

INTERNATIONAL RUGBY BOARD

IN THE MATTER OF THE REGULATIONS RELATING TO THE GAME

AND IN THE MATTER OF ALLEGED DOPING OFFENCES BY **KEITH GURUSINGHE, EVANGA SWARNATHILAKE AND SALIYA KUMARA** (SRI LANKA) CONTRARY TO REGULATION 21

BEFORE A BOARD JUDICIAL COMMITTEE APPOINTED PURSUANT TO REGULATION 21.20 and 21.21 CONSISTING OF:

Judicial Committee:

Dr. George Ruijsch van Dugteren (South Africa)
Dr. Barry O'Driscoll (Ireland)
Graeme Mew (Canada – Chair)

Appearances:

For the International Rugby Board:
Ben Rutherford (Counsel)

For the Players
Manoj Bandara (Counsel for Saliya Kumara and Keith Gurusinghe)
Farman Cassim and Mr **Nayodya** (Counsel for Eranga Swarnithilake)

Attendances:

Keith Gurusinghe)
Saliya Kumara) (the Players)
Eranga Swarnithilake)

Tim Ricketts (Anti-Doping Manager, International Rugby Board)

Also Present:

Lasitha Gunaratne (Honorary. Secretary of the Sri Lanka RFU)
Kiran Atapattu (Representative for the Sri Lanka RFU).

Heard: 19 July 2011 by way of telephone conference

Written Submissions:

Submissions for IRB:	18 July 2011
Submissions for Players:	18 July 2011
Further Information from Union	22 July 2011
Post-Hearing Submissions for Saliya Kumara and Keith Gurusinghe	1 August 2011

REASONS FOR DECISION OF THE BOARD JUDICIAL COMMITTEE

Introduction

1. This case involves three rugby players who used what they thought was a “creatine” type dietary supplement. No attempt was made by them to verify that the supplement did not contain any Prohibited Substances. They all subsequently failed drug tests. They blame the supplement and their lack of anti-doping knowledge for this. While admitting that they have committed anti-doping rule violations, they ask for reduced sanctions due to their lack of fault.
2. Keith Gurusinghe (“Gurusinghe”), Saliya Kumara (“Kumara”) and Eranga Swarnithilake (“Swarnithilake”) (collectively referred to as the “Players”) each tested positive for the Prohibited Substance Methylhexaneamine during the 2011 Asian 5 Nations tournament (“the Tournament”) following In Competition testing conducted by the IRB after Sri Lanka’s Match against UAE on 23 April 2011 in the case of Kumara and, in the cases of Gurusinghe and Swarnathilake, pursuant to In Competition testing conducted by the IRB after Sri Lanka’s Match against Hong Kong on 7 May 2011.
3. Methylhexaneamine (or “MHA”) is listed in Section S6 part b of the World Anti-Doping Agency (“WADA”) *Prohibited List 2011* as a specified stimulant prohibited In Competition. Section S6(b) substances are “Specified Substances”. The *WADA Prohibited List* is incorporated as Schedule 2 to the *Tournament Anti-Doping Programme*, contained as an appendix to the *Terms of Participation for the Tournament*, (“the Programme”) which is based upon Regulation 21 of the *Regulations Relating to the Game*.
4. Preliminary reviews of the cases were undertaken in accordance with Clause 20.1 of the Programme (equivalent to IRB Regulation 21.20.1), which determined that none of the Players was in possession of a therapeutic use exemption (“TUE”), that there were no apparent departures from the relevant International Standards, and that an Anti-Doping Rule Violation may have been committed in contravention of Clause 2.1 of the Programme (IRB Regulation 21.2.1)
5. The Players were notified by the IRB of their Adverse Analytical Findings via the Sri Lanka Rugby Football Union (“the Union”) by separate letters each dated 27 May 2011. The Players were advised on 3 June 2011 by the Union that they were provisionally suspended pursuant to Clause 19.1 of the Programme (IRB Regulation 21.19.1). The Players each confirmed by separate letter dated 10 June 2011 that they “*admit the anti-doping rule violation*” as alleged
6. The Players attribute their Adverse Analytical Finding to their use of a supplement called “Hemo-Rage” obtained by Gurusinghe.

7. Each of the Players claims to have received little or no anti-doping education. All acknowledge, however, to a general understanding that the use of performance enhancing drugs in sport is prohibited and that athletes are responsible for the substances that enter their bodies.

8. According to the Players they did not know, and had no reason to suspect, that the supplement they used contained any prohibited substances. They only learned after the Adverse Analytical Findings were announced that “Hemo-Rage” contained MHA. They each assert that they had no intention to enhance sport performance by the use of a Prohibited Substance and that their degree of fault should be regarded as low.

Anti-Doping Rule Violation Established

9. At the outset of the hearing, each of the Players confirmed his previous admission to the validity of the adverse analytical finding. Accordingly, we are satisfied that the Players have each committed anti-doping rule violations contrary to regulation 21.2.1¹.

Evidence

10. The BJC had before it a record which included the Doping Control Forms, Player Consent Forms ([tournament]), the Sample Analysis Reports, the Preliminary Review reports and certain correspondence between the Board and the Union and between the Players (or their representatives) and the Union.

11. The following witness statements were tendered:

- a) Keith Gurusinghe
- b) Saliya Kumara
- c) Sean Wijesinghe
- d) Sajith Saranga
- e) Eranga Swarnathilake²

12. The Players each gave oral testimony at the hearing. The BJC was also assisted by additional information provided at the hearing and in post-hearing correspondence by representatives of the Union.

¹ The presence of a Prohibited Substance or its Metabolites or Markers in a Player’s Sample.

² Although described as “written submissions” we have treated a signed document prepared by or on behalf of Mr. Swarnathilake as evidence, to the extent that the document records what is said to have happened.

The Players

A. Keith Gurusinghe

13. Gurusinghe is 20 years old. He comes from Kirulapone. He speaks the Sinhala language. He has a basic understanding of English.

14. Gurusinghe finished high school in 2010. He was selected to the national side soon after he completed school. He claimed that he had never been aware or been educated as to prohibited substances or as to any rules and/or regulations pertaining to the anti-doping policies of either the IRB or WADA. He had a general awareness of doping control procedures but was under the impression that doping involves things like heroin and cannabis. He acknowledged that he had heard on television about a boxer being banned, but he did not really know why that had happened.

15. While he was at high school, Gurusinghe had a personal trainer called Rusinka Jayathileke. While working with Mr. Jayathileke, Gurusinghe started to use creatine supplements, including "Hemo-Rage". Gurusinghe claimed that he did not know why creatine was good. He simply understood that it was alright to take. Gurusinghe said that Mr. Jayathileke, a teacher who Gurusinghe respected, described Hemo-Rage as "the number one creatine in the world".

16. Gurusinghe was selected to play for Sri Lanka during the 2011 Asian Five Nations Tournament. When asked whether he had signed a Player Consent Form for the Tournament, which was attached to the full Participation Agreement, thereby acknowledging the Programme and the IRB's jurisdiction over him in relation to anti-doping, Gurusinghe acknowledged that he had signed "something" but that he had understood it to be the team list and had made no further inquiries as to what it was that he had signed. All of the other team members signed the document too.

17. Despite his evidence about a lack of anti-doping education, Gurusinghe did acknowledge that the team was given the general instruction by the coaching staff "don't take any supplements, even something like whey protein." In Gurusinghe's mind, however, he made no link between this warning regarding supplement use and anti-doping regulations. Furthermore, other supplements were freely circulating in the dressing room.

18. Gurusinghe has not been employed since he left school. He said that there was, effectively, no one to guide him with respect to matters such as supplement use and nutrition. Since he has been provisionally suspended, he does not even have rugby. He has never knowingly cheated.

19. With respect to the Hemo-Rage product, Gurusinghe read the words "Hemo-Rage" on the label, but could not read any of the other information due to his lack of comprehension of the English language.

20. Gurusinghe signed the Team Member Consent Form as a member of the Sri Lanka team at the Tournament.

B. Saliya Kumara

21. Kumara is presently 27 years old. He has been playing rugby for approximately 15 years. He received his entire education in the Sinhala language. He has only a basic understanding of English. He comes from the “hill country” of Sri Lanka.

22. Kumara has represented his country at both the 15 a-side and 7 a-side versions of the Game. He was on the Sri Lanka team at the 2006 Commonwealth Games but did not participate in the 2010 Commonwealth Games because of injury. He does not receive payment for playing rugby. He is employed in a garment factory as a work study officer.

23. Kumara signed the Team Member Consent Form as a member of the Sri Lanka team at the Tournament. Evidence was also provided of a similar consent signed by him as a member of the Sri Lanka team in the Sevens World Series.

24. In addition to representing his country, Kumara has held the position of captain of the Kandy Sports Club Rugby Team. He was asked to resign from this position immediately after notification of the adverse analytical finding. The Kandy Club has subsequently terminated Kumara’s playing contract with the club and demanded a payment of Rs.300,000 from Kumara, which amount is said to be owing due to the terms of Kumara’s contract with the club. Kumara has not paid this amount and claims he does not have the means to do so.

25. Kumara said that although he may be a member of the Sri Lanka anti-doping testing pool, he had not participated in any anti-doping programmes. He did not recall participating in any anti-doping outreach education which was provided at the 2006 Commonwealth Games. Prior to the Tournament, Kumara had been drug tested on one previous occasion.

C. Eranga Swarnithilake

26. Swarnithilake is also 27 years old. He has played club rugby for nine years and has represented Sri Lanka at the senior level for the last four years. He also represented Sri Lanka at the under 19 level.

27. Although he has been tested on a number of occasions, Swarnithilake claims to have received no formal anti-doping education. He has been using supplementation for the past six to seven years. He claims to have had a practice of declaring his supplement use at the time of testing by listing the substances on the doping control form.

28. Swarnithilake signed the Team Member Consent form along with other members of the Sri Lanka team at the Tournament

29. Swarnathilake was not present at a team meeting at which the coach apparently gave a general warning about using supplements. In Swarnathilake's experience, supplement use is common at both school and in rugby clubs in Sri Lanka.

30. Swarnathilake works in a bank as a business development officer. He is not paid for playing rugby but attributes his obtaining of employment to his rugby connections. He acknowledges having a basic understanding of English and is sufficiently proficient that he was able to have a telephone conversation, in English, with the IRB Anti-Doping Manager.

Circumstances Giving Rise to Anti-Doping Rule Violation

31. It is common ground that Gurusinghe brought a supply of Hemo-Rage, as well as a scoop, to the Sri Lanka dressing room prior to Sri Lanka's matches against UAE on 23 April 2011 and against Hong Kong on 7 May 2011.

32. Gurusinghe explained his actions in the following terms in his witness statement:

"I was introduced to this "creatine" product called "HemoRage" by my school coach and air-force weightlifter Ranisilu Jayathileke, who never mentioned about the ill-effects of this particular product and accept that I placed this product in the dressing room, for team consumption on the belief that it was the widely accepted "creatine".

33. Gurusinghe admitted consuming this product on both 23 April (when he was a replacement but did not play) and on 7 May (when he did play and was tested).

34. Gurusinghe said that he put the Hemo-Rage on the dressing room table in front of team management. No one commented. The contents of the bottle were in powder form. On each occasion that he used the product, Gurusinghe took a scoop of the powder, mixed it with water and drank it.

35. There were other products available in the dressing room, including vitamins and a substance call "N.O.Xplode", which the Players allege were supplied by the team management. Other players also brought in supplements.

36. Gurusinghe's Doping Control Form listed whey protein, vitamins A and C and calcium. Swarnathilake listed "N.O.Xplode", "creatine", "Jeevani" and vitamin C. He explained that the "creatine" listed by him was, in fact, Hemo-Rage, although he did not know the brand name of the creatine product at the time. Kumara listed "Hemo rage" and "Anabolic whey".

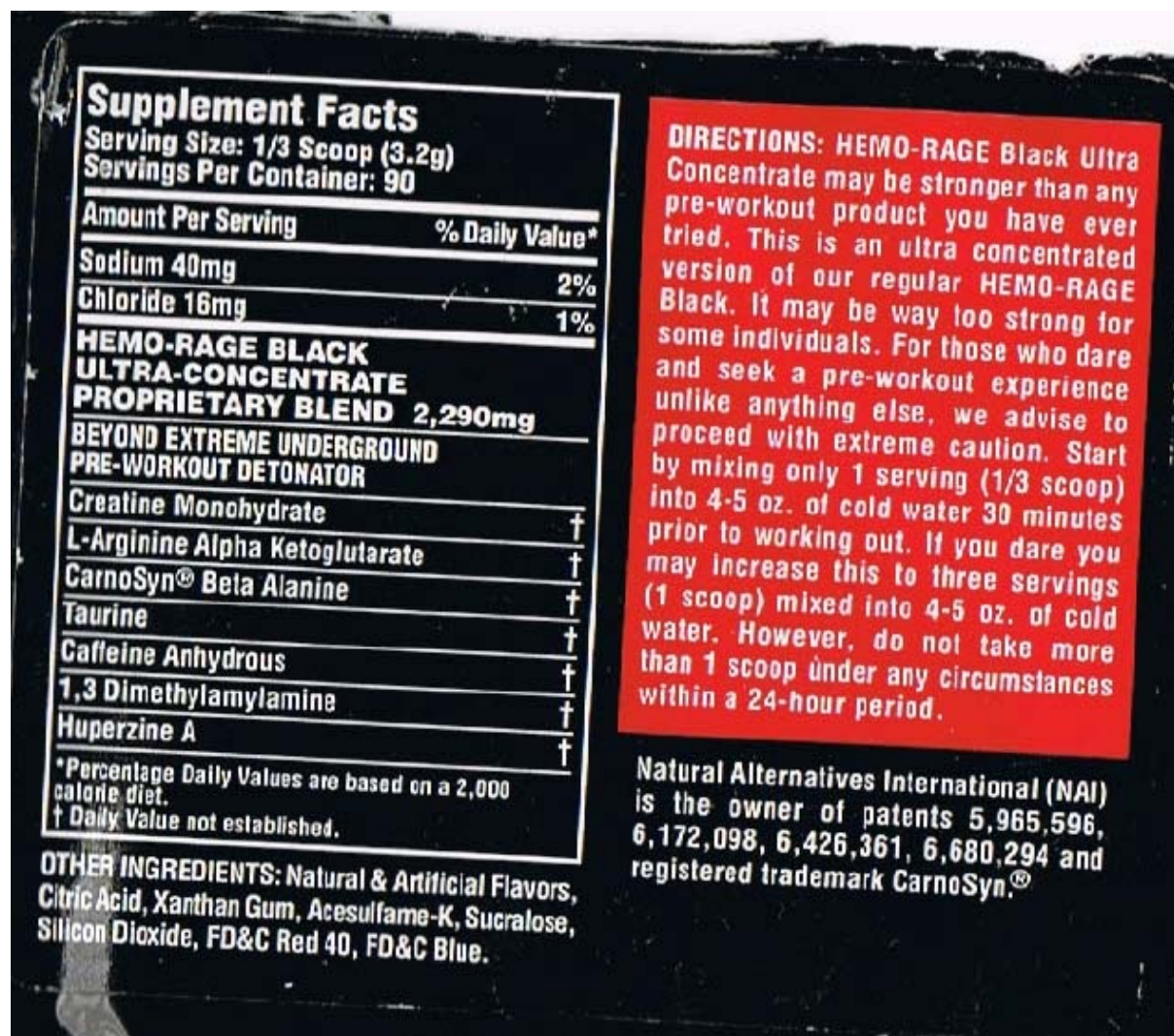
37. Gurusinghe acknowledged that he did not make reference to Hemo-Rage on his Doping Control Form. He felt that as Kumara had listed the substance, and as a team doctor had been present when the doping control forms were completed (see

below), it was not necessary for Gurusinghe to do so. Gurusinghe indicated that the doctor – Dr. Seewali Jayewickrema – had actually filled in the forms for the Players (whose ability to do so was limited by their lack of English language skills).

38. Kumara used the Hemo-Rage which had been brought into the dressing room by Gurusinghe on one occasion, just before he went on the play in the match on 23 April 2011. He consumed the product in the *bona fide* belief that it was creatine. He observed that no medical staff were available in the players' room to educate players on the use of substances and that even when, in the course of completing the Doping Control Form, Kumara listed Hemo-Rage, the SLRFU doctor, Dr. Seewali Jayewickrema, who was present at the time, made no comment.

39. Swarnithilake told much the same story as Kumara. Before the matches, he used "N.O.Xplode" - and a substance which he believed to be creatine. Both of these products were available in the dressing room.

40. A label for Hemo-Rage, submitted into evidence by Gurusinghe and Kumara, lists as an ingredient "1,3 Dimethylamylamine". It was conceded by all parties that this is another name for MHA. Part of the label is reproduced below.



41. None of the Players undertook any investigation as to what Hemo-Rage contained.

42. Even if the Players had read the label, which they admit they did not (and say that, because of limited ability in English they could not have read), the word Dimethylamylamine would have meant nothing to them. At least two of the three Players testified that they did not have regular access to the computer and did not use the internet. All of them concede that they did not consult any medical or other advice prior to using the supplement.

43. Interestingly, in post hearing submissions made on behalf of the Players, it was noted that Ranisilu Jayathileke had himself been found positive to MHA (no indication is given as to when this occurred and whether Gurusinghe knew that Mr. Jayathileke had tested positive for MHA prior to Gurusinghe's own positive test).

Doping Education

44. On the invitation of the BJC, the union was asked to furnish information about the nature and extent of anti-doping awareness education for players and coaches under the union's jurisdiction.

45. As part of its case, the IRB introduced a circular dated 6 April 2011 from the IRB Anti-Doping Manager to all CEOs, Team Managers and Medical Managers of the unions participating in the Tournament entitled "HSBC Asian 5 Nations – Anti-Doping Programme 2011 – Education Resources". That circular contained a section as follows:

SUPPLEMENTS

The IRB's position on nutritional supplements is enclosed in your Union's package.

Methylhexaneamine:

Member Unions and Players are advised to carefully check any supplements they may be using as to whether any products may contain Methylhexaneamine. This is a result of this substance being added to the WADA Prohibited List in 2010 which has resulted in a large number of cases in sport including Rugby. This substance may frequently be referred to as "geranium oil" or "geranium root extract"

Methylhexaneamine Related Substances

Methylhexaneamine has many different variants (listed below) which Players should check if using or considering to use any dietary or nutritional supplements. If a product contains any of the following ingredients on the label, the Player should immediately stop using the

product and report it to his Union. A failure to do this may result in an Adverse Analytical Finding being reported for Methylhexaneamine.

Methylhexaneamine; Methylhexanamine; DMAA (dimethylamylamine); Geranamine; Forthane; Forthan; Floradrene; 2-hexanamine, 4-methyl-; 2-hexanamine, 4-methyl- (9CI); 4-methyl-2-hexanamine; 1,3-dimethylamylamine; 4-Methylhexan-2-amine; 1,3- dimethylpentylamine; 2-amino-4-methylhexane; Pentylamine, 1, 3-dimethyl-; Geranium oil, Geranium root extract.

46. The union acknowledged having received the IRB circular dated 6 April 2011. The Union state that it passed the circular on to the Team Manager, but conceded that its information is that the IRB letter was not distributed among the players.

47. Although the Coach and Assistant Coach of the Sri Lanka team “clearly instructed” players not to take any supplements, the evidence nevertheless seems to indicate that at least one supplement, namely N.O.Xplode was supplied to players by team management.

48. The Union pointed to drug prevention programmes initiated by the National Dangerous Drugs Control Board in Sri Lanka which the union said had been forwarded to all ‘A’ Division Clubs, Provincial Unions and Schools’ Associations. To similar effect, the union provided details of an anti-doping awareness programme for clubs conducted by the Sri Lanka National Anti-Doping Organisation consisting of information forwarded to all ‘A’ and ‘B’ division clubs, Provincial Unions and Schools’ Associations.

49. The union also indicated that the Sri Lanka Ministry of Sports (in collaboration with the Union) has conducted testing at the Schools’ League Tournament (2010), the Inter-Club Knockout Tournament (2010), the Under-20 JWRC Squad (2011) and the Inter-League Club Tournament (2011).

50. In the face of this, the evidence of the Players was that none of them were the recipients, directly or indirectly, of any anti-doping education. Furthermore, as they noted during the course of their evidence and submissions, to their knowledge no anti-doping educational materials had been made available to them in their own language.

Methylhexaneamine

51. MHA is a Prohibited Substance with certain potentially-performance enhancing characteristics. Its use is prohibited In Competition. The website geranamine.org, extracts of which were placed into evidence, proclaims:

DMAA (also known as geranamine, methylhexanamine, dimethylamylamine, 1,3-dimethylamylamine) is a natural stimulant... The stimulant effects on the CNS are said to be less than

amphetamine and ephedra. DMAA can induce euphoria, elevated mood, intense energy, adrenaline rush, mental clarity and increased confidence...

Geranamine is mostly used as a pre-workout supplement by bodybuilders. However, it is also increasingly used by partygoers, for its stimulating effects...

DMAA is widely used by bodybuilders because of its stimulating effects... Its popularity strongly increased after the ban on ephedra in the US, in 2006. Geranamine is also included in many dietary supplements around the world, often using different synonyms...

In powder form, DMAA (geranamine) is most often ingested orally, or it is snorted...

The effects last between 1 – 3 hours, depending on the individual and route of administration.

52. The website [Drugs Forum](#) notes that

Methylhexan[e]amine is a common ingredient in mixtures of non-prescription stimulants marketed to bodybuilders, and in stimulants marketed as legal highs or 'herbal ecstasy'... Note the many similar names. Products from the same manufacturer with identical ingredient lists may be marketed under different names in different countries. Products with the same name from the same manufacturer marketed in different countries may contain different ingredients. These products may also contain other, undisclosed, ingredients. Manufacturers may change ingredients at any time."

53. The official website of the supplement which the Players point to as the cause of their ingestion of MHA, Hemo-Rage, markets the product as having the following properties:

"...raging energy... strength increases... Beyond extreme, beyond hardcore, beyond maximum strength..."

The product label as filed by Kumara and Gurusinghe on 14 July 2011 is of similar effect, claiming that it is:

"...beyond extreme raging energy, skin-bursting pumps... record-shattering strength that will propel your physique to new heights."

Sanctions

54. Under Regulation 21.2.1, the “*presence of a Prohibited Substance or its Metabolites or Markers in a Player’s bodily Sample*” constitutes an anti-doping rule violation. The violation occurs whether or not the Player intentionally used the Prohibited Substance or was negligent or otherwise at fault.

55. Regulation 21.6 addresses the principle of personal responsibility and provides:

21.6 Roles and Personal Responsibility

21.6.1 It is each Player’s responsibility to ensure that;

(a) no Prohibited Substance is found to be present in his body and that Prohibited Methods are not used;

(b) he does not commit any other anti-doping rule violation;

(c) he is available for Sample collection; and

(d) he informs Player Support Personnel, including, but not limited to, his doctors of his obligation not to use Prohibited Substances and Prohibited Methods and to take responsibility to ensure that any medical treatment received by him does not violate any of the provisions of these Regulations.

Further, Regulation 21.6.3 confirms that “*It is the sole responsibility of each Player, Player Support Personnel and Person to acquaint themselves and comply with all of the provisions of these Anti-Doping Regulations including the Guidelines*”.

56. MHA is in the category of Prohibited Substances which the IRB Regulations and the Code recognise as “Specified Substances”³.

57. Sanctions are provided for in Regulation 21.22. Ordinarily the period of Ineligibility for Prohibited Substances for a first time offence is two (2) years (Regulation 21.22.1)⁴. However, this is subject to conditions for the eliminating or

³ Regulation 21.4.5 provides:

For purposes of the application of Regulation 21.22 (Sanctions on Individuals), all Prohibited Substances shall be “Specified Substances” except substances in the classes of anabolic agents and hormones and those stimulants and hormone antagonists and modulators so identified on the Prohibited List. Prohibited Methods shall not be Specified Substances.

⁴ Regulation 21.22.1 provides:

The period of Ineligibility imposed for a violation of Regulation 21.2.1 (Presence of Prohibited Substance or its Metabolites or Markers), Regulation 21.2.2 (Use or Attempted Use of Prohibited Substance or Prohibited Method) and Regulation 21.2.6 (Possession of Prohibited Substances and Methods) shall be as follows, unless the conditions for eliminating or reducing the period of Ineligibility, as provided in Regulation 21.22.3 and 21.22.4, or the conditions for increasing the period of Ineligibility, as provided in Regulation 21.22.9, are met:

reducing the period of Ineligibility (Regulation 21.22.3 and 21.22.4) or conditions for increasing the period of Ineligibility (Regulation 21.22.9).

58. Regulation 21.22.3 addresses the elimination or reduction of the period of Ineligibility for Specified Substances (including MHA) under specific circumstances in the following terms:

Where a Player or other Person can establish how a Specified Substance entered his body or came into his Possession and that such Specified Substance was not intended to enhance the Player's sport performance or mask the Use of a performance-enhancing substance, the period of Ineligibility found in Regulation 21.22.1 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of Ineligibility from the Game, and at a maximum, two (2) years of Ineligibility.

To justify any elimination or reduction, the Player or other Person must produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the hearing panel the absence of intent to enhance sport performance or mask the Use of a performance enhancing substance. The Player's or other Person's degree of fault shall be the criterion considered in assessing any reduction of the period of Ineligibility.

Discussion

59. In order to take the benefit of Regulation 21.22.3, each Player must (a) establish to the satisfaction of the BJC on the balance of probabilities how the MHA entered his body; and (b) establish to the comfortable satisfaction of the BJC that his individual Use of MHA was not intended to enhance his sport performance or mask the Use of a performance-enhancing substance.⁵ Furthermore, in order to justify any reduction or elimination of the period of Ineligibility, the Player, as a mandatory condition, must also produce corroborating evidence in addition to his word which establishes to the comfortable satisfaction of the BJC the absence of an intent to enhance sports performance or mask the Use of a performance enhancing substance.

Cause of Anti-Doping Rule Violation

60. We are satisfied that, on a balance of probabilities, the Players' anti-doping rule violations resulted, in each case, from their ingestion of MHA as a result of using the

First violation: Two (2) years' Ineligibility.

⁵ The nature of the burdens the Player must satisfy are set out in the Comments to Article 10.4 of the WADA Code which is available at www.wada-ama.org. The Comment also elaborates in relation to the type of circumstances which in combination might lead a hearing panel to be comfortably satisfied of no-performance-enhancing intent, for example "the fact that the nature of the Specified Substance or the timing of its ingestion would not have been beneficial to the Athlete; the Athlete's open Use or disclosure of his or her Use of the Specified Substance; and a contemporaneous medical records file substantiating the non sport- related prescription for the Specified Substance..."

“Hemo-Rage” product. Although other supplements were available to the Players prior to their matches, the preponderance of available evidence points to Hemo-Rage as the source of the adverse results for all three players.

Lack of Intent to Enhance Sport Performance

61. It has been established that, in assessing intent to enhance sport performance, it is not necessary for the Players to establish that their use of Hemo-Rage was not intended to enhance sport performance. The nutritional programmes followed by athletes can, in a strict sense, be said to be intended to enhance their sport performance. Although an athlete assumes the risk that a nutritional supplement may be mislabelled or contaminated and is strictly liable for ingesting any banned substance, Regulation 21 (and Article 10.4 of the WADC) distinguishes between specified and prohibited substances for the purpose of determining an athlete’s period of ineligibility. In the case of Specified Substances, a different sanctioning regime applies because of the greater likelihood that such substances “could be susceptible to a credible, non-doping explanation.” Accordingly, what the Players must do is establish that their ingestion of the Specified Substance was not intended to enhance their sport performance. In the absence of any evidence that the Players knew that the product they were using contained a Specified Substance, we are comfortably satisfied that they did not, by using the Hemo-Rage product, intend to enhance sport performance for the purposes of Regulation 21 or Article 10.4 of the WADA Code. See generally *Oliveira v. USADA*, CAS 2010/A/2107 paragraphs 9.13 – 9.18

Corroboration

62. There is ample evidence to corroborate the Players’ evidence regarding the source of their positive tests and their lack of intention to enhance sport performance.

63. Sean Wijesinghe was the captain of the Sri Lanka team at the Tournament. He recalls that about 30 minutes before the game against Hong Kong, Swarnithilake asked him whether he should take a particular product on the table in the dressing room, to which Mr. Wijesinghe allegedly responded “it must a creatine I don’t know” and “...if you want help yourself”. Mr. Wijesinghe also corroborates that the “product”, from which we infer the “Hemo-Rage”, was openly kept on top of a table in the team dressing room.

64. Gurusinghe confirms that Kumara and Swarnithilake used Hemo-Rage.

65. The circumstances described by Kumara, Gurusinghe and Mr. Wijesinghe can also safely be regarded as corroborative of Gurusinghe’s evidence that he, too, consumed Hemo-Rage shortly before the test which gave rise to his Adverse Analytical Finding.

Degree of Fault

66. Because we are satisfied that the positive tests were the result of the Players' use of Hemo-Rage, that they did not intend to enhance sport performance, and that there is evidence which corroborates this, we are at liberty to consider the reduced range of sanctions provided for by Regulation 21.22.3 in the case of Specified Substances. As none of the Players has a previous anti-doping rule violation against his record, we are provided with discretion to replace the presumptive two year period of ineligibility with "at a minimum, a reprimand and no period of ineligibility, and at a maximum, two years".

IRB's Submissions

67. The Board, while not advocating a particular sanction, drew to the BJC's attention a number of other decisions involving MHA, including:

- *Oliveira v. USADA* (CAS 2010/A/2107) – 15 months Ineligibility
- *Foggo v. NRL* (CAS A2/2011) – 6 months Ineligibility
- *UKAD v. Wallader* (NADP, 29 October 2010) – 4 months Ineligibility
- *Duckworth v. UK AD* (CAS NADP, 10 January 2011) – 6 months Ineligibility
- *UK AD v. Dooler* (NADP, 24 November 2010) – 4 months Ineligibility
- *RFU v. Wihongi* (RFU Disciplinary Panel, 16 March 2011) – 4 months Ineligibility
- *RFU v. Steenkamp* (RFU Disciplinary Panel, 22 March 2011) – 3 months Ineligibility.

68. The BJC has also subsequently become aware of the case of *Kendrick v. ITF* (CAS 2011/A/2518) where a 12 month penalty initially imposed by the International Tennis Federation was reduced on appeal to the CAS to 8 months Ineligibility.

69. The IRB points to the evidence that various supplements, including Hemo-Rage, were "freely available in the dressing room" (paragraph 17, Swarnithilake statement) or "openly kept on top of a table in the team dressing room" (paragraph 9, Wijesinghe statement) and that "total responsibility should be taken by the medical team" (paragraph 3, Saranga witness statement). The inference is one of extreme carelessness on the part of the Players and the team management but, also, a lack of acceptance of responsibility by the Players, who choose instead to blame the Union, the team management and the Union's medical adviser.

70. The IRB submissions emphasise the importance of the principle of personal responsibility. Furthermore, as noted above, none of the Players took even the most rudimentary steps to find out more about the substance they were using. As noted by the IRB in its submissions:

... the Players say that they consulted their local medical practitioner in relation to the supplement following receipt of the letter of the IRB dated 27 May 2011:

“Perplexed and dismayed to receive your letter dated 27th May...I consulted my local medical practitioner who informed me that the said declared product had an ingredient called “dimethylamylamine” which is another name for “Methylhexamine” [sic.]” (letter of Kumara dated 10 June 2011)”

“It was only after receipt of your letter under reply that I ascertained through a consultant that the said supplement contained an ingredient called “dimethylamylamine” which is another name for “Methylhexamine” [sic.]” (letter of Gurusinghe dated 10 June 2011)

“On receipt of your letter dated 27th May 2011...I consulted my medical officer and he informed me that the said declared product had an ingredient called “dimethylamylamine” which is another name for “Methylhexamine” [sic.]” (letter of Swarnathilake dated 10 June 2011).

71. The IRB goes on to note that the circular letter dated 6 April 2011 from the IRB’s Anti-Doping Manager to member unions specifically warned as to the potential presence of MHA in supplements and listed Dimethylamylamine (as appeared on the Hemo-Rage label filed in evidence by both Kumara and Gurusinghe) as a synonym under which MHA may be listed. The IRB submission continues that if any of the Players had consulted the Prohibited List to check it against the Hemo-Rage product label (although in the case of Swarnithilake, he apparently did not even to bother to ascertain “the brand name of the product and only knew the substance as being ‘creatine”” (paragraph 10, Swarnithilake statement) even without medical advice, conducting further searches or sight of the IRB circular, the Players’ suspicions could have been aroused from the similarity between the alternate name and the ingredient noted the letters which they sent to the IRB.

72. Further submissions by the IRB underscore the lack of care taken by the Players:

37. It appears in the case of Swarnathilake that the only pre-consumption check he conducted was to ask his fellow player, Sean Wijesinghe, what the product was to which Mr Wijesinghe responded, *“I don’t know, if you want help yourself.”* (statement of Wijesinghe, 14 July 2011, paragraph 8) On that basis it seems that Swarnathilake was satisfied that it was safe to consume, not having even identified the name of the product (per his own statement, paragraph 10) and utterly failing in his duty of personal responsibility. The general lack of caution is further demonstrated by Swarnathilake’s admission in paragraph 8 of his statement to previously consuming “No Explode”, being a supplement linked with an IRB anti-doping case for an anabolic steroid⁶. Similarly, Gurusinghe claims to have been introduced to Hemo-Rage by a school coach and weightlifter who *“never mentioned*

⁶ The linkage between “No Explode” and another IRB case for an anabolic steroid was made in Swarnithilake’s statement but was not verified the IRB.

about the ill-effects of this particular product” (per paragraph 7 of his statement). However, it does not appear that Gurusinghe asked any questions about the product, let alone did more, before consuming and providing it to his team (the IRB has reserved its rights in relation to this last aspect). Gurusinghe says that “[n]o doctor was with the team to examine the bottle and educate us” (paragraph 10 of his statement) yet he admits to having been introduced to Hemo-Rage some time earlier (paragraph 9 of his statement) affording ample opportunity before the reckless consumption on Match day to consult with a doctor, which all three Players were able to do after the event per their letters dated 10 July 2011. These fundamental failures to heed basic warnings, exercise common sense and caution and take even preliminary precautionary steps, let alone undertaking more extensive checks such as having the supplements tested, put all of the Players seriously and significantly at fault for their consumption of the Prohibited Substance and any sanction ought properly to reflect that fact.

38. Excerpts from the official websites of Hemo-Rage, www.hemo-ragepage.com, and its manufacturer Nutrex, www.underground.nutrex.com/products/hemo-rage.asp, and the Hemo-Rage page of www.nutritionexpress.com were contained as Appendix 8 to the IRB’s Response. Nutrition Express can be seen to expressly list Methylhexaneamine as an ingredient of Hemo-Rage. The official Hemo-Rage website contains numerous images of persons with extreme and unnatural body-building/steroid-abusing-type physiques often associated with the consumption of Prohibited Substances. It refers to Hemo-Rage in the following terms:

“Your full spectrum beyond extreme UNDERGROUND pre-workout formula... 156 different ingredients... raging energy... strength increases... detonates fat and provides serious muscle-building compounds all in one. Contains 45 regular servings or 22 beyond extreme underground servings... There are countless pre-workout products to choose from all claiming to be extreme, hardcore and super strong. Now Nutrex takes pre-workout supplementation to another level. Beyond extreme, beyond hardcore, beyond maximum strength...”

The product label was in similar terms:

“Extreme Caution Advised... way too strong for some individuals... so powerful... beyond extremely raging energy... freakish blood-engorged vascularity... record-shattering strength that will propel your physique to new heights.”

In addition to these features which ought to trigger concerns for any athlete subject to Doping Control, including the 156 different ingredients not all of which are listed, the Hemo-Rage website also notes that the manufacturer has Anabol for sale which, as well as having a clearly suspicious name, was also the anabolic steroid-

containing product which led to the *IRB v Thompson* (20 June 2007) case. Further, the IRB notes that Hemo-Rage is also referred to as a “pre-workout” supplement on the website and its label and not as a Match day substance which accords with Methylhexaneamine’s status as being prohibited In Competition. The “ultraconcentrate” version of Hemo-Rage consumed by the Players is noted by the manufacturer to be “*super potent...like comparing a shot of whiskey to a beer ... [it] is going to hit you hard....*” The website and the label filed by Kumara and Gurusinghe on 14 July 2011 contains a warning per the excerpt above. [C]lear warnings as to the potential for Methylhexaneamine to be included within supplements aimed at bodybuilders, such as Hemo-Rage, are noted on the websites of Geranamine.org and Drugs Forum...

39. The ingredient list on the product label, unequivocal reference on the Nutrition Express website to Methylhexaneamine being an ingredient of Hemo-Rage along with the disturbing body images, warnings, references to pre-workout use only, intimations by the manufacturer of steroid-like qualities and the fact that the Hemo-Rage manufacturer also distributes Anabol are evidence that with only minimal research the Players would have become aware that this product was not appropriate for them to consume.

Players’ Submissions

73. The Players take a very different view to that of the IRB. They point to the case of *Ralapelle and Basson* (SARU Judicial Committee, 27 January 2011), in which two players who tested positive for MHA identified as the source a nutritional supplement which had been provided to the South African team touring Ireland and the UK. The SARU Doping Tribunal found that the players were not at fault but nevertheless imposed the sanction of a reprimand.

74. While the Players do not allege that the Hemo-Rage which they used was sanctioned in some way by the union or its medical advisers, they point to the events that occurred before both of the matches against UAE and Hong Kong, in which various supplements were openly displayed on a table in the dressing room with the full knowledge of not only other players but, also, team personnel. They also point to the involvement of Dr. Jayewickrema who assisted the Players in filling out their doping control forms, and who expressed no concerns at all regarding the information which the Players put on those forms. The Players also note that Dr. Jayewickrema, in addition to his role with the union, is an office bearer of the national anti-doping organisation of Sri Lanka. The submissions of the Players note that Dr. Jayewickrema did not inspect or warn the Players in respect of any of the substances that they declared.

75. The submissions of the Players emphasise not only their lack of doping education and sophistication but, also, the unavailability of information concerning doping in the Sinhala language. They also point to the ready acknowledgement on behalf of each of the Players of their commission of an Anti-Doping Rule Violation

and to the level of information provided by the Players in connection with the circumstances leading up to their Anti-Doping Rule Violations.

76. Each of the Players, through their representatives, has expressed remorse for what has occurred. For at least one of the Players his contract with his team has been cancelled, he has been stripped of his position of team captain, and, indeed, has been asked to pay a sum of money to his former club for an alleged breach of contract. All of the Players indicate that they have suffered humiliation and shame as a result of their anti-doping rule violations.

Analysis

77. While a genuine lack of anti-doping education is, in our view, a factor which we can properly take into account in assessing the fault of the Players, we do not attach a great deal of weight to it. There has been a *World Anti-Doping Code* in place since 2003. It applies to most sports, and has always applied to rugby. It applies in all countries. The requirements of the *Code* do not vary according to whether an athlete is a professional or an amateur, or whether he or she is in a developed or a less developed country.

78. Furthermore, the Players in question all signed documents in which, *inter alia*, they acknowledged the application of the IRB's anti-doping programme. They signed these documents without objection and cannot now seek to absolve themselves of the commitments that they signed up for by claiming that they could not read, let alone understand the documents.

79. The case of *Ralapelle and Basson* should be regarded with great caution as a precedent. In that case, two South African players were tested after the test match played between Ireland and South Africa. Their samples tested positive for the presence of MHA. The Players were sent home to South Africa. Their cases were subsequently heard by a Judicial Committee of the South African Rugby Union. The decision of that tribunal records that the players, together with the rest of the South African team, had consumed a nutritional supplement on instructions from the team's conditioning coach. The team had been using the supplement for some time, without incident. Previous batches of the supplement used by the team had been produced in South Africa. During the autumn 2010 tour of the UK and Ireland, however, the South African team had used a batch of the supplement manufactured in the UK. Subsequent testing disclosed that the batch of the supplement manufactured in the UK contained MHA, whereas the batch produced in South Africa did not. There was evidence that the supply of supplements to athletes by the South African medical team was not in line with the South African Union's own guidelines regarding the use of supplements.

80. The SARU tribunal found that the players were entitled to rely on the professional assistance and judgment of their medical team, and could not have been expected to do anything more in the circumstances. On the facts as presented, the tribunal found that there was no fault on the part of the players. However, the tribunal then went on to impose the penalty of a reprimand, noting that

the players had “already suffered the ignominy of being sent home early from the overseas tour, provisionally suspended for nearly three months and having their doping charges made public with the concomitant embarrassment, uncertainty, personal anguish and damage to their reputations.” The SARU tribunal continued:

“Any further punishment for the Players in question would, however, be out of kilter with their lack of fault in the matter. The Players are nevertheless strictly liable and a reprimand is accordingly the appropriate sanction in the exceptional circumstances of this case.”

81. The decision of the SARU tribunal is at odds with the provisions of Regulation 21 and with the *WADA Code*. There is no indication in the reasons of the tribunal that it considered the guidance provided in the *WADA Code* where, in relation to the issue of “No Fault or Negligence” under Article 10.5.1 of the Code:

“... an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabeled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Article 2.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete’s personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete’s food or drink by a spouse, coach or other person within the Athlete’s circle of associates (Athletes are responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.)’

82. Either there was no fault at all on the part of the players in question, in which case there should have been no sanction at all, or there was some fault, however slight in degree, in which case the sanction imposed by the SARU tribunal would be within the range of sanctions available to the tribunal.

83. In our judgment, therefore, the decision in *Ralapelle and Basson* should not be relied upon as authority for the proposition that players who rely on the professional assistance and judgment of team medical advisers in respect of supplement use will not be at fault if the supplements they use subsequently turn out to be the cause of

an anti-doping rule violation.

84. While, as noted, there is no suggestion in the case at hand that the Sri Lanka team management or medical personnel supplied the implicated supplement, the Players attempted to deflect responsibility towards the Union and the team medical adviser. While there are valid concerns about the adequacy of the anti-doping education received by the Players and, in particular, the availability of information in their own language, the Players' fault in the present case is palpable. Indeed, having regard to the factual circumstances described by other cases involving MHA and similar substances, the degree of fault attributable to these Players is a high one.

85. Gurusinghe accepted a supplement from a coach at his school involved in weightlifting. Weightlifting, of course, is a sport that has had more than its own share of problems involving performance enhancing substances. He did not bother to look at the label. He made no other inquiries about what the product contained. He merely accepted on face value the assurance from Mr. Jayathileke that the product was "creatine".

86. Kumara and Swarnithilake, who are both older and should have been wiser than Gurusinghe, blithely accepted Gurusinghe's assurance that the product was creatine. Swarnithilake did, at least, make some attempt to check that it was all right for him to use the product when he spoke, briefly, to his team captain.

87. Whether or not the Players had sufficient facility in the English language to read and understand the label on the Hemo-Rage product, the fact is that they made no efforts of any sort to verify what they were taking. One would have thought that at the very least they would have asked someone for advice. Anyone with even a rudimentary understanding of anti-doping regulations would, upon reading the label on the Hemo-Rage contained, have advised the Players not to use the product.

88. If there was no-one to take advice from, they should have refrained from using the product.

89. Having regard to all of the circumstances, it is our view that the degree of fault displayed by each of these Players warrants a condign sanction and that each of them should, accordingly, serve a period of Ineligibility of 9 months, running from the date of their provisional suspensions.

Decision

90. On 23 April 2011 in the case of Kumara and 7 May 2011 in the cases of Gurusinghe and Swarnathilake, each of the Players committed an anti-doping rule violation, namely, the presence in his bodily Sample of Methylhexaneamine. Methylhexaneamine is a Prohibited Substance under both Regulation 21 and the WADA Code.

91. The sanction imposed for this anti-doping rule violation is a period of Ineligibility of 9 months for each of the Players, commencing on 3 June 2011 (the date upon

which the Player was notified of the adverse analytical finding and provisionally suspended) and concluding on (but inclusive of) 2 March 2012.

92. The Player's attention is drawn to IRB Regulation 21.22.13 which provides, *inter alia*, that:

"No Player...who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a match and/or tournament (international or otherwise) or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by the Board or any Union or Tournament Organiser. Such participation includes but is limited to coaching, officiating, selection, team management, administration or promotion of the Game, playing, training as part of a team or squad, or involvement in the Game in any other capacity in any Union in membership of the IRB."

The full text of Regulation 21.22.13 concerning status during Ineligibility should be consulted.

Costs

93. If the Board wishes us to exercise our discretion in relation to costs pursuant to Regulation 21.21.10, written submissions should be provided to the BJC via Mr. Ricketts by 17:00 Dublin time on 26 September 2011, with any responding written submissions from the Player to be provided by no later than 17:00 Dublin time on 3 October 2011.

Review

94. This decision is final, subject to referral to a Post Hearing Review Body (Regulation 21.25) or an appeal, where the circumstances permit, to the Court of Arbitration for Sport (Regulation 21.27). In this regard, attention is also directed to Regulation 21.24.2, which sets out the process for referral to a Post-Hearing Review Body, including the time within which the process must be initiated.

16 September 2011

A handwritten signature in black ink, appearing to read 'Graeme Mew', with a horizontal line underneath the name.

Graeme Mew, Chairman