.4, 21.10.5 or 21.10.6:

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 World Rugby (or the Association, Union ... 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 ... 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.

5.4 Mr. Steyn is a rugby player. As such he has the benefit of participating in a very public and widely followed sport in South Africa. No-one is in any doubt that rugby union is regulated, that World Rugby is an organised and professional body. The same is true of SARU.

5.5 The World Rugby website has an Anti-Doping Handbook that is detailed, it is helpful, and it can be found by simply googling the topic in relation to the rugby union. From the Introduction, the TUE provisions, the guidelines on Dietary Supplements, the case studies, and the consequences summary, there are stark reminders of the responsibilities and the risks.

5.6 We are dealing here with a Non-Specified Substance. That being the case the burden of persuasion is upon Mr. Steyn to establish intent as contemplated in the Regulations. If the Independent Doping Hearing Panel finds that he acted with intent or recklessly then the period of ineligibility mandated is four years and there is no question of any reduction.

5.7 If the Independent Doping Hearing Panel is of the opinion that the athlete did not act with intent, then the period of ineligibility must be two years, subject to potential reduction. The provisions that make such reduction possible are Regulations 21.10.4 and/or 21.10.5.

5.8 Regulation 21.10.4 only finds application in the most exceptional cases.¹⁸ It has no application here, with respect. Strict liability applies principally to the question whether there has been an anti-doping rule violation but it impacts Consequences by requiring very, careful scrutiny when it comes to what is

expected of an athlete. This is because it is “principally the sole duty of the individual athlete to ensure that no prohibited substance enters his body.”

5.9 Assuming intent has not been established and Regulation 21.10.4 is not applicable then the period of ineligibility will be 2 years' subject to potential reduction in terms of Regulation 21.10.5.2. For the hearing panel to reduce the period of ineligibility it will need to be satisfied that Mr. Steyn has established on a balance of probabilities: -

- a. How the Prohibited substances ended up in his system;
- b. That there was no intent or recklessness;
- c. The degree of fault on his part so that an appropriate reduction can be arrived at.

5.10 When one refers to the definition of Fault factors to be taken into consideration in assessing an Athlete or other Person's degree of fault include whether the athlete was a minor, his/her experience, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the athlete in relation to what should have been the perceived level of risk. In assessing his/her degree of fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour.

5.11 In this regard Mr. Steyn is not a minor, he is an experienced athlete he is aware of prohibited substances and anti-doping rules, hence why he had completed a Therapeutic Exemption Use form. Not much level of care is taken into investigating the ingredients and potential risks of taking supplements. As you can see from the list provided for in pages 22-23 any one of these supplements could have been the source but it was not proven. Regardless, he has failed to show that these supplements are specific and relevant to explain the anti-doping rule violation.

5.12 In terms of the definition of No Fault or Negligence it states that the Athlete 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 Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

5.13 The definition of No Significant Fault or Negligence, for ease, is as follows-

The Athlete 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 relation to the anti-doping rule violation. Except in the case of a Minor...the Athlete must also establish how the Prohibited Substance entered his or her system.

Conclusion

5.14 Mr Steyn is required to show us how **19-norandrosterone (14,8ng/ml)** entered his system. SAIDS believes that he has failed at demonstrating this. He has not provided any evidence that his sample was contaminated or that there was a break in the chain of custody. It is highly unlikely or basically improbable that one could contaminate or tamper with a sample which would in effect reflect this substance.

5.15 The 19-norandrosterone concentration for Mr. Steyn was 4.9 times greater than the decision limit.

5.16 Furthermore, the prescriptions from Dr. Mostert as well as the medications disclosed on his doping control form are not medications that are found on the Prohibited List. See hand-out from SAIDS. Neither of these medications contain the substances found in his sample analysis.

5.17 Mr. Steyn is required to establish before the Tribunal that his Fault or Negligence when viewed in the totality of the circumstances was not significant in relationship to the anti-doping rule violation. He has failed to establish this.

5.18 Mr. Steyn did not show the duty of care or exercise "utmost caution" to ensure that whatever it is he actually took was not on the prohibited list;

5.19 Did not take reasonable steps to enquire what constitutes a doping offence;

5.20 He was tested previously on 3rd October 2009. He is aware of anti-doping and what is expected from him, yet he still did not disclose any supplements on his doping control form.

5.21 Mr. Kellerman is now relying on PAJA. He is only doing this because he has nothing else to go on and besides this contradicts himself when you refer to his paragraph 7 of his Heads of Argument i.e Regulation 21. Rules "be interpreted as an independent and autonomous text and not with reference to existing law or statutes".

6 VIOLATION

In that the Athlete does not dispute that there was an anti-doping violation it is not necessary to discuss the submissions relating thereto.

Sub-Article 2.1.1 of the SAIDS rules 2015 provides as follows:

"2.1 Presence of a *Prohibited Substance* or its *Metabolites* or *Markers* in an *Athlete's Sample*.

2.1.1 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 violation under Article 2.1"

From the concessions made by the Athlete it is clear that the Athlete violated the SAIDS Rules 2015 Regulations as the Regulations are applied in terms of strict liability. SAIDS has consequently established an anti-doping rule violation to the comfortable satisfaction of the panel.

7 SANCTION

I quote hereunder the Submission of the Prosecutor in respect of sanction which amply lays out the applicable principles:

“What is the appropriate sanction”?

7.1 The sanctions that fall within the competence of the tribunal are dealt with in Article 10 of the Anti-Doping Rules. Beginning with the question of ineligibility:-

10.2.1 The period of Ineligibility shall be four (4) 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 SAIDS 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 (2) years.

7.2 The abovementioned regulations therefore advise that when dealing with a Non-Specified Substance that the burden of persuasion is upon Mr Steyn to establish intent as required by the regulations.

7.3 The substance found to be present is a prohibited substance categorised under **Class S.1, Anabolic Agents**, on the 2016 WADA prohibited List International Standard 2016 (the Wada Prohibited List is incorporated in the World Rugby Anti-Doping Regulations) the presence of **19-norandrosterone (14,8ng/ml)** and its **metabolite 19-noreticholanolone was found.** This prohibited substance is prohibited in- competition and it is a Non-Specified Substance.

7.4 As a non- specified substance the athlete must illustrate how the substance was ingested [which Mr Steyn has not done] and that the anti-doping rule violation was not intentional for the tribunal to consider a sanction of less than four year. It is therefore clear that Mr Steyn is not able to meet requirement one as he has not illustrated how the non-specified substance entered his system and as a result thereof is not able to proceed with following tests which include demonstrating that he was not at fault or that that the ingestion did not enhance his sport performance.

7.5 When dealing with intention the SAIDS Anti-Doping Rules 2015 give the following guidelines:

"Article 10.2.3

As used in Article 10.2 and 10.3 the term "intentional" is meant to identify those Athletes 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. An anti-doping rule violation resulting from an *Adverse Analytical Finding* for a substance which is only prohibited *In-Competition* shall be presumed to be not "intentional" if the substance is a Specified Substance and the Athlete 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 Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.

7.6 Since Mr Steyn is not able to able to illustrate how the prohibited substance entered his system and therefore has not discharged the onus of providing the panel with a suitable explanation for the presence of the prohibited substance and furthermore not able to illustrate that the prohibited substance was used in a context unrelated to sport performance.

- 7.7 Therefore the athlete is not able to prove that intent was indeed lacking as he is not able to prove how the substance was entered his system and therefore not able to contextualise the purpose for the ingestion more specifically whether it was related to sport performance. In the absence of this vital information a sanction of 4 years would be appropriate as there is an element of recklessness on the part of the Athlete.
- 7.8 Should the panel feel that intent was lacking then the final leg would be to consider the degree of fault on the part of the athlete.
- 7.9 Whether an athlete competes at a recreational level, elite level or age group level is not relevant to the application of the SAIDS Anti-Doping Rules 2015. The Rules do not make such a distinction instead it sets out the equal application of its rules to all athletes and athlete support personnel in Article 1.3 of the SAIDS Anti-Doping Rules 2015.
- 7.10 The SAIDS Anti-Doping Rules provides some guidance when looking at an Athlete's degree of fault. It states that when assessing the Athlete's degree of Fault, it would, for example, be favourable for the Athlete if the Athlete had declared the product which was subsequently determined to be contaminated on his or her Doping Control form. Unfortunately, for whatever reason, this was not done in this instance.
- 7.11 The Rules also states that the other relevant factors to consider when assessing an Athlete's degree of fault is the Athlete's or other Person's experience, whether the Athlete or other Person is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete's or other Person's degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour.

- 7.12 When considering Article 10.5.2 of the SAIDS Anti-Doping Rules 2015 *Reduction of the Period of Ineligibility based on No Significant Fault or Negligence* where the presence of a non-specified substance in the urine of an athlete is applicable we need to look at some relevant case law.
- 7.13 In Czarnota's book "The World Anti-Doping Code, the athlete's duty of 'utmost caution' and the elimination of cheating" argued that "In assessing whether an athlete's fault or negligence was "significant," the WADC imposes an onerous "duty of utmost caution to avoid any prohibited substance entering his or her body." This duty requires athletes to "leave no reasonable stone unturned," although the "taking [of] reasonable steps should be sufficient [as] 'one can always do more'.
- 7.14 Czarnota stated in his article that "The duty of "utmost caution" requires athletes to know what constitutes a doping offence and what substances and methods are included on the WADA Prohibited List, follow health care and nutrition guidelines set by governing bodies, review a product's packaging, refrain from ingesting any products without consulting a "competent medical professional," refrain from ingesting products from "unreliable sources," and avoid places with an "increased risk of contamination.
- 7.15 The *IBAF v Ponson (IBAF vs Sydney Ponson (IBAF 09-001), p32, paragraph 8.28)* the panel held that "Any athlete who takes an 'over-the-counter' medication without first checking with her coach or a physician, or even reading the packaging for herself to ensure there are no prohibited substances in the medication, cannot be said to be without significant fault, and therefore is not entitled to the benefit of a reduced sanction under Article 10.5.2". (my emphasis)

- 7.16 In the Ponson case the panel argued that "Given that the Player did so little to discharge his **duty of utmost caution**, and failed to take any of a series of simple steps, easily open to him, any one of which would have enabled him to avoid this violation, in the Tribunal's view this is not an exceptional case and therefore the Player's fault or negligence cannot be said to be insignificant." (my emphasis)
- 7.17 In *WADA v Ali Nilforushan CAS 2012/A/2959, page 18, paragraph 8.18* the Panel stated that it "does not consider that Mr. Nilforushan's lack of anti-doping education is sufficiently exceptional to justify a reduction." (my emphasis)
- 7.18 From the submissions made by the Athlete and his legal representative there is no evidence whatsoever that the athlete took any steps to ensure that the supplement that he ingested did not contained any prohibited substances.
- 7.19 It is common cause that Mr Steyn is an experienced athlete and is not a minor. Furthermore it is common cause that the athlete had been tested before Mr Steyn is therefore well acquainted with the anti-doping regulations and processes and therefore on this basis should have exercised the necessary caution as it relates to the completion of the doping form. If Mr Steyn had done so this would have assisted in the process of elimination and the determination of the how the prohibited substance entered his system.
- 7.20 Mr Steyn had previously applied for a Therapeutic Use Exemption (TEU) during April 2016 which clearly demonstrates that he is accustomed with the anti-doping testing process and therefore a reasonable athlete in his position with his knowledge and experience of the process ought to have exercised the necessary duty of care and caution when ingesting substances/supplements and furthermore was aware that these supplements ingested should have been disclosed before the mandatory testing.
- 7.21 Furthermore the athlete duty of care amongst other things was for Mr Steyn to research the supplement before ingestion and consult relevant parties and do his due diligence and exercise caution as he required by the anti-doping regulations.

7.22 By virtue of the lack of any evidence that the athlete discharged his duty of utmost care before ingesting the supplement it cannot be argued that the athlete can rely on Article 10.5.2 for a reduction in sanction.

7.23 The athlete is fully aware of the principle of strict liability in that where an adverse analytical finding is produced that the athlete is strictly liable for the substances found in his or her bodily specimen whether or not the athlete intentionally or unintentionally used a prohibited substance or whether there was an element of negligence present

7.24 With regards to allegation of a time delay it is noted that according to procedure on average it usually takes 2-3 months to receive results from the laboratory, therefore it is our contention that there has not been unfair delay and furthermore no prejudice to Mr. Steyn as he was not suspended during this period and still continued to play rugby and receive an income. Based on the above case authority it is clear that there was a duty on the athlete exercise of "utmost caution". Once the athlete was tested he was on notice that there potentially could be an adverse finding. With all the evidence presented the onus resides strictly with the athlete and no store can be held on the time delay in conveying the test results to him.

8 DECISION

8.1 The Tribunal finds that a violation has been found of a Non-Specified substance which is prohibited in-competition and that a period of 4 years ineligibility is mandatory unless the athlete or other person can establish as required by Article 10.2.1.1 "that the anti-doping rule violation was not intentional" and that for the substance in question this would necessitate that the Athlete persuades the Tribunal that it was used "in a context unrelated to sport performance".

8.2 After considering the submissions in this matter, the Tribunal is firmly of the view that the Athlete has failed to demonstrate how the prohibited substance was ingested and as a

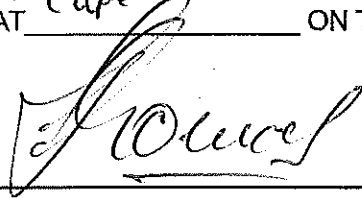
result thereof not able to surpass the onus in illustrating that violation lacked intention as contemplated by the regulations and that the ingestion of the prohibited substance was indeed unrelated to sport performance.

8.3 The submissions further revealed that Mr Steyn had sufficient knowledge about the anti-doping process and by virtue of his knowledge and experience should have exercised the necessary caution when ingesting supplements.

8.4 Mr Steyn has further not produced any evidence to demonstrate that he was diligent and cautious in researching the substance ingested. It is the tribunal view that due to Mr Steyn's experience and the fact that he is not a minor he ought to have demonstrated a greater exercise of care and should have investigated the ingredients and possible risk of using the supplements and as it stated above had a duty to disclose all the substances ingested prior to the testing.

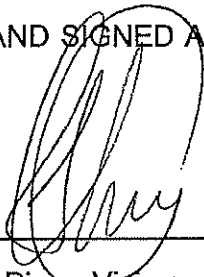
8.5 Accordingly the period of ineligibility of four years begins to run on the 7th July 2016, ending on the 6th July 2020.

DATED AND SIGNED AT Cape Town ON THE 29th DAY OF AUGUST 2017.



1. Mr. Jerome Vincent Thomas - **Tribunal Chairperson**

DATED AND SIGNED AT Stellenbosch ON THE 28th DAY OF AUGUST 2017.

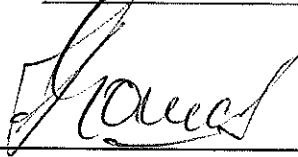


2. Dr Pierre Viviers - **Tribunal Member**

DATED AND SIGNED AT _____ ON THE _____ DAY OF AUGUST 2017.

3. Ms. Norma Nonkonyana - **Tribunal Member**

DATED AND SIGNED AT Cape Town ON THE 29th DAY OF AUGUST 2017.



1. Mr. Jerome Vincent Thomas - Tribunal Chairperson

DATED AND SIGNED AT _____ ON THE _____ DAY OF AUGUST 2017.

2. Dr Pierre Viciers - Tribunal Member

DATED AND SIGNED AT Brackenfell ON THE 28 DAY OF AUGUST 2017.



3. Ms. Norma Nnonkonyana - Tribunal Member

DATED AND SIGNED AT Cape Town ON THE 29th DAY OF AUGUST 2017.



1. Mr. Jerome Vincent Thomas - **Tribunal Chairperson**

DATED AND SIGNED AT _____ ON THE _____ DAY OF AUGUST 2017.

2. Dr Pierre Viciers - **Tribunal Member**

DATED AND SIGNED AT _____ ON THE _____ DAY OF AUGUST 2017.

3. Ms. Norma Nonkonyana - **Tribunal Member**