



Decision

by

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

Vernard Hollins
(born 23 November 1980)

hereafter:

(“the Player”)

(Nationality: U.S.A.)

Whereas, the Player underwent an in-competition doping test on 20 January 2010 in Basel (Switzerland) on the occasion of the Swiss basketball league game between Starwings Basket RegioBasel and Lugano Tigers (“Game”);

Whereas, the analysis of the Player's sample was conducted at the laboratory of Epalinges (Switzerland), which is a WADA-accredited laboratory (“Laboratory”). On 8 February 2010 the Laboratory informed Antidoping Switzerland (“SUI NADO”) that the sample showed the presence of hydromorphone, and that the result could be due to the intake of hydrocodone which was also detected in the sample;

Whereas, after reviewing the matter and receiving the Player's position in writing, SUI NADO decided on 23 March 2010 that the sample should be considered negative and the results management procedure would be concluded;

Whereas, following correspondence between SUI NADO and FIBA, FIBA received a copy of the case file on 4 August 2010;

Whereas, on 18 August 2010 FIBA informed the Player a) that the matter would proceed, and b) of his right to request the analysis of the "B" sample;

Whereas, on 19 August 2010 the Player waived his right to have the "B" sample analysed;

Whereas, on 24 August 2010 FIBA informed the Player of his right to be heard either in person or by telephone conference;

Whereas, on 26 August 2010 the Player confirmed that he opted for a hearing by telephone conference;

Whereas, on 4 September 2010 at 3.30pm the Player was 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. Mr. Benjamin Cohen, FIBA Legal Affairs Manager and Mr. Andreas Zagklis, FIBA Legal Advisor, were also in attendance;

Whereas, the Player

- did not contest the result of the test;
- submitted that since the summer of 2009 he suffers from RTC syndrome in both his shoulders which occasionally causes him sharp pain;

- submitted that during the 2009 Christmas holidays he visited his family doctor in the USA, Dr. Charles Coats (“Dr. Coats”), who prescribed him the medication Acetimophen with Hydrocodone for the pain;
- argued that he used the said medication shortly before the Game because he was again in pain;
- stated that he trusted Dr. Coats –who has been his doctor for a long time– at a moment when he was not under contract with any club. Dr Coats is not a sports specialist and did not know that this medication could be prohibited under the regulations applicable in the country the Player would be later contracted to play in;
- submitted a letter by Dr. Coats where the latter confirmed having prescribed approximately 30 tablets of Acetimophen with Hydrocodone to the Player;
- submitted that he used the same medication not more than five times between September 2009 and January 2010;
- stated that Acetimophen with Hydrocodone must have been the source of the prohibited substance;
- expressed his regret for the inconvenience this situation has caused and confirmed that he had no intention to enhance his performance and to put his career in danger; he just wanted to be relieved from the pain in his shoulders;
- affirmed that he had committed no previous anti-doping rule violation.

Now, therefore, the Panel takes the following:

DECISION

A period of one month ineligibility, i.e. from 10 September 2010 to 9 October 2010, is imposed on Mr. Vernard Hollins.



Reasons:

1. Article 2.1 of the FIBA Internal Regulations governing Anti-Doping (the “FIBA ADR”) edition 2010 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. In its relevant parts the WADA 2010 Prohibited List reads:

“All Prohibited Substances shall be considered as “Specified Substances” except Substances in classes S1, S2.1 to S2.5, S.4.4 and S6.a, and Prohibited Methods M1, M2 and M3.

[...]

S7. NARCOTICS

The following narcotics are prohibited:

[...] hydromorphone [...]”

3. The Player has committed an anti-doping-rule violation pursuant to Article 2.1 of the FIBA ADR, since hydromorphone, a prohibited specified substance, was found in his urine sample. This fact remained uncontested.

4. According to Article 10.4 of the FIBA ADR:

“Where a Player or other Person can establish how a Specified Substance entered his or her body or came into his or her possession and that such Specified Substance was not intended to enhance the Player’s sport performance or mask the use of a performance-enhancing substance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from future Events, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the hearing panel the absence of an intent to enhance sport performance or mask the use of a performance enhancing substance. The Player’s or other Person’s degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

5. The Panel considers that the Player has brought forward sufficient evidence establishing that the source of the prohibited substance was the medication Acetimophen with Hydrocodone, which was prescribed by Dr. Coats to the Player. The Laboratory report also speaks in favour of such a conclusion.

6. Further, having considered the circumstances under which the Player used the substance and the effect of the above-mentioned medication, the Panel finds that the Player used Acetimophen with Hydrocodone merely seeking relief from pain and not a performance enhancing result. The Player’s explanation that the pain is not caused by a heavy training schedule but mainly appears on days of rapid weather changes is plausible from a medical perspective. Therefore, the Panel does not see any intention to enhance performance in the Player’s (or Dr. Coats’) actions and therefore finds that Article 10.4 of the FIBA ADR is applicable to this case.

7. Turning now to the Player's "degree of fault" as provided for in the same Article of the FIBA ADR, the Panel is mindful of the principles laid down in Article 2.1.1 of the FIBA ADR and the relevant CAS jurisprudence and underlines that "it is each Player's personal duty to ensure that no Prohibited Substance enters his or her body." On numerous occasions this Panel has emphasized that a player cannot shift his own responsibility under the rules to his support personnel, be it technical, medical or other.
8. In this respect, the Player's argument that he could not have known in advance which substances are prohibited in each European country cannot be accepted, because the WADA Prohibited List is applicable worldwide and is mandatory for the entire Olympic movement, i.e. for all international and national sports federations, including FIBA and its members. Being a professional player who has played seven seasons in Europe, the Player should have been aware of this general principle of anti-doping.
9. Further, the Panel notes the Player's honest admission that he did not check the package or the information sheet of his medication before consuming it. In addition, the Player did not consult with his team doctor or other medical expert with experience in sports after signing with a Swiss club in October 2009: he thought –erroneously– that the tablets were simple painkillers which he would use only when the symptoms of the RTC syndrome would appear. The Panel finds that the Player's behaviour falls short from the athletes' standard of diligence as established in the FIBA ADR, the World Anti-Doping Code and relevant CAS jurisprudence, since he did not take all necessary precautions to exclude any reasonable chance of having a prohibited substance entering his body.
10. In evaluating the Player's responsibility, however, the Panel has to consider also an important peculiarity of the case at hand: the substance consumed by the Player (hydrocodone) is not prohibited but metabolizes in the human body into hydromorphone, which is a prohibited narcotic. It is thus evident that in the present matter, unlike in cases of contaminated nutritional

supplements or medications, even if the Player had carefully reviewed the product label he would have had very little chance of foreseeing that hydrocodone could give rise to an adverse analytical finding.

11. Therefore, the Panel is of the opinion that the Player's negligence was truly insignificant.

12. For the above reasons, the Panel decides that it is appropriate to impose on the Player a sanction of one (1) month. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.

13. The Panel deems it appropriate pursuant to Article 10.9 of the FIBA ADR that the period of ineligibility is to start on the date of this decision, i.e. 10 September 2010.

14. This decision is subject to an Appeal according to the FIBA Internal Regulations governing Appeals as per the attached "Notice about Appeals Procedure".

Geneva, 10 September 2010

On behalf of the FIBA Disciplinary Panel



Antonio Mizzi
President of the Disciplinary Panel