

AMERICAN ARBITRATION ASSOCIATION
Arbitration Tribunal

In the Matter of the Arbitration between

Barney Reed
And
USADA

Re: 30 190 00701 01

OPINION

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND and AWARD as follows:

1. The United States Anti-Doping Agency ("USADA") is an independent legal entity that conducts drug testing and adjudication of positive test results pursuant to United States Anti-Doping Agency Protocol for Olympic Movement Testing (the "Protocol") and the rules of the various international sports federations.
2. Barney Reed ("Reed") was a member of the United States National Table Tennis Team at the 2001 U.S. Open, a competition held under the jurisdiction of the International Table Tennis Federation ("ITTF").

Facts

3. On July 6, 2001, while at the 2001 U.S. Open, Reed provided a urine sample for testing at the UCLA Olympic Analytical Laboratory in accordance with the Protocol and Section 5.3.1 of the ITTF Anti-Doping Code.
4. Mr. Reed's sample tested positive for 19-norandrosterone at a level approximately eleven (11) times the established threshold for males of two (2) nanograms per milliliter.
5. Prior to the test, Reed had been taking a supplement containing androstenedione.

Procedural History

6. Following receipt of the positive drug test, USADA, in conjunction with the testing laboratory, conducted an internal review, and then submitted the matter to an Anti-Doping Review Board. That Board, consisting of technical, medical and legal experts, and relying on the rules of the ITTF, proposed a two year suspension to Reed.
7. Reed rejected the recommended sanction, and this arbitration followed.
8. Prior to the hearing in this matter, which took place on February 27, 2002, the parties entered into a written stipulation of uncontested facts, dated January 4, 2002 (the "Stipulation"). The Stipulation recites the testing procedure and results, Reed's purchase and consumption of the supplement containing a prohibited substance, and that a doping offense under the rules of the ITTF has occurred.

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9. After the hearing, Reed was given the opportunity to submit additional argument and substantiation for his position. The panel received and reviewed Reed's letters of March 26 and April 4, 2002, as well as the various briefs, precedent and testimony provided by USADA.

10. The hearings were declared closed on April 4, 2002 pursuant to R-37 of the American Arbitration Association Supplementary Procedures for Arbitration initiated by USADA.

Relevant Provisions

11. The key regulation at issue in this dispute is Section 5.5.1 of the ITTF Anti-Doping Code, which establishes a mandatory two years suspension, commencing at the date of sampling, for an offense of the nature stipulated.

12. Section 5.5.3 states that commission of a doping offense will result in immediate disqualification and the withdrawal of all titles medals and prizes.

Arguments Presented

13. USADA contends that the language of Section 5.5.1 allows for no discretion in the application of its stated penalties, and that, since the Stipulation is conclusive as to the violation, a two year suspension is the only possible outcome of these proceedings.

14. Reed defends on a number of grounds. First, he asserts that his use of the supplement was on the advice of either a trainer or a store clerk (a factual inconsistency that, like several others, has no direct bearing on this decision). He goes on to state that he did not know the supplement contained a banned substance, and that he discontinued use after calling the USADA Drug Reference Line (for which no reference exists in the USADA records).

15. Reed also argues that, since substances such as anabolic steroids have no discernible effect on performance in his discipline, the offense is, in effect, technical in nature and could not, and by USATT rating did not, enhance his competitive abilities or standing within the sport.

16. Finally, Reed asks the panel to exercise discretion in establishing either the violation or the penalty to flow therefrom. He cites to several doping violations in table tennis and other sports in which there were findings that either exonerated the athlete or imposed less severe sanctions.

Reasoning and Conclusions of the Panel

17. The panel is mindful of Reed's appearance *pro se*, and is satisfied that the relevant regulations and precedent have been located and considered. Despite certain apparent disparities in the parties' respective versions of what happened, we are convinced that Reed did not intend to evade the anti-doping rules, or to obtain a competitive advantage thereby.

18. We are however, equally persuaded that a violation has occurred, and that this panel has no choice but to apply the ITTF Anti-Doping Code as written. The Stipulation and Reed's testimony establish that a prohibited substance was regularly used over a protracted period, and Reed goes on to state that he did not cease taking the supplements, clearly marked as to contents, until, belatedly, he called the USADA Drug Referenced Line and learned that he was in violation.

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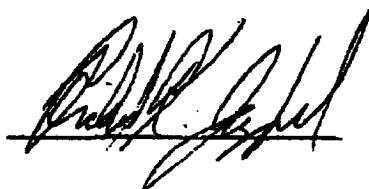
19. The ITTF has not incorporated into its Anti-Doping Code any language that would allow for application of an "extraordinary circumstances" or any other exception to, or escape from, its broad mandate. The athlete's intentions, other conduct and state of mind are therefore not relevant in applying Section 5.5.1. The panel has no discretion to alter the sanction that regulation prescribes.

20. Here, Reed would have the panel ignore both the specific provisions of the ITTF Anti-Doping Code and the central, uncontested fact that he chose to begin a supplementation regime without first clearing those supplements with USADA. Indeed, had he looked at the labels, the call would have been unnecessary; this is not the more compelling (if equally unavailing) case of a hidden or misdescribed ingredient. Reed knowingly took a supplement containing androstenedione in reliance, he states, on the fact that it was available "over the counter". As an athlete competing at a level requiring submission to drug testing, he did so at his peril. At the very least, failure to take note of a banned substance constitutes negligence on Reed's part.

21. Section 5.5.1 of the ITTF Code, in keeping with the Protocol, is designed to maintain a drug-free competitive environment. Reed, however innocent his motives may have been, violated that Code. We therefore impose, pursuant to section 5.5.1, a two year suspension from July 6, 2001, the date of the test, and cancellation of all sanctioned results and prizes from that date.

The administrative fees and expenses of the American Arbitration Association and the compensation and expenses of the arbitrators shall be borne entirely by USADA.

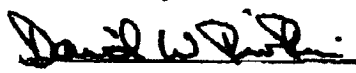
Richard K. Jeydel, Chairman:



Date:

4/22/02

David W. Rivich, Arbitrator:



Date:

4/22/02

Hon. Peter Lindberg, Arbitrator:

Date:
