



**Tribunal Arbitral du Sport
Court of Arbitration for Sport**

CAS 2006/A/1130 WADA v/Darko Stanic & Swiss Olympic

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Quentin Byrne-Sutton, Attorney-at-law in Geneva, Switzerland

Arbitrators: Mr Stephan Netze, Attorney-at-law in Zurich, Switzerland
Ms Corinne Schmidhauser, Attorney-at-law in Bern, Switzerland

between

World Anti-Doping Agency (WADA), 800 Place Victoria, CA-Montreal, Quebec, H4Z 1B7
Represented by Mr François Kaiser, Attorney-at-law in Lausanne, Switzerland

As Appellant

and

Darko Stanic, Schlossgasse 4, CH-8003 Zurich
Represented by Mr Adrian F. Howald, Attorney-at-law in Zurich, Switzerland

&

Swiss Olympic Association, Laubeggstrasse 70, CH-3000 Bern 22
Represented by Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland

As Respondents

I. THE PARTIES AND THE ORIGIN OF THE DISPUTE**A. The Parties****a) *The Appellant***

1. The Appellant, the World Anti-Doping Agency (“WADA”) is an independent non-governmental organization created to promote, coordinate, and monitor the fight against doping in sport in all its forms.

b) *The Respondents*

2. The first Respondent, Darko Stanic, is a professional handball player, who plays for a Swiss club named Grasshoppers Handball AG (“Grasshoppers”), which is a member of the Swiss Handball Association.
3. The second Respondent, the Swiss Olympic Association (“Swiss Olympic”), is the head of the organization grouping Swiss sports federations in Olympic and non-Olympic disciplines.

B. The Origin of the Dispute

4. On 28 April 2006, after a game between St. Otmar St. Gallen and Grasshoppers, Darko Stanic was tested positive for Benzoyllecgonine and Methylecgonine, which are metabolites of cocaine; cocaine being specified within WADA’s list of substances prohibited In-Competition. The analysis of the B sample, which was made on Darko Stanic’s request, confirmed the results of the analysis of the A sample.
5. Upon receiving the results, Darko Stanic immediately indicated his surprise to the president of his club, Grasshoppers, and assured him he had not voluntarily taken cocaine in any form.
6. The disciplinary Chamber of Swiss Olympic opened a procedure against Darko Stanic, who was convened to a hearing.
7. During his hearing, Darko Stanic stated that he had come to the conclusion that the cocaine must have entered his system as a consequence of him unknowingly smoking a cigarette containing cocaine, in the following circumstances:
 - Four days before the positive test, in the early morning of 24 April 2006, he and one of his friends Vladan Marsenic had gone to a discotheque in Zurich.

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- In general, he smokes approximately one packet of cigarettes a day and at some point during their stay in the discotheque he ran out of cigarettes and asked his friend for one.
 - Because his friend had none, he asked a group of compatriots from ex Yugoslavia with whom they had been talking whether someone could give him a cigarette.
 - The cigarette he was offered did not raise any suspicions in his mind because although he did recognize that it was probably a self-made cigarette it was the same shape and size as an industrially-produced cigarette. In other words, the cigarette did not have the funnel shape typical of a so-called "joint" containing marijuana, hashish or other drugs rolled into cigarettes.
 - He accepted the cigarette and while smoking it felt somewhat strange. He also quite quickly began feeling nausea and some unusual stomach pains aches and therefore decided to leave the discotheque with his friend. Upon arriving home he could not sleep.
8. On 6 July 2006, the disciplinary Chamber of Swiss Olympic issued its decision, whereby Darko Stanic was suspended for a period of six months.
9. In reaching its decision, the disciplinary Chamber of Swiss Olympic considered that Darko Stanic had committed "*no significant fault or negligence*" as defined by article 17.4.2 of its doping Statute and that given the overall circumstances, including Darko Stanic's personal situation, the minimum sanction of one year's suspension should be reduced to six months.
10. On 13 July 2006, Swiss Olympic's decision was copied to WADA.
11. WADA decided to appeal Swiss Olympic's decision because it considered Swiss Olympic to have misapplied its doping Statute by relying on article 17.4.2 and fixing a six-month suspension rather than a two-year suspension based on articles 12.1 and 17.1 of the Statute.

II. SUMMARY OF THE ARBITRATION PROCEEDINGS

12. On 27 July 2006, WADA filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter "CAS") against Swiss Olympic's decision of 6 July 2006. It nominated Mr. Stephan Netzle as arbitrator.

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13. On 11 August 2006, WADA filed its Appeal brief, including the following prayers for relief:
- I. Déclarer l'appel de l'AMA recevable.*
 - II. Modifier la décision rendue le 6 juillet 2006 par la Chambre disciplinaire pour les cas de dopage de Swiss Olympic et prononcer à l'encontre de M. Darko Stanic une sanction conforme aux dispositions de l'article 17 du Statut concernant le dopage de Swiss Olympic, soit une sanction de 2 ans de suspension, subsidiairement une sanction inférieure à 2 ans de suspension, mais d'une durée minimale d'une année.*
 - III. Allouer à l'AMA une participation à ses frais de procédure "*
14. Thereafter, by means of an exchange of correspondence with CAS, the parties agreed that the language of the arbitration would be English. Consequently, the following submissions were filed in English.
15. On 24 August 2006, Darko Stanic indicated his agreement with Swiss Olympic to nominate Ms Corinne Schmidhauser as arbitrator.
16. On 5 September 2006, Swiss Olympic filed its Answer, including the following prayer for relief:
- "The appeal filed on 11 August 2006 by the World Anti-Doping Agency (WADA) has to be dismissed and the decision of the Disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be confirmed"*
17. On 26 September 2006, CAS confirmed the constitution of the Panel comprised of Mr. Quentin Byrne-Sutton (Chairman), Mr. Stephan Netzle and Ms Corinne Schmidhauser.
18. On 2 October 2006, the Respondent filed his Answer, including the following prayers for relief:
- 1. The appeal filed on 11 August 2006 by Appellant has to be dismissed and, furthermore, the Respondent has to be found not guilty and the ban according to the decision of the disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be lifted with immediate effect;*
 - 2. First secondary motion: the appeal filed on 11 August 2006 by Appellant has to be dismissed and the decision of the disciplinary chamber of Swiss Olympic Association of 6 July 2006 has to be confirmed (ban of 6 months);*
 - 3. Second secondary motion: a ban imposed on the Respondent should in any event not exceed a duration of one (1) year;*
 - 4. All costs to be reimbursed by the Appellant"*

19. The hearing took place in front of the Panel on 12 December 2006 in Lausanne, Switzerland, with the General Counsel to the CAS (Mr Matthieu Reeb) and an interpreter (Ms Helen Hauser) in attendance. The following participants were present:
- a) *Appellant*
Mr François Kaiser, Attorney-at-Law
 - b) *First Respondent (Darko Stanic)*
Mr Darko Stanic, player
Mr Adrian F. Howald, Attorney-at-Law
Mr Arnold Schuler, Chairman of Grasshopper Handball AG
Mr Vladan Marsenic, witness
 - c) *Second Respondent (Swiss Olympic)*
Mr Bernhard Welten, Attorney-at-Law
20. The hearing began by Darko Stanic making a statement and replying to questions, continued with the witnesses being examined and ended with closing statements by the parties' counsel and Darko Stanic.
21. During his closing statement, counsel for the Appellant specified that having heard Mr Stanic and his witnesses, Appellant deemed that Mr Stanic's version of how the cocaine had entered his system was not credible and that he must therefore be sanctioned by a two-year suspension for not having proven how the prohibited substance entered his system. Swiss Olympic's counsel also underlined the athlete's burden of proof and argued that, contrary to what the disciplinary Chamber had decided, it was not possible in any event to reduce the sanction to six months. Mr Stanic's counsel refuted the idea that Mr Stanic had been negligent and insisted that although it was unusual to smoke cocaine powder it was not at all unusual for cocaine to be smoked in the form of "crack"; it thus being perfectly credible that Mr Stanic had unknowingly ingested some form of cocaine by smoking the cigarette in the discotheque.

III. THE PARTIES' CONTENTIONS

A. Appellant

22. WADA submits in substance that:
- Darko Stanic has not clearly established how the cocaine entered his system.
 - The test for admitting "*no fault or negligence*" is very demanding, notably according to the case law of CAS, and Darko Stanic has clearly not met it; this being confirmed by the finding of Swiss Olympic's disciplinary Chamber that it is negligent for an athlete to accept a hand-rolled cigarette from a stranger in a discotheque.