



Decision

by

the FIBA Disciplinary Panel established in accordance with
Article 8.1 of the
FIBA Internal Regulations governing Anti-Doping
in the matter

Jonathan Habsch
(born 14 October 1984)

hereafter:
(“the Player”)

(Nationality: Belgian)

Whereas, the Player underwent an in-competition doping test on 17 January 2009 in Aywaille (Belgium) on the occasion of a game between RBC Aywaille and Kortrijk Sport CB for the 3rd division of the Belgian national championship;

Whereas, the analysis of the Player's sample was conducted at the Laboratory of Zwijnaarde, Ghent (Belgium), which is a WADA-accredited laboratory. On 29 January 2009 the laboratory informed the Ministry of the French Community that a) the sample showed the presence of norandrosterone, a prohibited substance, in a concentration of 4.8 ng/ml; b) said concentration is above the threshold established in the applicable rules taking into account the measurement uncertainty at the threshold level ($k=1.64$, decision limit=2.32 ng/ml);



Whereas, the Player did not request an analysis of the B sample;

Whereas, on 22 April 2009 the Player was suspended by the Association Wallonie-Bruxelles de Basketball” (“AWBB”);

Whereas, by decision dated 11 June 2009 the disciplinary committee of the AWBB decided to impose a two-year ban on the Player and to suspend one year of the sanction. Thus the Player was declared ineligible for a period of one year starting from the delivery of the decision;

Whereas, on 2 March 2010 the Player exercised his right to be heard via telephone conference by a FIBA Disciplinary Panel composed of Mr. Antonio Mizzi, President of FIBA's Legal Commission and of Dr. Heinz Günter, Vice President of FIBA's Medical Commission. Ms. Cendrine Guillon, FIBA Anti-Doping Manager as well as Dr. Dirk-Reiner Martens and Mr. Andreas Zagklis, FIBA Legal Advisors, were in attendance;

Whereas, the Player at the hearing:

- did not contest the result of the test;
- stated that he is an amateur basketball player who played in the 3rd division in Belgium during the 2008-2009 season and that his club, after being relegated, is now participating in the 4th division (1st local);
- stated that due to his profession (car garage owner) he is not eating properly and, at the time relevant in these proceedings, he was looking for a nutritional supplement to “feel better”;
- submitted that a person he met in a gym recommended and purchased on his behalf a nutritional supplement available through the internet;



- could not remember the name of the nutritional supplement but recalled that it was a big box of powder and that he was drinking a water solution of this powder on a daily basis for a period of 1,5 – 2 months before the doping control;
- argued that he had no idea that the nutritional supplement contained any prohibited substance and thought he was just taking vitamins and proteins;
- stated that since he was suspended in Belgium on 22 April 2009 he did not participate in any competition organised by FIBA or by a national member federation affiliated to FIBA;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore, the Panel takes the following:

DECISION

A period of two years' ineligibility, i.e. from 22 April 2009 to 21 April 2011, is imposed on Mr. Jonathan Habsch.

Reasons:

1. Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (the "FIBA ADR") edition 2009 reads as follows:



“ARTICLE 2 ANTI-DOPING RULE VIOLATIONS

Players and other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 The presence of a Prohibited Substance or its Metabolites or Markers in a Player's Sample.

2.1.1 It is each Player's personal duty to ensure that no Prohibited Substance enters his or her body. Players 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 Player's part be demonstrated in order to establish an anti-doping violation under Article 2.1. [...]

2. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA FIBA ADR since norandrosterone, a prohibited substance listed in WADA's 2009 Prohibited List (the “2009 Prohibited List”) under letter S.1.1.b (Endogenous Anabolic Androgenic Steroids when administered exogenously) was found in a concentration above the threshold in his urine sample. The 2009 Prohibited List expressly mentions that for norandrosterone “*an Adverse Analytical Finding reported by a laboratory is considered to be scientific and valid proof of exogenous origin of the Prohibited Substance. In such case, no further investigation is necessary.*” This fact remained uncontested.

3. According to Article 10.2 of the FIBA ADR

“The period of Ineligibility imposed for a violation of Article 2.1 (Presence of Prohibited Substance or its Metabolites or Markers), [...] shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Articles 10.4 and 10.5, or the conditions for increasing the period of Ineligibility, as provided in Article 10.6, are met:

First violation: Two (2) years' Ineligibility.”



4. The Panel takes note of the Player's argument that the positive finding can be explained only by his taking of the nutritional supplement which must have contained the prohibited substance.
5. In that respect, Article 10.5 of the FIBA ADR provides that if a Player establishes that he bears no fault or negligence (10.5.1) or no significant fault or negligence (10.5.2) the otherwise applicable period of ineligibility shall be reduced or even eliminated. In the event that the Player has violated Article 2.1 of the FIBA ADR, like in the present case, he must also establish how the Prohibited Substance entered his system.
6. After reviewing the evidence before it, the Panel has serious doubts whether the use of a nutritional supplement which the Player was not even in a position to name, let alone confirm that he checked its label, can be considered as a plausible explanation for the presence of norandrosterone in his sample on 17 January 2009.
7. Further, even in the event that the Panel accepted that the anti-doping rule violation is a result of the above-mentioned use of a nutritional supplement purchased through the internet some time towards the end of 2008, the Player could not benefit from the application of Article 10.5 of the FIBA ADR. The Panel finds that the Player acted –at least– negligently by ingesting a supplement without ensuring that it does not contain a prohibited substance (see also FIBA Disciplinary Panel decision in the matter Onur Bolat, dated 14 July 2009). FIBA and WADA have released numerous public warnings with regards to supplements or medication that can be purchased through the internet but may contain prohibited substances. Despite that, the Player did not bring forward any evidence and was far from convincing the Panel that he took any preventive measures before making use of the said supplement. The Panel underlines that precautions of this kind are so fundamental that basketball players of any level, be it professional or not, are expected –and indeed obliged under the applicable rules– to take.



8. Based on the above findings, the Panel holds that it is appropriate to impose on the Player a sanction of two (2) years.
9. The Panel deems fair pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on 22 April 2009, as the Player was unable to play basketball since that date due to the suspension imposed by the AWBB.
10. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 4 March 2010

On behalf of the FIBA Disciplinary Panel

Antonio Mizzi
President of the Disciplinary Panel