

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

**N°: SDRCC DT 23-0351
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)
CANADA SOCCER (CS)**

AND

**LUDWIG AMLA
(ATHLETE)**

AND

**GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)
(OBSERVERS)**

Before:

Richard W. Pound, K.C. (Arbitrator).

On behalf of the Athlete: Sarra Saïdi (Counsel) and My Anh Hamel (Counsel).

On behalf of CCES: Kevin Bean, Matthew Koop, Mylène Lee, Bradlee Nemeth, Elizabeth Carson and Adam Klevinas (Counsel).

On behalf of Canada Soccer: Mathieu Chamberland and Daniel Pazuk.

WADA and the Government of Canada did not participate in the proceedings.

DECISION WITH REASONS

1. Ludwig Amla (Amla) is a professional soccer player. The team to which he was attached, for purposes related to these proceedings is the Halifax Wanderers.
2. On 8 February 2023 Amla was notified by the Canadian Centre for Ethics in Sport (CCES) that he had provided a positive urine sample during an in-competition doping test administered on 10 September 2022 in Halifax, NS and that the proposed sanction in the circumstances was for him to be suspended for a period of two years.¹ The analysis was performed by a WADA-accredited laboratory, INRS Centre Armand-Frappier Santé Biotechnologie, which reported the positive sample on 7 October 2022. No departure from the relevant International Standards was asserted or noted. The presence of Terbutaline (S.3 – BETA-2 Agonists), classified as a Specified Substance was found. No request was made regarding analysis of the “B” sample. No other irregularities were asserted and there was no contestation that an Anti-Doping Rule Violation (ADRV) had occurred.
3. That notification and the failure of mediation efforts have led to this appeal.
4. I was appointed as Arbitrator from the Sport Dispute Resolution Centre of Canada (SDRCC) roster list. No objection to my appointment was raised.

Background

5. Amla, with respect to these proceedings, is an adult male. He had participated in soccer in Europe before coming to Canada. He had grown up in Denmark* and had played soccer in Macedonia, which had proven to be an unsatisfactory experience.
6. The CCES Notice of Charge had been sent in English. Amla was not comfortable with English and asked that the proceedings be conducted in French. There were no objections to this.
7. Amla’s evidence was that he had suffered from asthma since early childhood. While in Europe he had been prescribed an inhaler and the medication having the commercial name Bricanyl. He continued to use both the inhaler and Bricanyl after coming to Canada.
8. Whatever may be the medical benefits of Bricanyl in the treatment of asthma, it is nevertheless a prohibited substance in the context of doping in sport.
9. When first assigned to the Halifax Wanderers, Amla underwent a medical examination conducted by the team’s chief physician, Dr. Rob Green, to determine whether there might be any reason why he should not be cleared to play. Part of the form used in the medical assessment was completed by Amla and part by Dr. Green. The examination was conducted on 29 July 2022 and

* A part of this sentence was deleted by the Arbitrator after the original publication of the award to correct a factual error that had no bearing on the outcome.

¹ The commercial description of the Specified Substance is Bricanyl. The applicable rules pursuant to which the Notice of Charge was issued under the Canadian Anti-Doping Program are Rule 2.1 and Rule 2.2. The proposed sanction of two years is pursuant to Rule 10.2.2. In the discussion and analysis portion of these reasons I have used the more generic description of “prohibited substance.”

included a physical examination, a listing of medications, plus EKG and other tests following that date.

10. Dr. Green did not travel with the team. He was the game physician at home games and attended at occasional team practices.
11. The day-to-day medical supervision of the team players was provided through the team's physiotherapist who was present at every practice and game. The physiotherapist would bring any medical matters to the attention of Dr. Green, who preferred that the players not contact him directly, given his very busy clinical practice.
12. There was some concern about the dating of a report in August 2022 of Dr. Green consulting with respirologists regarding the possible effects of immediately ceasing the use of Bricanyl, when his uncontradicted evidence was that he had not known of the Bricanyl until after the positive test was reported in October 2022. I am satisfied that the most likely explanation was an error in dating the document and that nothing in these proceedings turns on the mistaken date.
13. Following the medical examination, Dr. Green pronounced Amla fit to play. The form indicated that there might be asthma (noted as "asthma?") and that follow-up (FU) at the initiative of Amla was called for. No such follow-up occurred. The team physiotherapist was always available to deal with medical issues and to refer appropriate cases to Dr. Green.
14. There is also a discrepancy between the evidence of Amla and that of Dr. Green regarding disclosure of Amla's inhaler and its contents. Amla stated that he had brought the inhaler to the 29 July 2022 examination and that Dr. Green had handled it and knew what it had contained. Dr. Green denied this and stated that the first he knew of the inhaler's contents was after learning of the positive test. I accept Dr. Green's version.
15. Amla was required to log in to and follow a CCES presentation on doping prior to playing in any games. Amla did so on 31 July 2022 and accessed the French version of the presentation. Amla acknowledged that he had no difficulty in following the presentation, which included particular emphasis on the athlete's personal responsibility for anything ingested and the need to ensure that athletes take measures to determine that nothing ingested was a prohibited substance.
16. There was no evidence provided regarding any follow-up or inquiries relating to the contents of Amla's inhaler, by Amla or any team official.
17. Dr. Green stated that he had told Amla that he (Amla) would have to check regarding the compliance aspects of his medication, since that was not part of his responsibility as team physician. Notwithstanding the personal responsibility of the athlete to ensure that he takes care that no prohibited substances are ingested, that part of the team process has now been tightened up because of the present situation.

Analysis

18. The issue in this matter is quite narrow and relates only to the consequences of the positive test. There was no challenge arising out of the underlying analysis of the sample and the resulting positive test, nor the fact that Bricanyl is a Specified Substance. The only matter under consideration in these proceedings is the length of any resulting suspension.

19. While the normative standard for a positive doping test is a suspension of four years, the suspension sought by the CCES in these circumstances is two years, an acknowledgment that the anti-doping rule violation under review was not intentional.
20. Dr. Green concurred with that conclusion and based on his knowledge of Amla was of the view that nothing intentional had been involved. He stated that Bricanyl was a very old medication, one which he had never prescribed during his more than 20 years as a physician. A more mainstream medication for short acting acute treatment appears to be Salbutamol.
21. In its submissions, the CCES observed that the CCES presentation followed by Amla on 31 July 2022 should have been a “red flag,” but that Amla had not followed up at all on his responsibility. The applicable rules are, it argued, the rules and they must be observed.
22. The submissions on behalf of Amla were that he had been transparent throughout and that there had been no hiding regarding his conduct. He had relied on the team officials to ensure that everything was done properly. Much was made of the fact that Amla did not receive a copy of the completed medical form (much of which had been completed by Amla himself), even though 29 July 2022 was a medical consultation rather than a compliance process. That examination was never intended to be a means of transferring the athlete’s personal responsibility for compliance from himself to someone else. The submission was that the appropriate period of suspension should be four months, arguing that a two-year suspension after a career that had lasted a mere 43 days was not proportionate. Finally, the submission was that there should not be disclosure of the suspension.
23. In its reply, the CCES maintained that the start of any suspension should be the date of the initial Order. Publicity regarding decisions of this nature is an important aspect of the fight against doping in sport and none of the circumstances that might warrant a non-publication order were present.² The CCES also drew attention to the fact that it was not negligence on the part of the club that was under review, but rather that of the athlete himself. In addition, Amla had not taken advantage of a period of provisional suspension contemplated in the program. I will come back to this latter point in due course.
24. It is important to consider the objectives of anti-doping activities in sport. In 1999, recognizing that doping had become widespread, the stakeholders (at least within the broad context of the Olympic Movement), namely the International Olympic Committee (IOC), international sports federations (IFs), national Olympic committees (NOCs), athletes and national governments created the World Anti-Doping Agency (WADA) to address the problem and to coordinate the fight against doping in sport. As to the governance of WADA, governments and the Olympic Movement share votes and financial contributions on a 50 – 50 basis.
25. In 2003 WADA adopted the World Anti-Doping Code (Code) to harmonize the many different anti-doping rules across all sports and all countries, which came into effect on 1 January 2004. The Olympic parties were required to incorporate the Code into their internal rules prior to the beginning of the Olympic Games in Athens in 2004. Governments undertook to find a mechanism

² Rule 14.3.2 provides that CCES must disclose the disposition of the Notice of Charge.

that would enable them to make the Code applicable within their own anti-doping activities, which they accomplished by adopting the UNESCO Convention on Doping in Sport in November 2005, to come into effect upon ratification by 30 state parties, which was completed in early 2006. The combined effect of the Code and Convention marked the first time that sport and national rules regarding doping in sport were aligned. Canada was among the first countries to ratify the Convention.

26. The Canadian Anti-Doping Program (CADP) incorporates all the mandatory provisions of the Code.
27. Both the state parties and the Olympic Movement agreed that all disputes arising in respect of the Code would be resolved by arbitration, with the Court of Arbitration for Sport (CAS) as the final authority. State parties recognized that their state courts lacked the necessary doping expertise, that their processes are too slow and too costly to be effective in a sport context and that the state courts systems are already overloaded. The current proceedings are part of the arbitration hierarchy.
28. I agree with the submission by the CCES regarding proportionality. That matter has been dealt with by its decision to request a suspension of two years rather than the normative suspension of four years for an ADRV. That proportionality has been accepted by all WADA stakeholders. While Amla was negligent in not confirming that Bricanyl was a prohibited substance, he did not have a deliberate intention to dope. His counsel overlooked the Code concept that an ADRV is complete once the prohibited substance has been discovered in an athlete's body. There are no "mulligans" granted in anti-doping, regardless of the amount of time the athlete may have been playing.
29. I was also troubled by the evidence that at the 29 July 2022 medical examination, Amla was apparently unable to identify the medication used in his inhaler and to report the name of that medication to Dr. Green. One should have thought that having used the medication for several years and renewing prescriptions on a regular basis at a pharmacy, he would at least know the name of the medication he was acquiring.
30. Amla was part of a professional team, the players of which are subject to doping controls both in and out of competition. His personal responsibility was to have made certain that he was not ingesting a prohibited substance. There may well have been other players using inhalers and even casual conversation might have shown that his medication was different from theirs – another possible red flag.
31. My understanding is that Amla has not participated since the time of his positive test. His counsel did not address why, in the circumstances, he did not opt for a provisional suspension to be in force from the time of the positive test. One should have thought that the team personnel ought to have urged him to take this mitigating step, even to insist, especially when there was no contestation regarding the elements of the positive test.
32. It was Amla's personal responsibility to avoid using prohibited substances and to take steps to discover whether his medication contained any such substances. I take this to be a settled question and one which does not allow athletes to delegate or shift the underlying personal responsibility

for compliance.³ His team entourage, however, can be presumed to be familiar with the provisional suspension regime, with its mitigating consequences, and should have seen to it that Amla took that step. It was negligent on the part of the team and has caused unnecessary prejudice to Amla.

33. Pursuant to Rule 10.13, the starting point for Amla's suspension is the date of notification of the initial Order.
 34. There was no evidence as to whether Amla is an International athlete. I presume, in the absence of evidence to the contrary, that he is a National athlete. This decision may be appealed in accordance with the procedures set out in CADP Rule 13. If otherwise, the Results Management Authority should liaise with the national and/or international federation and set out any available appeal route, together with the appropriate address and deadline to appeal.
 35. There is no principled reason why public notice of Amla's suspension should not be published. None of the special factors leading to non-publication are present. Such publication adds to the deterrent effect of such disposition. I decline to make an order prohibiting publication.
 36. In the circumstances, I make the following Order:
 - a. Ludwig Amla is suspended for a period of two (2) years from the date of the initial decision (4 July 2023);
 - b. This decision will be published in accordance with CADP Rule 14.3.2; and
 - c. The elapsed time between the date of the CCES Notice of Charge and the date of the initial decision shall be counted as if the Athlete had voluntarily accepted a Provisional Suspension.
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MONTREAL, this 10th day of July 2023



Richard W. Pound, K.C.

Arbitrator

³ See for example: *WADA v. Stauber*, CAS 2006/A/1133; *P. v. ITF*, CAS 2008/A/1488; *WADA v. Turrini and CISM*, CAS 2008/A/1565; *UCI v. Munoz Fernandez*, CAS 2005/A/872; *UK Anti-Doping v. Grammer*, NADP 4 Jan 2012; *Edwards v. IAAF and USATF*, CAS OG 04/003; and *D. v. FINA*, CAS 2002/A/ 432.