

RUGBY FOOTBALL UNION
DISCIPLINARY HEARING

Judgment

At: Holiday Inn, Brighouse
On: Monday, 28th January 2008
Player: James Rothwell (18.7.85) **Club:** Doncaster RFC
Match: Manchester v Waterloo
Venue: Manchester
Date of Match: 22nd December 2007

Panel: Antony Davies (Chairman), Dr. Barry O’Driscoll
and Derek Morgan
Secretary: Brenda Parkinson, RFU Disciplinary Department
Attending: James Rothwell (“the Player”)
John Lowe (Director, Doncaster RFC)
Also in attendance: Tony Simpson, RFU Communications North

Preliminary Matters

1. The procedure to be followed and offence were both explained to Mr. Rothwell. He understood both. He raised no objection in relation to the composition of the panel.

Charge and Plea

2. The Player pleaded guilty to an anti-doping offence, accepting that on 22nd December 2007 after the match Manchester v Waterloo he had refused or failed, without compelling justification, to submit to Sample Collection after notification or otherwise evaded Sample Collection.

The Facts

3. The essential facts were not in dispute and can be summarised shortly. James

Rothwell is a professional rugby player. He is contracted to play for Doncaster RFC, an English first division Club. He was recovering from serious injury, having undergone surgery, and had been placed by Doncaster RFC on loan to Waterloo RFC, who play in National League 2, the League below. On Saturday, 22nd December 2007, he played for Waterloo against Manchester. After commencement of the match, he was identified as a player who would be required to give a sample. When the match finished, he was informed by his Physiotherapist that he had been selected for testing. He was introduced to the chaperon from UK Sport and told that he had been so selected and that failure to comply with the requirements would result in an anti-doping violation being committed.

4. The Waterloo team were split between two changing rooms. The Player asked the chaperon if he could be allowed to get his towel for the shower. He was allowed to do so and for a moment was out of the direct vision of the chaperon. After a short time, it became clear to the chaperon that he had effectively “lost” the Player and he commenced enquiries and a thorough search. The result of those enquiries was an indication that the Player had left the Club premises, exiting through a side door and leaving his kit bag and change of clothes in the changing room. His investigations in the car park resulted in a witness informing him that he had seen a player going through the car park in full kit, covered in mud and getting into a car and being driven off.

5. After about one hour, contact with the Player was established. He then maintained he was not aware he was to be tested and had made a mistake.

6. The RFU Anti-Doping Officer, Gavin Dovey, stated that the following day, 23rd December 2007, he was contacted by the Doncaster team Doctor requesting advice and guidance on what was referred to as a potential mis-test by a player at his Club. On 24th December 2007, Mr. Dovey had a number of conversations with the Player by telephone. Based on the Player’s answers to Mr. Dovey’s questions, the circumstances being described to Mr. Dovey did not to his mind “add up” and it had occurred to him immediately that there may have been a failure to comply. He advised the Player of the potentiality for a two year ban unless he had some compelling reason for not doing the test. The Player then indicated that he was prepared to give a sample, but was informed that it was too late and that he would be contacted again once Mr. Dovey had received a

report from UK Sport.

The Regulatory Scheme

7. Under IRB Regulation 21.2.3
“refusing or failing without compelling justification to submit to Sample Collection after notification as authorised in these Anti-Doping Regulations or otherwise evading Sample Collection” constitutes an anti-doping rule violation.
8. IRB Regulation 21.6 deals with personal responsibility and states as follows :-
“21.6.1 It is the player’s responsibility to ensure that no prohibited substance is found to be present in his body and that prohibited methods are not used. It is also the personal responsibility of each player to ensure that he does not commit any other anti-doping rule violation.
21.6.2 It is the sole responsibility of each player and person to acquaint himself with all of the provisions of these Anti-Doping Regulations including the guidelines.”
9. IRB Regulation 21.8 headed “Requirement to Undergo Doping Control” states:-
“21.8.1 Doping control may be carried out at any time. Doping control may be random or specific. All players shall submit to doping control at any time and any place whenever requested by an authorised Official.
10. IRB Regulation 21.22.3 deals with the imposition of ineligibility for anti-doping rule violations. It states :-
“21.22.3 The period of ineligibility for other violations of the Anti-Doping Regulations shall be :
(a) For violations of Regulation 21.2.3 (refusing or failing to submit to sample collection [.....] the ineligibility periods set forth in Regulation 21.22.1 shall apply.”
11. The period of ineligibility imposed for a violation is :
First Violation : Two (2) years’ ineligibility
Second Violation: Lifetime ineligibility

This is the Player's first anti-doping rule violation.

12. IRB Regulation 21.22.4 permits elimination or reduction of the period of ineligibility based on exceptional circumstances the relevant and material elements applying to the present case being :-

“(b) This Regulation 21.22.4 applies only to [.....] failing to submit to sample collection under Regulation 21.2.3 [.....]. If a player or person establishes in an individual case involving such violations that he or she bears no significant fault or negligence, then the period of ineligibility may be reduced but the reduced period of ineligibility may not be less than one half of the minimum period otherwise applicable.”

13. The standard of proof is the balance of probability (Regulation 21.3.1).

Evidence and Submissions

The Player's case

14. In advance of the hearing, the Player submitted a written statement (dated 25th January 2008). Before us, he expanded and elaborated upon the statement and the events which led to his missing the test. He is 22 years of age. In the last three years he has suffered an appalling catalogue of serious injury. He has suffered a dislocated shoulder and has had knee reconstruction surgery on two occasions. By 22nd December 2007, he was ending a period of rehabilitation. He had been informed that if he proved his stamina, fitness and skill level in his loan period at Waterloo, he would be offered a more lucrative full-time contract for the season 2008-2009 at Doncaster RFC. There was a great deal at stake for him.

15. He had not been tested before, but accepted that he had been given anti-doping information by his Club though he had not really read it. In the week leading up to the 22nd December, he had joined friends who were back from University for a get together and although he himself had not partaken, others had smoked cannabis. He conceived of the possibility that a cannabinoid had entered his system passively and that it may show up on testing. He did not want to risk that as it would have a disastrous effect upon his

future as a full-time professional rugby player.

16. The Player acknowledged that he had been informed by his Club Physiotherapist that he had been selected to be tested. He was aware of being introduced to a man “with a clipboard” and that he was standing next to another player who was to be tested. To use the Player’s words “my head went” and he stated that he got changed quickly and walked out of the main entrance of the changing rooms and Clubhouse unchallenged. He did not agree that he had sneaked out of a side door, but maintained that he had taken off his kit and changed into jeans, T-shirt and duffle coat before walking into the car park and getting into his parents’ car to be driven away. He said nothing to his parents about the incident or the reason he was leaving in the state he appeared (he admitted he had not taken a shower after an extremely muddy game). He had left his kit bag in the Clubhouse because there wasn’t room in his parents’ car and thought that another Doncaster player on loan to Waterloo would have brought it back for him.

17. The Player received a telephone call enquiring as to his whereabouts within an hour of leaving Manchester and whilst being driven along the M62. Initially, he said he acted “dumb” but when he was told of the potential for a long period of ineligibility, he woke up to the reality of the situation and the next day contacted the RFU Anti-Doping Officer, Gavin Dovey, and attempted to make arrangements to be tested.

18. Under questioning from the Panel the Player accepted that the original reason he had given for leaving (having to get home quickly to analyse a match DVD – a part-time job he had to supplement his income) was not in fact the correct version of events and that the sole reason for leaving was to avoid the potentiality for a positive sample. It was only when he realised the full horror of his potential fate that he did anything to try and rectify the situation. By then it was too late.

19. Giving somewhat inconsistent replies under questioning from the Panel, he went on to say that he had asked a colleague to take his kit home, whilst conceding that there had been plenty of room for his kit bag in his parents’ car as he was alone in the back. He also disputed that the coach driver, who had given a statement to the UK Sport chaperon, had seen him in his kit. He maintained that whilst he hadn’t showered, he had

at least changed. (We did not feel these inconsistencies materially affected our decision.)

20. The Player's statement ended with confirmation that on 26th December 2007 he had been suspended without pay by Doncaster RFC pending the outcome of the disciplinary hearing. Since then he had come to terms with what had happened and wished to reiterate the stupidity of his actions. He wished the Panel to know specifically that he had never knowingly taken any substance on the WADA banned list.

21. The Player produced copies of e-mail traffic and telephone calls to show the efforts he had made to rectify the situation from Sunday 23rd December 2007 onwards. The Player also asked the Panel to consider a letter from Director of Rugby, Waterloo RFC, Colin D. Fisher.

Decision

22. Anti-doping rule violation. In the light of the Player's admission and the strength, cogency and weight of the evidence, the Panel was satisfied to a very high standard that the Player had committed an anti-doping rule violation. Under the regulatory system set out above, the prescribed sanction for a first violation is two years' ineligibility. Argument that the Player bore "No Significant Fault or Negligence" was not advanced to us by the Player or his representative. We did however, and in fairness to the Player, consider whether we ourselves could find any such evidence but concluded on the facts we could not. We have some sympathy for the Player. He is young, inexperienced and naïve. However, his Club had given him all the necessary information on the anti-doping regime, which he admitted he had not bothered to read, and this attitude sat very uneasily against the personal responsibility requirements clearly set out in Regulation 21.6. Indeed, this is a full-time professional recovering from injury and looking to an enhanced full-time professional contract for the following season. His reckless disregard and wilful abdication of his responsibilities in this regard quite amazes us.

23. The Player had been given the 2007 Anti-Doping Advice card from UK Sport.

Furthermore, his Club had given him a folder with further information and he had available to him the services of a Club Doctor and a team of Physiotherapists and Coaches.

24. It is hoped that the Player has learned a serious and salutary lesson and that his substantial misfortune will serve as a warning, if not a wake up call, to other players that they must fully acquaint themselves with their personal responsibilities with regard to the anti-doping regime.

25. IRB Regulation 21.8.1 states clearly :-

“All players shall submit to Doping Control at any time and any place whenever requested by an authorised official.” Use of the word “shall” permits of no choice. Indeed, if Sample Control were to be regarded as optional by those who had something to hide, the regulatory system would be holed below the water line. For this reason the sanction for failing to submit, quite rightly in our view, equates to the sanction imposed had a positive sample been given.

26. It was noted that the Player’s Club, Doncaster RFC, had acted responsibly in its provision of information and in suspending the Player from 26th December 2007 after investigation.

Sanction

27. The Player is suspended from all participation in Rugby Union for two years from 26th December 2007 to 25th December 2009. He is free to play again on 26th December 2009. During the period of suspension, his status within the game is in accordance with IRB Regulation 21.22.7.

Costs

28. The Panel considered the issue of costs carefully. The Player had been suspended without pay from 26th December 2007. He was currently unemployed. Given the sanction imposed, the Panel did not feel it necessary to make an award of costs against the Player.

Right of Appeal

29. The Player was informed of his right to appeal as set out in RFU Disciplinary Regulations.

Antony Davies

Antony Davies,

Chairman

1st February 2008

