



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2007/A/1364 WADA v/FAW and James

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr David W. Rivkin, Attorney-at-law in New York, United States of America

Arbitrators: Mr Peter Leaver QC, Barrister in London, United Kingdom

The Hon. Michael Beloff QC, Barrister in London, United Kingdom

in the arbitration between

WORLD ANTI-DOPING AGENCY ("WADA"), Montreal, Quebec, Canada

Represented by Dr. Francois Kaiser, Attorney-at-law in Lausanne, Switzerland

- the Appellant -

and

FOOTBALL ASSOCIATION OF WALES ("FAW"), Cardiff, United Kingdom

Represented by Mr Michael Cully, Solicitor in Cardiff, United Kingdom

- the First Respondent -

CERI JAMES, Ruthin, United Kingdom

- the Second Respondent -

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1. PARTIES

1.1 The Appellant World Anti-Doping Agency (hereinafter referred to as "WADA" or "Appellant"), is an independent international anti-doping agency, whose aim is to promote, coordinate, and monitor, at the international level, the fight against doping in sports in all its forms.

1.2 The First Respondent, Football Association of Wales (hereinafter referred to as "FAW"), a member of International Federation of Association Football (hereinafter "FIFA"), administers football in Wales and runs six international teams.

1.3 The Second Respondent, Mr. Ceri James, is a citizen of the United Kingdom who was a football player with the English team Welshpool Town Football Club (hereinafter "WTFC") before he was suspended for a doping violation. WTFC is affiliated with the FAW, the governing body for football in Wales.

2. BACKGROUND FACTS

2.1 On March 24, 2007, Mr. James was selected for an in-competition urine test on the occasion of the Welsh Premier Football League match between Haverfordwest County and WTFC. The urine sample was collected in conformity with the applicable regulations by UK Sport, the National Anti-Doping Organization for the United Kingdom, and FIFA Doping Control Regulations. The sample was sent to the Drug Control Centre of King's College (London), a laboratory accredited by WADA.

2.2 With a letter of 13 April 2007, UK Sport notified the FAW that the Drug Control Centre had found the "A" urine sample collected from Mr. James (sample No. A1071966) positive for

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Benzoyllecgonine, which is classified as a stimulant on the WADA Prohibited List.

2.3 With a letter of 17 April 2007, the FAW notified Mr. James that his urine sample was found positive for Benzoyllecgonine, and that he had the right to have the "B" sample analysed. The FAW also informed Mr. James that it would convene a Review Panel to decide whether a doping offence has been committed and whether an interim suspension should be put in place until the matter was concluded.

2.4 With a letter of 19 April 2007, Mr. James notified Mr. Paul Evans, the Head of Discipline and Welfare at the FAW, that he "[could] not argue with the result of the sample." Mr. James followed up with a letter on 20 April 2007, stating that he "will not be needing the B Sample."

2.5 At the FAW Review Panel meeting on 20 April 2007, the panel concluded that there was *prima facie* evidence that a doping offence has been committed. Furthermore, the panel decided that an interim suspension was appropriate. With a letter of 24 April 2007, Mr. James was notified of the Review Panel's decision and told that he must not participate in any football activity until all disciplinary proceedings had been completed.

2.6 On 22 May 2007, an Appeals Panel of the FAW found that the presence of a prohibited substance in Mr. James's body was clear and unchallenged, but took note of the good character evidence submitted by Mr. James and the fact that this was Mr. James's first offence. The Appeals Panel noted that the FAW Regulation 11.2.1 specifies a minimum suspension of 6 months and a fine for a first offence.

2.7 As a result, the Appeals Panel decided to suspend Mr. James from all participation in football for 6 months and 10 days, from 21 April 2007 until 31 October 2007. Mr. James was ordered to pay a fine of £250,00, suspended for two years from 24 March 2007 and payable only if

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Mr. James breached the FAW Doping Control Regulations during this period. In addition, Mr. James was ordered to pay the cost of the hearing in the amount of £300.00.

3. CAS PROCEEDINGS

3.1 On 27 August 2007, WADA filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter "CAS") against the decision of the FAW Appeals Panel (hereinafter the "Appealed Decision"). The appeal was made according to Article 61.6 of the FIFA Statutes, pursuant to which: "[WADA] is entitled to appeal to CAS against any internally final and binding doping-related decision passed by FIFA, the Confederations, Members or League." Pursuant to Article 1.8(a) of the Rules of the Football Association of Wales Limited (hereinafter "FAW Rules"), the Members of FAW must comply fully with the statutes, regulations, directives and decisions of FIFA at all times and to ensure that these are also respected by its members.

3.2 On 28 August 2007, copies of the Statement of Appeal were notified by the CAS to Mr. James and the FAW. On 29 August 2007, a copy of the Statement of Appeal was also notified by the CAS to FIFA.

3.3 On 30 August 2007, FAW filed an Application for a provisional ruling under Rule 37 of the Code for Sports-related Arbitration (hereinafter "Code"), contending that WADA's Statement of Appeal was filed outside the time limit provided by the FIFA Statutes. WADA submitted a reply letter on 5 September 2007, and FAW submitted its sur-reply on 6 September 2007. With a 7 September 2007 letter, CAS informed the parties that the Deputy President of the Appeals Arbitration Division submitted the FAW's Application to the arbitration panel, upon its appointment. With a 2 October 2007 letter, FAW formally withdrew its Application for a ruling on this basis.

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3.4 On 10 September 2007, the Appellant filed its Appeal Brief.

3.5 On 28 September 2007, CAS issued a notice that the CAS Arbitral Panel for the present dispute (hereinafter the "Panel") was constituted as follows: Mr. David W. Rivkin as President, Mr. Peter Leaver as arbitrator designated by the Appellant, and the Hon. Michael Beloff as arbitrator designated jointly by the Respondents.

3.6 FAW and Mr. James filed their Answers on 3 October 2007 and 9 October 2007, respectively.

3.7 The parties agreed that no hearing was required.

4. SUMMARY OF THE PARTIES' POSITIONS

WADA

4.1 WADA argues that the FIFA Statutes and Regulations are applicable to the present case. WADA points out that pursuant to Article 1.1 of the FAW Rules, these Rules must be read and construed in conjunction with FIFA Statutes and Regulations, and in case of a conflict, the FIFA rules shall prevail. Furthermore, pursuant to Article 1.8(a) of the FAW Rules, the Members of FAW must comply fully with FIFA Statutes and Regulations and ensure that these are also respected by their members.

4.2 WADA points out that according to Article 61.6 of the FIFA Statutes, "*WADA* is entitled to *appeal to CAS against any internally final and binding doping-related decisions passed by FIFA, the Confederations, Members or League.*"

4.3 WADA argues that its appeal was timely pursuant to Article 61.1 of the FIFA Statutes, which states that: "*Appeal against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21*

days of notification of the decision in question." WADA points out that pursuant to Article 60.2 of the FIFA Statutes, "*CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*" Under Swiss law, deadlines fixed per days start to run from the day following receipt of a decision. WADA submits that since FIFA Statutes do not provide to the contrary, the deadlines must be computed pursuant to this general Swiss law principle. Moreover, WADA points out that the CAS has applied this principle in its prior cases. As a result, WADA contends that its Statement of Appeal, filed on 27 August 2007, was lodged within the statutory time limit.

4.4 As to the substance of its Appeal, WADA points out that since cocaine is a prohibited substance, and its metabolite, Benzoyllecgonine, was detected in Mr. James's "A" Sample, a violation of Article II.1 of the FIFA Doping Control Regulations has been established.

4.5 WADA argues that pursuant to Article 65.1(a) of the FIFA Disciplinary Code, Mr. James must incur a two-year suspension for his doping offence. An athlete can ask for a reduction of the suspension period to half the sanction otherwise applicable if he bears "no significant fault or negligence." WADA argues that Article 65.2, which allows for a reduction, is not applicable in the present dispute, because it applies only in cases where the circumstances are "truly exceptional." Mr. James's regrets, hard work for his club, or intent not to take drugs in the future do not justify a reduction of the suspension period.

FAW

4.6 FAW concedes that the Appealed Decision was in error due to its failure to apply the sanctions prescribed by Article 65 of the FIFA Disciplinary Code. FAW accepts that its Doping Control Regulations, which prescribed a 6-month suspension for Mr. James's offence, were inconsistent