

NATIONAL ANTI-DOPING PANEL

Before:
Matthew Lohn
Dr N Townshend
Dr T Crystal

B E T W E E N:

Rugby Football League

National Governing Body

- and -

Dean Gaskell

Respondent

IN THE MATER OF PROCEEDINGS BROUGHT UNDER THE 2009 ANTI-DOPING RULES OF
THE RUGBY FOOTBALL LEAGUE AGAINST DEAN GASKELL

FINAL DECISION OF THE ANTI-DOPING TRIBUNAL

1. INTRODUCTION

- 1.1 This is the final decision of the Anti-Doping Tribunal convened under Article 8 of the Anti-Doping Rules of the Rugby Football League ("the Rules") to determine a charge brought against Dean Gaskell for commission of a Doping Offence in breach of Article 2.1 of the Rules.
- 1.2 Article 2.1 of the Rules provides that the presence of a prohibited substance or its metabolites or markers in a sample shall constitute an Anti-Doping Rule Violation unless the athlete establishes that its presence is consistent with a TUE granted in accordance with Article 4.
- 1.3 Dean Gaskell is a professional rugby league player engaged by Widnes Vikings. He possesses a Therapeutic Use Exemption ("TUE") for the Beta-2 Agonist Salbutamol. WADA technical document TD 2009 MREL, provides that where a player holds a TUE for Salbutamol, a recorded level of the drug over 1000ng/nl constitutes an adverse analytical finding.

- 1.4 Mr Gaskell submitted to a drugs test having played in a match against York on 6 June 2009. The test yielded a positive result for Salbutamol at a level of 2620ng/ml. Mr Gaskell was charged with a Doping Offence.
- 1.5 Matthew Lohn (Chairman), Dr Neil Townsend and Dr Terry Crystal were appointed to form a Tribunal to hear the case. A hearing was held on Monday 14 September 2009. The hearing was attended by Dean Gaskell, Paul Kirtley, Counsel instructed on behalf of Dean Gaskell and Blake Solly who appeared on behalf of the Rugby Football League. Stephen Watkins, from the NADP and two observers from UK Sport were present at the hearing. This document constitutes the final reasoned decision of the Tribunal, reached after due consideration of the evidence heard and the submissions made by the parties attending at the hearing.

2. PROCEDURAL HISTORY

- 2.1 Dean Gaskell was charged with a Doping Offence by a letter from the RFL dated 8 July 2009. The letter confirmed that there had been an Adverse Analytical Finding following testing of a specimen provided by Mr Gaskell after a match against York on 6 June 2009
- 2.2 Mr Gaskell was informed that (pursuant to Article 7.2.3 of the Rules) he was charged with an Anti-Doping Rule Violation. The letter also set out the potential consequences that could follow if the allegation were established at a hearing.
- 2.3 Hattons Solicitors, instructed on behalf of Dean Gaskell, confirmed receipt of the Notice of Charge by a letter dated 16 July 2009 and asked for the case proceed to a Hearing in accordance with Article 8 of the Rules. Further information was submitted by Hatton Solicitors by letter dated 8 September 2009 in the form of a Skeleton Argument and witness statements from Mr Gaskell, Joanne Seddon the Head Physiotherapist at Widnes Vikings, Katherine Perthern, the club Doctor and fellow professional players John Duffy and Terry O'Connor.
- 2.4 In the Skeleton Argument Mr Gaskell admitted a breach of Article 2.1 of the Rules. Mr Gaskell submitted that since this was his first violation, the Tribunal should exercise their discretion pursuant to Article 10.4 of the Rules to eliminate any period of Ineligibility. Mr Gaskell acknowledged that, in order for the Tribunal to exercise their discretion, he would need to persuade the Tribunal of the circumstances in which the Specified Substance came to enter his body and that the Specified Substance was not intended to enhance his sports performance.

3. THE TRIBUNAL'S DECISION

3.1 Determination of the Charge

- 3.1.1 In view of the admission by Mr Gaskell to a breach of Article 2.1, the Tribunal determined that the Anti-Doping Rule Violation was established.

3.2 Consequences

A. Ineligibility

- 3.2.1 Under the Rules, where an Player found to have committed a Doping Offence under Article 2.1 of those Rules, and, as here, such offence is the Player's first Doping Offence, the Tribunal is normally required to impose a period of Ineligibility of 2 years.
- 3.2.2 The Rules provide a discretion for a Tribunal to depart from imposing this restriction in limited circumstances. In this case Mr Gaskell has sought to rely upon the exemption set out in Article 10.4.1 of the Rules. That Article provides that where the offence is a first doping offence, and the Player establishes how a Specified Substance enters his body and that his use of it was not intended to enhance his performance, the Tribunal may depart from the sanction provided for in Article 2 and impose a sanction ranging from at the minimum a reprimand and no period of Ineligibility to a period of Ineligibility of up to two years
- 3.2.3 In accordance with the Rules the burden is on Mr Gaskell to satisfy the Tribunal, of each of the requisite elements of the plea. In seeking to satisfy that burden, Mr Gaskell gave evidence and called four witnesses; the club doctor, the club physio a fellow player and a team coach.
- 3.2.4 Mr Gaskell explained to the Tribunal that he was diagnosed as suffering from asthma around the age of 4. As to his recent medical care he confirmed that he has not visited his personal GP for a considerable number of years but has only been seen by doctors employed by professional rugby clubs. The only access he currently has to an inhaler is the one kept at Widnes which is normally in the kit bag belonging to the club physiotherapist, Joanne Seddon. Mr Gaskell informed the Tribunal that he has never been shown by a medical professional how to use an inhaler efficiently and his normal approach is to inhale deeply whilst pressing the trigger between three and four times in very quick succession.
- 3.2.5 Mr Gaskell only became aware of the need to have a TUE following advice from the Widnes club doctor, Dr Katherine Perthen shortly after he joined the club. A TUE was applied for by Dr Perthen and was granted. Mr Gaskell understood from the certificate that he was allowed to take the inhaler "as required". The Panel reviewed the TUE and noted the provisions provided for Mr Gaskell to take 100 micrograms of Ventolin (Salbutamol) as required. The TUE did not provide for any upper limit of consumption nor set out any maximum permitted urinary concentration.
- 3.2.6 Prior to the match against York on 6 June 2009, Mr Gaskell suffered a fracture to his cheek bone and had been absent from training for a period of time. He felt he was not aerobically as fit for the game as he would normally have been and found that he was more breathless than usual. Mr Gaskell estimated that he

would have taken the inhaler from the physio at every break in play for three or four puffs. In this game there were 11 tries scored in addition to further stoppages for injuries,

- 3.2.7 Joanne Seddon, the physio, confirmed that she was aware of Mr Gaskell's asthma and the fact he held a TUE in relation to his use of the Salbutamol. She confirmed that she kept two inhalers in her kit bag. One which she provided to Mr Gaskell whenever he required an inhaler and the other in the case of emergencies should other team members require treatment with an inhaler.
- 3.2.8 Dr Perthen confirmed that she filled in the TUE application form for Mr Gaskell using information provided by him. She had no access to any of Mr Gaskell's medical records prior to January 2008 when she started working at Widnes. She confirmed that she had not given Mr Gaskell any advice regarding how to take a Salbutamol inhaler, explaining that she thought that Mr Gaskell's own doctor would have done this. Dr Perthen told the Tribunal that until the positive A sample was reported, she had not realised that the only inhaler used by Mr Gaskell was from the club's kit bag. She also confirmed that she was not aware until this case of the upper limit of 1000ng/ml of Salbutamol set by WADA. She further confirmed that Mr Gaskell had recently undergone further medical testing which had confirmed his diagnosis of asthma.
- 3.2.9 The Panel also received evidence from John Duffy and Terry O'Connor, both of whom have played alongside Mr Gaskell. They confirmed his position as a role model both on and off the pitch and their knowledge of Mr Gaskell's use of an inhaler. Mr Duffy confirmed that Mr Gaskell always used his inhaler on the pitch in full view of other players.
- 3.2.10 The Tribunal having considered this evidence determined that Mr Gaskell had satisfied the burden of proving to the comfortable satisfaction of the Tribunal the matters set out at Article 10.4.1 of the Rules.
- 3.2.11 In relation to the first of those matters, namely, how the drug's specified substance entered Mr Gaskell's body in the concentration that it did, the Tribunal was satisfied that Mr Gaskell's gave credible evidence of taking 30 to 40 puffs during the match. This evidence was corroborated by Joanne Seddon. The Tribunal accepted that such excessive use would have caused the urine concentration to be in excess of the WADA threshold of a 1000mg/ml.
- 3.2.12 The second matter which Mr Gaskell needed to establish was that his Salbutamol use was not intended to enhance his performance. The Panel was satisfied that Mr Gaskell's sole aim when using the inhaler was to gain respite from his respiratory symptoms of breathlessness. The medication that Mr Gaskell used was provided to him and self administered on the pitch in front of his team and the opposing side. The inhaler was provided to him on each occasion by the club physio. There was no suggestion of any concealment in the administration of the Specified Substance.

- 3.2.13 The Tribunal has carefully considered how it should exercise its discretion in view of the above facts.
- 3.2.14 At the heart of this case is a young player whose chronic medical condition was not being regularly monitored. This was a failure both on his part and on the part of his employer, Widnes. These failures have been compounded by the failure of his club to advise Mr Gaskell of the WADA limits for Salbutamol and how such limits could be breached with inhaler use. Mr Gaskell was not told at the time he completed his TUE that there was a level of 1000ng/ml which should lead him to be circumspect when using the inhaler. The club doctor when giving evidence before the Tribunal confirmed that she had not known of the 1000ng/ml threshold set by WADA. In addition no mention was made of the limit on either the TUE application or on the authorising Certificate of Approval for Therapeutic Use.
- 3.2.15 The Panel considers that all these issues significantly contributed to the positive analytical finding. The Tribunal respectfully suggests that for the future to avoid such circumstances again, all TUE's relating to a specified substance with a threshold level should have a clear maximum daily dose annotated on the form.
- 3.2.16 When considering the issue of sanction, the Tribunal has concluded that the severity of any penalty should be ameliorated in view of the poor medical advice and care provided to Mr Gaskell by Widnes.
- 3.2.17 Widnes allowed regular medication to be provided to Mr Gaskell without enquiring whether his medical condition was being monitored by another health professional. A club should ensure that its medical staff monitor their players' chronic medical conditions in a competent and professional manner, liaising with other healthcare professionals as appropriate. In this case Widnes applied for a TUE for Mr Gaskell without properly understanding his medical history or the WADA code provisions which governed the drug. Such cursory medical and pastoral care is far below the standards that should be afforded to professional athletes who rely upon their clubs for support, and is simply unacceptable in a modern sporting environment.
- 3.2.18 These significant mitigating factors do not completely exonerate Mr Gaskell from blame. Although the medical supervision provided by Widnes failed to serve Mr Gaskell's best interests, he was still accountable for any drugs which formed part of his therapeutic regime. As an athlete he had a responsibility to inform his club about the full history of his medical condition and to appraise himself as to whether any drug he was required to take formed part of an anti-doping regime. Mr Gaskell's ignorance of the relevant issues is not acceptable. The use of drugs in sport has a high profile and players should be aware of the implications and duties which arise when receiving medical treatment.
- 3.2.19 Having taken all these factors into account the panel has determined to impose a period of three months Ineligibility on Mr Gaskell. This significant reduction of

penalty reflects, on the one hand, the poor advice and care given to Mr Gaskell by Widnes and the singular absence of intent for him to improve his sporting performance through drug use. On the other hand, the penalty reflects the personal responsibility which Mr Gaskell is subject to as a professional sportsman taking medication and his failure to meet the appropriate standards. The period of ineligibility will take effect from the date of this decision.

4. **SUMMARY**

4.1 Accordingly, for the reasons given above, the Tribunal makes the following decision:

- (i) A Doping Offence contrary Article 2.1 of the Rules has been established;
- (ii) The Tribunal has exercised its discretion pursuant to Article 10.4.1 of the Rules and has imposed a period of 3 months Ineligibility.

5. **RIGHTS OF APPEAL**

5.1 In accordance with Article 13 of the Rules, Mr Gaskell shall have the right to appeal against this decision to the National Anti-Doping Panel.

5.2 If Mr Gaskell wishes to exercise this right he must file a Notice of Appeal with the National Anti-Doping Panel no later than 21 days from receipt of the decision by him in accordance with Article 13.7.1 of the Rules.

Matthew Lohn

Dr Neil Townshend

Dr Terry Crystal



signed on behalf of the Tribunal on 29 September 2009



NATIONAL ANTI-DOPING PANEL