

AWARD DELIVERED BY THE EXECUTIVE COMMITTEE OF FISA

sitting in the following composition

President

Denis Oswald

Members

Michael Williams

Mike Sweeney

Tricia Smith

Denis Masegla

In the case

Ulf LIENHARD

In London, Great Britain on 7th March 2004

I. Facts

The Executive Committee of FISA considers that the facts have been satisfactorily established by the commission of enquiry. The athlete concerned also agrees with the description of the facts made by the commission of enquiry.

The Executive Committee of FISA therefore bases its judgement on the following facts:

9th August 2003 – The Pan American Sports Organisation's (PASO) Medical Commission conducted an in-competition test on a bronze medal winner, Ulf Leinhard, at the Pan American Games in Santo Domingo.

13th August 2003 – Dr Christiane Ayotte of the INRS- Institut Armand Frappier in Quebec, Canada, sent a faxed report to Pr. Eduardo De Rose, Chairman of the Medical Commission of the PANAM Games to inform him that the sample 643272 (Ulf Leinhard) contained a cocaine metabolite.

14th August 2003 – A hearing was conducted by the members of the PASO medical commission with Mr Mario Moccia (Chief de Mission from Argentina), Dr Hugo Oswaldo Rodriguez Pani, Mrs Maria Julia (President of the Athlete's commission) and a representative of the Athlete. A request was made to PASO during this hearing to test the "B" sample.

14th August 2003- PASO sent out a press release, disclosing the identity of the athlete and the results of the analysis by the Montreal laboratory.

15th August 2003 – Mr Mario Vazquez Raña, President of PASO, sent a faxed letter stating the name of the athlete and the report of the analysis of the laboratory to the FISA office.

15th August 2003- The Athlete went to the Centre for Toxicological Research in Buenos Aires and had his urine, hair and blood tested for cocaine. The results were negative.

30th September 2003 – Mr Ricardo Mingramm, the President of the Argentinean Rowing Federation sent a list to the FISA office by fax of all the doping cases from the PANAM Games. This list included the test of the athlete Ulf Leinhard. Attached was also a letter that had been written on 26th August 2003 to Antonio Rodriguez of PASO.

28th October 2003 – Mr Ricardo Mingramm and the Athlete wrote to PASO requesting that the “B” sample be analysed.

5th November 2003 – Ms Alicia Masoni de Morea on behalf of AOC wrote to PASO asking for the complete laboratory report of the “A” sample and the date of the analysis of the ”B” sample.

12th November 2003 – Dr Christiane Ayotte wrote to Matt Smith informing him that the analysis of the “B” sample had confirmed the result of the “A” sample.

1st December 2003 – Matt Smith wrote to Ulf Leinhard by e-mail via the registered Argentinean Rowing Federation address informing him that the “B” sample analysis had confirmed the result of the “A” sample and that he was provisionally suspended. He also informed the Athlete that a commission of enquiry would take place and that the athlete could attend. The athlete and the National Federation were requested to complete the questionnaires attached so that they could be submitted to the commission of enquiry. Unfortunately this e-mail did not reach its destination as the Federation had changed its address unannounced.

4th February 2004 – Matt Smith re-sent the e-mail this time directly to Mr Mingramm and informed him that the commission of enquiry would be held on 19th February 2004 and that the Athlete could attend in person or by conference call.

19th February 2003 – FISA convened a commission of enquiry by conference call. It was confirmed that the case would go to the Executive Committee on 7th March 2004 for a decision.

7th March 2004 – The Executive Committee of FISA met on 7th March 2004 as planned. A telephone conference was first established with the

Athlete's lawyer, Ms Alicia Masoni de Morea who was at that time in Morocco. The Executive Committee later had the opportunity to speak with the athlete. The athlete and his lawyer had the opportunity to speak together over the phone before Ms Masoni made her final statement. In general terms, both made comments. Their comments focused mainly on the report established by the Swiss Anti-Doping laboratory. They also repeated their position that the case is due to contamination and that the Athlete never took cocaine.

The following week, the athlete and his lawyer sent a final comment in writing to the Executive Committee of FISA summarising the position of the athlete.

The Executive Committee of FISA started its deliberations without coming immediately to a decision. The decision was reached later on through electronic correspondence between the members of the committee.

II. Applicable law

2.1 The applicable rules are the ones in force at the time of the offence. This means in this case the Olympic Movement Anti-Doping Code and the corresponding FISA rules. However there is an exception regarding sanctions because the principle of *lex mitior* is applicable. Under *lex mitior*, the sanctions, which are more favourable for the athletes, must be applied even if they were not in force at the time of the offence. The Court for Arbitration of Sport (CAS) in Lausanne has recognised this principle in many different awards.

The FISA 2003 FISA Ordinary Congress adopted the World Anti-Doping Code (WADC) with effect on 1st January 2004. The WADC contains sanctions, which are less severe than the FISA rules, and therefore that part of the WADC will apply to this case.

III. The athlete's contentions

The athlete submitted that he never took cocaine and that the presence of cocaine metabolites in his body can only result from contamination. He stressed that the level of cocaine metabolites found in his urine was very low and that it could not enhance his performance. He believes that this contamination could have come from two possible sources. One was the food and drinks which were available at the athletes' hotel or at the rowing course where no strict protection measures were in place. The other possibility could have been through skin absorption mainly with \$US banknotes that the athlete had been handling in certain transactions during the few days preceding the competition.

He provided some scientific evidence, which supports the contention that under certain circumstances skin absorption of cocaine is possible.

1.15 Mega Ribosyn has been re-tested after this adverse result. Some capsules in the same box were with containing .02 ng/ml of norandrosterone and others 20III. Merits

The A sample was positive for Benzoylcegonine metabolites with a concentration of 11-13 ng/ml. The analysis of the "B" sample confirmed the result of the analysis of the A sample. The Executive Committee of FISA regrets that PASO was very slow to react and that a long time elapsed between the two analyses. However, this delay does not affect the final result.

An athlete is presumed guilty once the presence of a prohibited substance in his or her body or bodily fluids has been established. The sports organisation bears the burden of proof to establish such a presence. In this case, the presence of Benzoylcegonine metabolites has been established satisfactorily and the athlete himself does not question the regularity of the procedure or the results of the analysis.

Under these circumstances, a positive doping case is validly established and the athlete is presumed to be responsible for that positive case.

The athlete can rebut that presumption but he has the burden to prove that the prohibited substance came to be in his body without fault or negligence on his part.

The athlete has an excellent record and he made a very good impression on the Executive Committee of FISA. He claimed that he never took cocaine and the Executive Committee was prepared to believe this if he was able to present sufficient evidence to explain how cocaine came to be in his body (being then transformed in metabolites).

Regarding his first possible explanation (contamination through food or drink at the hotel or at the course), the Executive Committee was not provided with evidence of a lack of control nor any element which would suggest that somebody would have put cocaine in his food or drink. In addition, if the food or drink had been contaminated, there should be some evidence of other athletes testing positive as they were eating and drinking at the same places. Ulf Lienhard is the only rower who tested positive at the Pan-American Games.

Without any evidence to support it, the contamination of food or drink remains pure speculation and only an unsupported possibility. Therefore, this first argument does not rebut the presumption of guilt.

The athlete's second argument relies on possible skin contamination. Ulf Lienhard produced some limited scientific literature, which is relatively

dated and not totally convincing. It was difficult to determine if the articles produced reflect only the opinion of a few individuals or if it is a theory generally admitted by the scientific community. No peer review was produced. In order to seek additional expertise on this point the Executive Committee consulted Dr. Martial Saugy, head of the Lausanne laboratory. Dr Saugy confirmed that skin absorption of cocaine is possible under certain specific conditions.

In any case, skin contamination is only a possible but theoretical source of a positive result unless the athlete has demonstrated that he was in the certain specific conditions where skin absorption may happen. In the present case, Ulf Lienhard did not even claim that he had been extensively handling US banknotes nor that he had been dealing with people connected with cocaine or doing business in a region where there was a high level of drug use. If skin contamination through banknotes could happen easily under normal circumstances, all the athletes having used American dollar banknotes would test positive. This is obviously not the case and the mere possibility of skin contamination through banknotes is not sufficient to rebut the presumption of guilt, which lies on Ulf Lienhard. Because he has the burden of proof, the athlete must provide additional elements to convince the Executive Committee of FISA that he had been in the certain specific conditions which made it possible for cocaine to have entered his body through skin contamination.

The low level of Benzoylcegonine metabolite found in his body is not a determinative argument in the case. Any positive athlete has, at a certain stage, a very low level of the prohibited substance. It all depends when the substance was taken and which phase of the elimination process the athlete is in. He will even reach the level zero a number of weeks or of days after the intake. In this particular case, the negative test made a few days after the competition seems to indicate that Ulf Lienhard was already in the excretion phase but does not establish that he never had a higher level than 11-13 ng/ml. This element is certainly not proof of innocence. In addition, it is important to stress that the offence is committed as soon as the substance is present in the athlete's body at any level as there is no threshold. Whether it has enhanced the performance of the athlete or not does not play any role. Art. 4.4, Chapter II of the Olympic Movement Anti-Doping Code clearly states. "The success or failure of the use of a Prohibited Substance or Prohibited Method is not material. It is sufficient that the Prohibited Substance or Prohibited Method was used or attempted for the offence of doping to be considered as consummated".

The Executive Committee of FISA is aware that it is difficult for an athlete to rebut the presumption of guilt, but the principle of strict liability which is the basis of the fight against doping in FISA's Anti-Doping Rules as well as in the Olympic Movement Anti-Doping Code and the World Anti-Doping Code puts the burden of proof on the athlete who has a positive test. In this case, Ulf Lienhard was correct and did not

try to invent explanations which would not have been credible. He tried honestly to find explanations for his positive result. He admitted, however, that these were only suppositions on his part and that he had no concrete evidence to bring forward. Because he was not able to present any evidence explaining how the prohibited substance came into his body in the specific case, Ulf Lienhard has failed to rebut the presumption of guilt resulting from the presence of a prohibited substance in his body.

The sanction established by the World Anti-Doping Code for the presence of Benzoyllecgonine, (a metabolite of cocaine) is two years according to Article 10.2, which is applicable here under the principle of *lex mitior*. The athlete informed FISA immediately of his positive case and requested the analysis of the B sample. However, FISA was not in charge of the case at that time and only PASO could act, which they did only after several months. Ulf Lienhard, knowing that he had been positive did not compete again after the Pan-American Games. Under these circumstances, the Executive Committee of FISA considers that the athlete has, in effect been sanctioned from the date of his first positive test, the day after the collection of the positive sample, ie. 10th August 2003.

FOR THESE REASONS

The FISA Executive Committee finds:

1. Ulf Leinhard is ineligible to participate in any rowing competition for two years.
2. The ineligibility period of two years began on the date of his first positive test, the day after the collection of the positive sample, i e. 10th August 2003.
3. This award is rendered without costs.

Lausanne, 26th March 2004

For the FISA Executive Committee

Denis Oswald
President

Mike Williams
Member