

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

North American Court of Arbitration for Sport Panel

UNITED STATES ANTI-DOPING AGENCY,
v.
LARRY WADE,
Respondent.

ARBITRAL AWARD

AAA No. 30 190 01334 04

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:

I. FACTS

1. Larry Wade is an elite-level athlete in the sport of track and field. He is a member of USA Track & Field ("USATF") and has been serving on USATF's Athlete Advisory Committee since 2002. (Respondent Brief, 2). Since the fourth quarter of 2000 and prior to the subject test of this arbitration, Mr. Wade had had no positive laboratory test reported by the International Association of Athletic Federations ("IAAF") or the United States Anti-Doping Agency ("USADA"). (Stipulation of Uncontested Facts and Issues, Claimant Ex. 10).
2. On May 11, 2004, Mr. Wade submitted to out-of-competition drug testing at the request of IAAF. (Id.).

3. Lorraine Prichard, an International Doping Tests & Management ("IDTM") Doping Control officer, collected and processed Mr. Wade's urine sample, specimen number 859294. (Doping Control Form for Sample #859294). IDTM provides doping control services to IAAF.
4. In Ms. Prichard's presence, Mr. Wade split his urine sample into two collection bottles ("A" sample and "B" sample) identified by control number 859294 and sealed the bottles. (Id.). Once sealed, these bottles could only be opened with a special device at the drug testing laboratory.
5. As required by the collection process, Mr. Wade informed Ms. Prichard that he was taking multi-vitamins and minerals at the time of the collection. (Id.).
6. Ms. Prichard and Mr. Wade then both signed the doping control form, which indicates that 125 ml of Mr. Wade's urine was collected. (Id.)
7. After the collection, Ms. Prichard stored Mr. Wade's urine sample in her refrigerator until she dispatched it the following day, May 12, 2004. (IDTM Report Sample A 859294, p. 4, Claimant Ex. 8).
8. Ms. Prichard had intended to send Mr. Wade's sample to a laboratory in Canada (the "Canadian Laboratory"). (Collection Report Letter of Acknowledgement signed by Lorraine Prichard on May 12, 2004, Claimant Ex. 8). Instead, she mistakenly addressed the airbill to IDTM's headquarters in Sweden, and the sample was accordingly sent to Sweden. (Collection Report Letter of Acknowledgement signed by Tom Callingham on May 12, 2004, Claimant Ex. 8). The Canadian Laboratory confirmed that it never received Mr. Wade's urine sample coded 859294. (Email from Dr. Christiane Ayotte to Melania Balseiro, dated May 25, 2005, Claimant Ex. 32).

9. Upon arrival in Sweden on May 17, 2004, at 11:10am, Mr. Wade's urine sample was refrigerated until it was dispatched to Barcelona, Spain at 4:02pm on the same day. (IDTM Report Sample A 859294, p. 4, Claimant Ex. 8).
10. At 10:02 AM on May 18, 2004, Mr. Wade's urine sample arrived at the laboratory at the Institut Municipal d'Investigació Mèdica, Unitat de Farmacologia (the "Barcelona Laboratory"), where the "A" sample and "B" sample were observed to be intact and undamaged. (Id.). A letter from Claire Allinson, an IDTM Administrator, accompanying the sample, explained the discrepancy between the name on the collection order and that on the collection report. (Antidoping Analysis Report: Sample A Identification: 859294, p. 12, Respondent Ex. 4 ("Sample A Rep.")).
11. The Barcelona Laboratory is a World Anti-Doping Agency ("WADA") accredited laboratory. (USADA Pre-Hearing Brief ("USADA Br."), p. 3).
12. On May 19, 2004, the Barcelona Laboratory conducted an initial test of Mr. Wade's "A" sample and detected the presence of the metabolite of an anabolic steroid. (Sample A Rep., p. 5).
13. On June 2, 2004, the Barcelona Laboratory took three replicates from Mr. Wade's "A" sample and conducted three separate analyses. (Sample A Rep., p. 7, 22). All three analyses indicated the presence of the anabolic steroid metabolite, 19-norandrosterone, at a mean concentration of 37.5 ng/ml. (Id.). The Sample A Report also records that the "A" sample contained 80 ml of urine. (Id. at p. 20).
14. 19-norandrosterone is a metabolite of a prohibited anabolic steroid. Under the IAAF Anti-Doping Rules, the presence of 19-norandrosterone above the 2 ng/ml cutoff establishes ingestion of prohibited substances nandrolone, 19-norandrostenediol, or 19-norandrostenedione. (IAAF Prohibited List, Claimant Ex. 3; Claimant Ex. 38).

15. The Barcelona Laboratory subsequently reported the "A" sample as positive to the IAAF.
16. After being notified of the positive result, Mr. Wade requested that the B sample be tested in the presence of his representative. (Letter from Wade to USATF dated July 5, 2004, Resp. Ex. 2).
17. On July 29, 2004, in the presence of Mr. Wade's representative, the Barcelona Laboratory took three replicates from the "B" sample and performed three separate analyses. (Antidoping Analysis Report: Sample B Identification: 859294, p. 19, 22, 23, Respondent Ex. 4 ("Sample B Rep.")). The results confirmed the existence of 19-norandrosterone at a mean concentration of 41.1 ng/ml. (Id. at p. 6). The "B" Sample Report also indicates that the B sample contained 60 ml of urine. (Id. at p. 19).
18. In a report dated July 30, 2004, the Barcelona Laboratory transmitted its findings of norandrosterone at a concentration of higher than 2 ng/ml to the IAAF. (Analytical Report, Sample B Rep., p.8).
19. On September 29, 2004, USATF referred the matter to USADA for adjudication. Mr. Wade contested the sanction proposed by USADA and filed a request for arbitration.
20. Mr. Wade has been voluntarily serving a provisional suspension since July 12, 2004. (Sept. 27, 2004 letter from Caryn Nguyen, Esq. to Dr. Gabrielle Dolle, Claimant Ex. 12).
21. The Panel received various submissions from the parties, including pre-hearing briefs from each side.
22. On May 30, 2005, WADA issued a "Clarification about Nandrolone Testing" and an accompanying "Explanatory Technical Note" discussing the phenomenon of

"unstable urine," in which, in rare cases and under special conditions, a chemical reaction occurs in a vial of urine. WADA also provided some additional information about this phenomenon prior to the hearing.

23. On June 2, 2005, the Panel held a hearing in Los Angeles, California. At the close of the hearing, the Panel left open the single issue of whether Mr. Wade's positive test result could have been caused by urine instability and provided for both parties to make additional submissions on this subject.
24. After the hearing, WADA provided further information on urine instability in response to Mr. Wade's document request. The Panel then received supplemental briefs from each side on the open issue of whether Mr. Wade's positive test result was due to urine instability. Following receipt of these briefs, the record was declared closed on October 31, 2005.

II. PARTIES' CONTENTIONS

25. USADA contends that the mere presence of the prohibited 19-norandrosterone above the 2 ng/ml cutoff in Mr. Wade's urine sample, regardless of his intent, constitutes a doping violation under the World Anti Doping Code (the "Code") adopted by IAAF. (USADA Br., p. 5-6). USADA further contends that Mr. Wade failed to offer any evidence sufficient to rebut the presumption of the validity of results from the WADA-accredited Barcelona laboratory.
26. In response, Mr. Wade sets forth three contentions in his defense. First, Mr. Wade challenges the chain of custody of his urine sample. He argues that USADA's documentation of the chain of custody fails to link his urine sample to the one tested by the Barcelona Laboratory, because two separate Collection Report Letters of Acknowledgement indicate that Mr. Wade's urine sample 859294 was sent to the Canadian Laboratory and the Barcelona Laboratory on the same day, May 12, 2004 (Wade Pre-Hearing Brief ("Wade Br."), p. 3-4). Mr.

Wade further argues that the note from IDTM headquarters to the Barcelona Laboratory explaining the above discrepancy was not signed or dated and did not identify the sample at issue. (Id. at p. 3). In addition, Mr. Wade points out that the Barcelona Laboratory recorded 140ml of urine combined in the "A" Sample and "B" Sample, while only 125ml was collected from Mr. Wade on May 11, 2004. (Id. at p. 4). Mr. Wade contends that the 15ml difference is conclusive evidence that the urine sample tested by the Barcelona Laboratory was not that of Mr. Wade. (Id.)

27. Second, Mr. Wade asserts that even if the urine sample was his, the positive results can only be due to third-party gross negligence or intentional tampering. (Id. at p. 4).
28. Third, Mr. Wade asserts that the presence of 19-norandrosterone in his urine sample could have been caused by ingestion of contaminated supplements that he uses as part of his nutrition program. (Id.)
29. The panel left open for post-hearing briefing and decision the limited issue of whether "unstable urine" provided an explanation for Mr. Wade's positive test result. Both parties submitted supplemental briefs on that issue.
30. In his Supplemental Brief ("Wade Suppl. Br."), Mr. Wade argued that his test results were invalid, because: (1) the WADA standard of 10 ng/ml is an arbitrary limit for urine to be "unstable" as concentrations of 19-norandrosterone below 50 ng/ml cannot be associated with any performance enhancement effect and detections of low concentrations are not fully understood and may result from diet, contaminated supplements or unstable urine, and (2) WADA failed to disclose the possibility that "unstable urine" can cause a false positive. (Wade Suppl. Br., p. 1-2).

31. In response, USADA asserted that Mr. Wade failed to rebut the presumption of validity granted to WADA-accredited laboratories, as well as failed to make any other claim that his urine was unstable, and Mr. Wade's expert failed to analyze or discuss Mr. Wade's test results at issue. (USADA's Response to Respondent Larry Wade's Supplemental Brief ("USADA Suppl. Br."), p. 2-3). Rather, USADA contended that Mr. Wade merely challenged the appropriateness of WADA's 2 ng/ml threshold for a positive result, an issue which was not reserved for supplemental briefing. (Id.). USADA further contended that a performance enhancing effect is irrelevant to the doping violation inquiry. (Id. at p. 5-6). Finally, USADA's expert provided additional evidence that Mr. Wade's urine was not unstable, in addition to the concentration of 19-norandrosterone being outside the range where instability might be found. (Id. at p. 8-9).

III. DISCUSSION

32. USADA bears the initial burden to prove Mr. Wade's doping violation "to the comfortable satisfaction of the hearing body bearing in mind the seriousness of the allegation which is made." (IAAF Rule 33.1-33.2). Such a standard of proof is "greater than a mere balance of probability but less than proof beyond a reasonable doubt." (IAAF Rule 33.2).
33. Doping is defined as "the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids." (IAAF Rule 32.2(a)).
34. WADA-accredited laboratories are presumed to have conducted testing and custodial procedures in accordance with the appropriate standards. (IAAF Rule 33.4(a)).
35. Therefore, USADA met its initial burden of proving Mr. Wade's doping violation based on producing Mr. Wade's positive test results from a WADA-approved laboratory.

36. Once USADA meets its initial burden, the burden of proof shifts to Mr. Wade to rebut, by a balance of probability, the presumption of validity of the laboratory's procedures. (IAAF Rule 33.3 and 33.4(a)).
37. The Panel finds that Mr. Wade has failed to rebut USADA's presumption of proper testing and accurate results.
38. The Panel rejects Mr. Wade's first defense that the chain of custody did not link the urine sample tested by the Barcelona Laboratory to the urine sample Mr. Wade provided on May 11, 2004. Mr. Wade himself separated his urine into two bottles labeled 859294, and sealed the bottles. (Prichard Testimony, Tr. p. 147-48). These bottles could only be opened with a special tool present only at laboratories. (Prichard Testimony, Tr. p. 148). Mr. Wade watched while Ms. Prichard noted the label number from the bottles on the Collection Form. (Prichard Testimony, Tr. p. 151).
39. While Ms. Prichard, who collected the sample, intended to send Mr. Wade's sample to a laboratory in Canada for testing, she mistakenly addressed the airbill to IDTM's headquarters in Sweden. (International Express Airbill, Claimant Ex. 8; Prichard Testimony, Tr. p. 161-62). While she attempted to remedy her mistake by calling DHL to redirect the package, it was never redirected. (Prichard Testimony, Tr. p. 165). There is confirmation that the sample coded 859294 was accordingly sent to Sweden, as the airbill number on the package received by IDTM in Sweden matches the airbill number listed on the Collection Report Letter of Acknowledgement by Ms. Prichard, which lists the destination as a Canadian laboratory. (International Express Airbill and Collection Report Letter of Acknowledgement signed by Lorraine Prichard on May 11, 2004, both at Claimant Ex. 8).
40. There is also confirmation that the sample coded 859294 was received by IDTM headquarters and subsequently sent for testing to the WADA-approved laboratory

in Barcelona. (Collection Report Letter of Acknowledgement signed by Tom Callingham on May 12, 2004,¹ Claimant Ex. 8). IDTM received the sample coded 859294 with the bottle seals intact within a sealed plastic pouch. (Allinson Testimony, Tr. p. 94). The sample codes on the bottles received by IDTM matched those on the Collection Report prepared by Ms. Prichard. (Callingham Testimony, Tr. p. 124). On May 17, 2005, IDTM sent the sample, which was still sealed in the plastic pouch with the bottle seals intact, to Barcelona. (Allinson Testimony, Tr. p. 99). The DHL airbill for the shipping of the sample coded 859294 from Claire Allinson at IDTM to the Barcelona Laboratory was marked with airbill number 9970685233. (Sample B. Rep., Respondent Ex. 5, p. 14).

41. There is also evidence that the Barcelona Laboratory received the sample numbered 859294 with the bottle seals intact on May 18, 2005. (Acknowledgement Receipt, Sample B. Rep., Respondent Ex. 5, p. 17; Segura Testimony, Tr. P. 28; Sample A. Rep., Respondent Ex. 4, p. 20). The airbill number on the package received by the Barcelona Laboratory matched that on the airbill sent by IDTM. (Id.). Likewise, the Canadian Laboratory confirmed that it never received Mr. Wade's urine sample coded 859294. (Email from Christiane Ayotte to Melania Balseiro, dated May 25, 2005, Claimant Ex. 32).
42. Mr. Wade's representative was present for the opening of the B sample coded 859294 and verified the integrity of the shipping container, the bottle, and the seal, as well as the transfer of the sample into a sealed container for analysis. (Sample B. Rep., Respondent Ex. 5, p. 22-24). Three witnesses, including Dr.

¹ Mr. Callingham testified that he used the date May 12, 2004 as the shipment date in accord with the Collection Report form filled out by Ms. Prichard. However, he actually shipped the package containing the samples on May 17th. (Callingham Testimony, Tr. p. 124).

Segura, signed off on the procedures used in analyzing the B sample coded 859294. (Sample B. Rep., Respondent Ex. 5, p. 25).

43. The unique numbering and design of the Berlinger collections bottles in which the sample was stored and transported further proves that the urine sample tested by the Barcelona Laboratory was indeed Mr. Wade's.² (Allinson Testimony, Tr. p. 108-11).
44. The documentary evidence, in tandem with the hearing testimony by Jordi Segura, Claire Allinson, Tom Callingham, and Lorraine Prichard, conclusively establish that sample 859294, Mr. Wade's urine, was shipped from California, via Sweden, to the Barcelona Laboratory.
45. The fact that 15ml more urine, as measured by eyeballing the sample bottles against a calibrated bottle, was recorded at the Barcelona Laboratory does not overcome all the evidence presented by USADA. Dr. Segura testified that the measurement method used has a margin of error of plus or minus 10 ml for each sample, making such discrepancies common and of no concern. (Segura Testimony, Tr. p. 33-38). Additionally, the measurement upon collection was also through eyeballing the approximate volume level on a bottle marked only at 25 ml intervals, with Ms. Prichard rounding the volume to the nearest 25 ml mark. (Prichard Testimony, Tr. p. 145-47). Given the imprecise method of measuring sample volume, the Panel is satisfied that such a discrepancy does not introduce sufficient doubt in the face of the clear documentary chain of custody.

² Mr. Wade's point about the bottles missing the red rings is without merit. The red rings are merely to keep the bottles from prematurely sealing, and are not implicated in the actual sealing; in fact, the bottle cannot be sealed properly if the red ring is not removed. (Prichard Testimony, Tr. p. 148-49).

46. Mr. Wade next argues that third-party gross negligence or tampering must have occurred. However, Mr. Wade provides no evidence in support of this assertion. The Barcelona Laboratory, a WADA-credited laboratory, is "presumed to have conducted sample analysis and custodial procedures in accordance with the International Standard." IAAF Rule 33.4(a). Since Mr. Wade has not presented any evidence to rebut this presumption, the Panel must reject this argument.
47. As to Mr. Wade's third argument, that the positive test result could have been caused by contamination of the supplements Mr. Wade was taking prior to the collection of his urine sample, Mr. Wade bears the burden to establish any exceptional circumstances under which a prohibited substance entered his body. (IAAF Rule 38.11 and 38.12(i)). It is not an exceptional circumstance when the violation is alleged to be "due to the taking of contaminated food supplements." (IAAF Rule 38.12(iii)). While we found Mr. Wade to be a sympathetic witness who may have taken contaminated food supplements, his mere conjecture that such contamination was possible does not meet this burden. Even considering the expert affidavit submitted with Mr. Wade's Supplemental Brief, Mr. Wade failed to establish any exceptional circumstance under which the prohibited substance entered his body. Furthermore, even if there were to have been an exceptional circumstance found, his period of ineligibility may be reduced only if the athlete can establish how the prohibited substance entered his system, which Mr. Wade had not. (IAAF Rule 40.2). Hence, this argument must also be rejected.
48. Finally, Mr. Wade failed to provide any evidence that would indicate that his positive test result should be discounted due to instability of his urine. Mr. Wade's Supplemental Brief and attached expert affidavit failed to provide any support for the specific proposition that Mr. Wade's urine was unstable. Specifically, Mr. Wade failed to address testimony by Dr. Segura that the sample coded 859294 failed to meet any of WADA's criteria for likely instability of urine: (1) nandrolone concentration from 2 to 10 ng/ml, (2) low and comparable

levels of 19-noretiocholanolone ("NE") and 19-norandrosterone ("NA"), and (3) NA/NE is less than androsterone/etiocholanolone. (Claimant Ex. 38; Segura Testimony, Tr. p. 52-53, 56).

49. In summary, the Panel is of the opinion that (i) USADA has proved that the prohibited substance 19-norandrosterone was found above the cutoff level in urine sample 859294 provided by Mr. Wade on May 11, 2004, to the comfortable satisfaction of this Panel, and (ii) Mr. Wade has failed to rebut the doping violation and to meet his burden to prove any defenses.
50. For the above reasons, the Panel finds Mr. Wade guilty of a doping violation under the IAAF Rules. Accordingly, the Panel finds that Mr. Wade should be declared ineligible for two years, pursuant to IAAF Rule 40.1(a)(i), with credit for suspension time already served from July 12, 2004 until the date of this Award. Mr. Wade should therefore be eligible for competition on July 12, 2006.

IV. Findings and Decision.

This panel therefore rules as follows:

1. Mr. Wade is guilty of a doping violation under IAAF Rules, so that he should be declared ineligible for two years, less the period of suspension he has previously.
2. Mr. Wade shall be ineligible for two years from July 12, 2004 under the IAAF Rules, including from participating in U.S. Olympic, Pan American or Paralympic Games, trials or qualifying events, being a member of any U.S. Olympic, Pan American or Paralympic Games team and having access to the training facilities of the United States Olympic Committee ("USOC") Training Centers or other programs and activities of the USOC including, but not limited to, grants, awards, or employment pursuant to the USOC Anti-Doping Policies.
3. The Administration fees and expenses of the American Arbitration Association and the compensation and expenses of the Arbitrators totaling \$xx.xx shall be borne by the United States Anti-Doping Agency.
4. The parties shall bear their own costs and attorney's fees.
5. The administrative fees and expenses of the American Arbitration Association totaling \$750.00 shall be borne entirely by United States Anti-Doping Agency, and the compensation and expenses of the neutral(s) totaling \$23,489.71 shall be borne entirely by United States Anti-Doping Agency.
6. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.
7. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute together one and the same instrument.

Dated November __, 2005

11/9/05
Date


David W. Rivkin, Chair

Date

Alan E. Harris, Arbitrator