

**Tribunal Arbitral du Sport  
Court of Arbitration for Sport  
CAS 2005/A/826**

**FINAL ARBITRAL AWARD**  
Pronounced by the  
**COURT OF ARBITRATION FOR SPORT**  
**OCEANIA REGISTRY**  
**Appeal Division**  
Sitting in the following composition

**Panel:**

Mr Malcolm Holmes QC (President)  
Mr Brian Collis QC  
Mr John Boulton AM

In the case of:

**MR CHRISTOPHER RAE**

Represented by Mr Bill Fragos, Barrister and solicitor

**Appellant**

and

**AUSTRALIAN WEIGHTLIFTING FEDERATION**

Represented by Mr Boris Kayser, Barrister.

**Respondent**

Court assisted by Mr Richard Redman, solicitor

Date of Award: 2 February 2005.

## BACKGROUND

1. The Appellant, Mr Chris Rae (**C.R.**), is currently aged 24 years, having been born on the 20<sup>th</sup> July 1980.
2. It is not disputed that C.R. at all relevant times was a person to which the Anti-Doping Policy of the Australian Weightlifting Federation Inc. (**AWF**) applies (which Policy is hereinafter referred to as the **Policy**).
3. By letter dated the 25<sup>th</sup> day of August 2004, the Australian Sports Drugs Agency (**ASDA**) informed the AWF that C.R. had returned a positive drug test as regards a sample obtained from him by ASDA on the 26<sup>th</sup> day of June 2004. On such date C.R. was competing in weightlifting events at the AWF National Olympic Team Nomination Trials held at the Hawthorn Weightlifting Centre, Victoria. Such sample revealed the presence of Cannabis – Cannabinoid, which is listed as a prohibited substance in the World Anti-Doping Agency (**WADA**) Anti-Doping Code, 2004 Prohibited List, effective 1 January 2004. It is listed under the category "Specific Substances". It is not disputed by any of the parties that it was a prohibited substance under the Policy.
4. C.R. was notified of the abovementioned positive result by the AWF by letter dated the 6<sup>th</sup> day of September 2004. Such letter stated, *inter alia*:

*"In accordance with the anti-doping policy of the AWF, this violation has resulted in immediate suspension of your membership to the AWF. Such suspension will remain in place until the final determination of the sanction is applied.*

*If you choose to accept the finding of this alleged violation, the matter will be referred to the Court of Arbitration for Sport ("CAS") for sanctioning. Conversely, should you decide to contest this matter, the matter will be referred to CAS."*

5. C.R. chose to accept the said finding and the matter was referred to CAS for sanctioning.
6. By Determination dated the 15<sup>th</sup> day of December 2004, a sole arbitrator of CAS determined that C.R.:
  - (a) repay to the AWF any funding or grant received by him since the 26<sup>th</sup> June 2004;
  - (b) be disqualified from any competitive results obtained from the 26<sup>th</sup> June 2004 with all resulting consequences including forfeiture of any medals, points or prizes; and
  - (c) be ineligible (as set out in Clause 9.1 of the Policy) for a period of two years.
7. Pursuant to Clause 11 of the Policy, the Appellant has appealed against the said Determination dated the 15<sup>th</sup> day of December 2004.
8. By reason of such appeal, pursuant to Clause 11.2 of the Policy a panel of three arbitrators, namely, Mr Malcolm Holmes Q.C. (President), Mr Brian W. Collis Q.C. and Mr John Boulton A.M., has been appointed by the Permanent Secretary of the Oceania Registry of CAS, to hear and determine the appeal. Clause 11.4 of the Policy states:

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*"Any appeal will be a re-hearing of the matters appealed against and the provisions of Clause 10 will apply, mutatis mutandis, to any appeal to CAS."*

### ORDER OF PROCEDURE

9. Following such appointment of the said Panel, a Directions Hearing was held on the 21<sup>st</sup> January 2005, by way of telephone conference between the Panel and representatives of the parties. In such conference, an Order for Procedure was agreed upon by represented parties as follows:

- (i) The appeal has been brought pursuant to Clause 11.1 of the Policy and CAS has jurisdiction to hear and determine such appeal;
- (ii) That the arbitration would be conducted by CAS according to the Code of Sports-related Arbitration, 2004 Edition (the **Code**);
- (iii) CAS for the purposes of the arbitration, would be constituted by a Panel comprising Mr Malcolm Holmes Q.C. (President), Mr Brian W. Collis Q.C. and Mr John Boulton A.M.
- (iv) The seat of arbitration is in Lausanne, Switzerland;
- (v) The language of the arbitration shall be English;
- (vi) The law of the merits, being the substantive law of the dispute, shall be the law of Victoria, Australia and the laws of natural justice;
- (vii) That the said Panel would arbitrate on the dispute and render an award in conformity with the agreement between the parties to submit their disputes for arbitration before CAS and the Code so far as it is practicable;
- (viii) A timetable was agreed for the filing of the submissions and documentation relied upon by each of the parties;
- (ix) The appeal is to be determined on the papers;

- (x) That the Panel would use its best endeavours to publish an award as soon as possible after receiving all relevant documentation;
- (xi) That each party would bear their own costs of the appeal hearing;
- (xii) That the result of the appeal hearing shall be made public;
- (xiii) It was agreed that the parties are at liberty on 48 hour notice to convene a Directions Hearing in the form of a teleconference to address any additional matters.

#### **THE POLICY AND THE WADA ANTI-DOPING CODE (the WADA Code)**

10. Clause 9.1 of the Policy prescribes the sanctions to be imposed on any person found to have committed an Anti-Doping Rule Violation, and as regards a period of ineligibility as set out in sub-paragraphs (a), (b), (c) and (d) thereof, such period is to be determined according to Articles 10 and 11 of the WADA Code.
11. Clause 9.4 of the Policy states "*that any period of sanction may be reduced by CAS solely in accordance with the provisions of the*" WADA Code.
12. It is not disputed that on the 26<sup>th</sup> day of June 2004, C.R. committed an Anti-Doping Violation within the meaning of the Policy, in that sample provided by him revealed the presence of cannabis-cannabinoid, which was listed as a prohibited substance in the WADA Code at the relevant time. However, on appeal it is submitted on his behalf that the period of sanction which ought to have been imposed upon him, should have been fixed by CAS in accordance

with Article 10.3 of the WADA Code and in particular in accordance with the sub-paragraph headed "First violation".

13. Article 10.3 of the WADA Code provides as follows:

*"The Prohibited List may identify specified substances which are particularly susceptible to unintentional anti-doping rules violations, because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents. Where an Athlete can establish that the Use of such a specified substance was not intended to enhance sport performance, the period of Ineligibility found in Article 10.2 shall be replaced with the following:*

*First violation: At a minimum, a warning or reprimand and no period of Ineligibility from future events, and at a maximum, one (1) year's Ineligibility.*

*Second violation: .....*

*Third violation: .....*

*However, the Athlete or other Person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing (in the case of a second or third violation) this sanction is provided in Article 10.5." (our underlining added)*

14. As mentioned above, the Prohibited List of the WADA Code identifies cannabinoids as a Specified Substance for the purposes of Article 10.3 of such Code.

15. All parties have accepted that this is C.R.'s first said violation and accordingly, CAS determines this to be the case. The question which then arises for determination is whether or not C.R. has established that the use of the substance was not intended to enhance sport performance.

16. The AWF conceded in its original submission dated the 25<sup>th</sup> day of November 2004, that cannabis-cannabinoid "does not have a performance enhancing effect on an athlete participating in weightlifting." Such concession accords with information provided by ASDA as to its effects, an article headed "Marijuana as doping in Sports" compiled by members of the Laboratory of Analytical Toxicology, College of Pharmaceutical Services, University of Sao Paulo, Brazil and information provided by the Queensland Weightlifting Association. Such documentation emphasises that use of cannabis by a weightlifter will, if anything, impair and not enhance, a weightlifter's performance. On the basis of the concession so made by AWF and the documentation provided to it, CAS determines that cannabis-cannabinoid does not have a performance enhancing effect on an athlete participating in weightlifting.
  
17. C.R. said that the Australian team for the Athens Olympics was only permitted one male weightlifter, and because of this C.R. was not nominated, although he qualified as the highest ranking Australian weightlifter at the Oceania Championships in Fiji in March 2004. As a result of this, C.R. became despondent and depressed and at one point was not going to compete at the Olympic trials in June 2004. It was at this point that he used cannabis, although he knew it to be a prohibited substance. His use of cannabis at such time was part of his reaction to non-selection in the Olympic team. It was not to enhance his performance in the said weightlifting trials. The circumstances of the selection of the team was not disputed by the AWF.

18. CAS further determines and accepts C.R.'s explanation that his use of cannabis was not to enhance his weightlifting performances.
19. The AWF conceded in its submission dated the 20<sup>th</sup> day of January 2005 that the period of ineligibility to be imposed on C.R. should be fixed in accordance with Article 10.3 of the WADA Code.
20. Upon giving due consideration to the submissions of the parties and the documentation provided to it, CAS further determines that the period of ineligibility to be imposed on C.R. should be fixed in accordance with Article 10.3 of the WADA Code.
21. CAS further determines that the provisions contained in Article 10.5 of the WADA Code are not relevant in this instance, and notes that neither the Appellant or his representative submitted that such matters were relevant.

#### **PERIOD OF INELIGIBILITY**

22. On the basis of the documentation provided to it and the submissions of the parties, CAS makes the following findings:
  - (i) C.R. is currently aged 24 years of age;
  - (ii) C.R. has been an active competitor in weightlifting since 1992 and has been subjected to drug tests on almost forty (40) occasions since that time;
  - (iii) The Australian team for the Athens Olympics was only permitted one male weightlifter, and because of this C.R. was not nominated,

although he qualified as the highest ranking Australian weightlifter at the Oceania Championships in Fiji in March 2004. As a result of this, C.R. became despondent and depressed and at one point was not going to compete at the Olympic trials in June 2004. It was at this point that he used cannabis, although he knew it to be a prohibited substance. His use of cannabis at such time was part of his reaction to non-selection in the Olympic team. It was not to enhance his performance in the said weightlifting trials;

- (iv) C.R. is regretful of his cannabis use and has been highly embarrassed as a result of the same;
- (v) C.R. has taken the initiative of seeking counselling.

23. The WADA Code confers a considerable discretion on the CAS in the circumstances of this case in order to reflect the seriousness and circumstances of the particular case. CAS notes the previous lengthy good record of C.R., his immediate acceptance of the contravention, his full and frank disclosure of the circumstances of the contravention, his contrition and the fact that he has been suspended from competition for about four months following notification of the contravention on 6<sup>th</sup> September 2004 pending the outcome of this appeal.

24. After giving due consideration to all relevant matters, CAS determines that the period of ineligibility to be imposed upon C.R. pursuant to the provisions contained in Article 10.3 of the WADA Code is for a period from the 6<sup>th</sup> September 2004, the date from which C.R. was suspended by the AWF from


membership of the same, to the date of this award. CAS further determines that such period is proportionate with the seriousness of this violation and the circumstances surrounding it.

### SANCTION

25. In accordance with the provisions contained in Clause 9 of the Policy and Articles 10 and 11 of the WADA Code, CAS determines that the sanction to be imposed on C.R. in respect of this Anti-Doping Violation is as follows:
- (a) C.R. be disqualified from all competitive results obtained from the 26<sup>th</sup> day of June 2004 until the 2<sup>nd</sup> February 2005, with all resulting consequences, including forfeiture of any medals, points and prizes;
  - (b) C.R. be ineligible from the 6<sup>th</sup> day of September 2004 until the 2<sup>nd</sup> February 2005:
    - (i) for membership of or selection by the AWF in any Australian representative team;
    - (ii) to participate in any capacity, in any competition or activity (other than an authorised anti-doping educational rehabilitation program) authorised or organised by any signatory or signatories of any member organisation (as defined by the Policy);
    - (iii) to hold any position with the AWF.
26. The Court notes that by reason of the applicability of Article 10.3 of the WADA Code, the provisions contained in Clause 9.1(1) and sub-paragraph (c) of Clause 9.1, are not applicable.

27. CAS determines that there be no order as to costs.

DATED this 2<sup>nd</sup> day of February 2005.

A handwritten signature in black ink, appearing to read 'Malcolm Holmes', written in a cursive style.

**MR MALCOLM HOLMES Q.C. (PRESIDENT)**

**MR BRIAN W. COLLIS Q.C.**

**MR JOHN BOULTBEE A.M.**