

In the matter between :

South African Institute for Drug-Free Sport (SAIDS)

Complainant

and

André Smith

Respondent

DETERMINATION

1. CHARGE :

The Respondent was charged on 3 October 2012 with an Anti-Doping Rule violation for contravening Article 2.1 of the 2009 Anti-Doping Rules of SAIDS, on 17 August 2012, when he provided a urine sample (2725303) during an in-competition test which, upon analysis by the South African Doping Control Laboratory at the University of the Free State, found the presence of the prohibited substance Epimetendiol, 17 α -methyl-5 β -androstane-3 α , 17 β -diol, epmethandienone and 6 β -hydroxymethandienone, metabolites of the Anabolic Agent, Methandienone. Epimetendiol and metabolites of Epimetendiol are categorized under Class S1 "Anabolic Agents" on the World Anti-Doping Code 2012 Prohibited List International Standard.

2. JURISDICTION :

- 2.1 In terms of Section 10(1)(e) of the South African Institute for Drug-Free Sport Act No. 14 of 1997, National Sports Federations must adopt and implement Anti-Doping Policies and Rules which

conform with the World Anti-Doping Code ("the Code") and with the requirements as set out in the SAIDS Anti-Doping Rules.

- 2.2 The Code is the core document produced by the World Anti-Doping Agency ("WADA") and provides the framework for the harmonization of Anti-Doping Policies, Rules and Regulations, across all sports and all countries around the world.
- 2.3 The South African Government has made a formal commitment to the Code and formally recognized the role of WADA through the Copenhagen Declaration of Anti-Doping in Sport (2003).
- 2.4 SAIDS is the statutory body established by the South African Government with the responsibility to promote and support the elimination of doping in sport in South Africa.
- 2.5 SAIDS has formally accepted the WADA Code and has adopted and implemented its Anti-Doping Rules in accordance with its responsibilities under the Code.
- 2.6 The International Rugby Board ("IRB"), in June 2004, adopted the Code and following an International Review of the Code by all signatories, with the new WADA Anti-Doping Code 2009 having been agreed with an effective implementation date of 1 January 2009. These Rules under the Code were adopted and implemented in conformity with the IRB's continuing efforts to eradicate doping in the sport of rugby.
- 2.7 The Respondent, a 19-year old professional rugby player with the Valke, falls under and is bound by the IRB's Rules.
- 2.8 The Anti-Doping Rules so adopted by SAIDS and the IRB, are sports rules governing the conditions under which sport is played. Athletes, including the Respondent, accept these Rules as a condition of participation and are bound by them.

2.9 The SAIDS Anti-Doping Rules apply to SAIDS, each National Federation of South Africa and each participant in the activities of the National Federations by virtue of the participants' membership, accreditation or participation in their National Federations or their activities and events. The Complainant in this matter has jurisdiction over the IRB and its members, including the Respondent, all of whom are subject to the SAIDS Anti-Doping Rules and the IRB Rules.

3. **DISCIPLINARY COMMITTEE :**

3.1 A Disciplinary Committee was convened by the Complainant in order to determine whether, in this case, a doping violation in terms of the SAIDS Rules and as embodied in the charge aforementioned, was committed by the Respondent.

3.2 The Committee consisted of :

Monty Hacker, Chairperson and an admitted attorney of some fifty years standing;

Dr Andy Branfield, a sports ;physician, and;

Leon Fleiser.

Nicolas Kock represented the Complainant with the duty of prosecuting the Respondent.

3.3 The Hearing before the Panel was originally convened to be held at the Garden Court, Kempton Park on 30 October 2012 at 17h30 but the venue was, at short notice, transferred to the Board Room at Wertheim Becker Inc., 1st Floor Oxford Manor, 196 Oxford Road, Illovo, Johannesburg. The reason for this change of venue was to suit the convenience of all parties.

3.4 The Hearing at the changed venue commenced on 30 October 2012 at 17h30 and the Respondent appeared personally, without representation from his provincial body, Valke Rugby, or from the national body SARU.

4. **COMPLAINANT'S CASE AGAINST RESPONDENT – PRESENTED BY MR KOCK :**

4.1 As set out in the charge aforementioned, the Complainant charged the Respondent with having committed an Anti-Doping Rule violation, more especially the contravention of SAIDS Rule 2.1.

4.2 SAIDS Rule 2.1 reads as follows :

“2.1 The Presence of a Prohibited Substance or its Metabolites or Markers in the 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 Rule violation under Article 2.1.

2.1.2 Sufficient proof of an Anti-Doping Rule violation under Article 2.1 is established by :

The presence of a Prohibited Substance or its Metabolites or Markers in the Athlete's A Sample where the Athlete waives his right to have his B Sample analysed, and the B Sample is not analysed."

- 4.3 The Respondent had in fact waived his right to have his B Sample analysed and it was not analysed. Accordingly, the finding of the Athlete's A sample, as analysed by the South African Doping Control Laboratory at the University of the Free State on 4 September 2012, therefore conclusively revealed the presence of metabolites of Epimetendiol, 17 α -methyl-5 β -androstane-3 α , 17 β -diol, epmethandienone and 6 β -hydroxymethandienone, metabolites of Methandienone. Methandienone is categorized under Class S1 "Anabolic Agents" in specific 1(a) Exogenous on the World Anti-Doping Code 2012 Prohibited List International Standard.
- 4.4 Mr Kock acknowledged that the onus of proving this contravention lies with the Complainant.
- 4.5 The Respondent, in a letter addressed to him by SAIDS dated 18 September 2012, was advised of the Laboratory's findings aforementioned at his in-competition rugby match on 17 August 2012, and was invited to have his B Sample tested, whilst being notified that he had been provisionally suspended from competing and participating in any authorised or organised sport by any professional league or any international or national level event, organized as per Article 10.10 "Status During Ineligibility" with immediate effect as of the date of that letter. In that same letter, the Athlete was advised of his right, through a written submission to SAIDS, within seven days namely by Tuesday 25 September 2012, to respond to the assertion that an Anti-Doping Rule had been violated by him.

- 4.6 No written submissions were received from the Respondent by SAIDS, nor were any explanations given by him for the presence of the Prohibited Substances in his urine sample, to counter the assertion that he had violated the Anti-Doping Rule.
- 4.7 Mr Kock relied upon the following relevant documents which were then marked as exhibits, namely :
- 4.7.1 The Complainant's letter to the Respondent dated 18 September 2012 - Exhibit "A";
- 4.7.2 The Complainant's letter to the Respondent dated 3 October 2012 - Exhibit "B";
- 4.7.3 The Laboratory report dated 4 September 2012 - Exhibit "C";
- 4.7.4 The Doping Control Form - Exhibit "D";
- 4.7.5 The Chain of Custody Form - Exhibit "E".
- 4.8 The Respondent testified that he had finished his schooling and that his sole interest was rugby which he had been playing since the age of 9 or 10 years. He also testified that he had last played for the Valke under-19 team and had also had a successful sporting career at the highest level in cricket and athletics. He acknowledged that he had received an anti-doping education, particularly what to use and what not to use. He furthermore acknowledged that this occasion was the first time that he had been tested and that some two weeks later, playing against the Eastern Province Kings, was tested again, on 31 August 2012. According to the Respondent, he had only used miprodol and no supplements and was not aware of having taken Methandienone, whether in tablet or any other form. He was unable to make any suggestion as to how the prohibited substance was found in his

urine sample. When questioned by Mr Kock, the Respondent was unable to throw any light on the manner in which this prohibited substance entered his body. However, because of the Respondent's youth, Mr Kock elicited the fact that the Respondent had not properly or satisfactorily investigated the matter and particularly the source from which the prohibited substance could be traced. When the Respondent was asked if an adjournment of the Hearing would be of assistance to him in tracing the source of the prohibited substance, he responded in the affirmative and accepted the Chairman's offer to assist him in this regard by postponing the Hearing for a period of two weeks until 13 November 2012. The Hearing, with the approval of the members of the Tribunal and Mr Kock, as well as the Respondent, was then postponed to 13 November 2012 at 17h30 at a venue to be advised by SAIDS.

5. All parties having been advised by SAIDS that the postponed Hearing in this matter would resume at the same venue at 17h30 on 13 November 2012, the members of the Tribunal and Mr Kock were all present at the appointed time on 13 November 2012. However, there was no appearance at this postponed Hearing from the Respondent and despite waiting until 18h00 that day, the Respondent failed to attend. It was at that stage that the Chairman invited Mr Kock to make his closing argument, which Mr Kock did. In doing so, Mr Kock argued that no explanations had been tendered by the Respondent as to how the prohibited substance came to be found in his urine sample, this despite having been given an opportunity (by means of the postponement) to do so. In the circumstances, Mr Kock called for the Tribunal to find the Respondent guilty of having committed the doping offence with which he was charged and that there existed neither mitigating nor exceptional circumstances which could be taken into account. He therefore sought the mandatory sanction of a two-year suspension being imposed on the Respondent.

6. **CONCLUSION :**

- 6.1 The Panel/Tribunal, after deliberation, accepted the evidence and submissions of the Complainant.
- 6.2 Accordingly, the Respondent was found guilty of contravening SAIDS Anti-Doping Rule 2.1.
- 6.3 The sanction imposed upon the Respondent, André Smith, is a two year suspension commencing 18 September 2012. Furthermore, the Respondent's ineligibility during this two year sanction shall preclude him from competing and participating in any authorised or organised sport by any provincial league or any international or national level event organised as per Article 10.10 "Status During Ineligibility" for the duration of the sanction hereby imposed by the Panel.

DATED at JOHANNESBURG ON THIS THE 16th DAY OF NOVEMBER 2012.



MONTY HACKER
Chairman

**With DR ANDY BRANFIELD and MR
LEON FLEISER having concurred with
this Determination**