

BEFORE THE ANTI-DOPING TRIBUNAL OF SOUTH AFRICA (Instituted in terms of section 17(2) (a) of Act No. 14 of 1977, as amended by Act No. 25 of 2006)

HELD AT CENTURION, PRETORIA

**Case number:
SAIDS/2023/29**

THE SOUTH AFRICAN INSTITUTE FOR

DRUG-FREE SPORT

Applicant

and

LEBONE MOKHESENG

Respondent

THE FINDINGS OF THE SOUTH AFRICAN INSTITUTE FOR DRUG-FREE SPORTS' DISCIPLINARY TRIBUNAL HELD ON WEDNESDAY 24 JANUARY 2024 AT 15H00 HOURS AT THE CENTURION HOTEL, PRETORIA

The Tribunal consisted of the following duly appointed Members:

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| Mr Raymond Hack | - | Chairperson |
| Ms Corinne Berg | - | SAIDS Panel Member |
| Dr Andy Branfield | - | SAIDS Panel Member |
| Ms Wafeekah Begg | - | Lead Prosecutor on behalf of South African Institute for Drug-Free Sport |
| Mr Shane Wafer | - | Assistant Prosecutor acting on behalf of South African Institute for Drug-Free Sport |
| Mr Ishoq Docrat | - | JD Attorneys acting on behalf of the Respondent |

Mr Lebone Mokheseng	-	(Respondent) Rowing South Africa
Mr Jonathan Carlse	-	Witness on behalf of South African Institute for Drug-Free Sport
Ms Celine Brown	-	Independent Stenographer
Ms Faith Bobo	-	Independent Stenographer

INTRODUCTION

The Chairman welcomed the members and the parties and confirmed that the hearing was in terms of the SAIDS Anti-Doping Rules. He inquired as to whether there was any conflict of interest, to which the parties responded that there was no conflict of interest. He further advised that this matter was a hearing that would be conducted as a Sports Tribunal Hearing and not in terms of any rules of a Court of Law.

He informed the parties that the hearing panel would review and assess the evidence given by any witnesses as well as any written submissions made by both parties.

PROCEEDINGS BEFORE THE TRIBUNAL

1. FACTUAL BACKGROUND TO THE MATTER

- 1.1. On 11th November 2022 SAIDS informed the Respondent of its inclusion in the SAIDS Registered Testing Pool ("**RTP**") via correspondence sent to its designated e-mail address (see Annexure "A" and "B"). SAIDS thereafter requested the Respondent to submit its whereabouts information as an athlete included in the RTP, for testing in accordance with the ADR and the World Anti-Doping Code ("**WADC**").

- 1.2. On 11th November 2022, the Respondent was also invited to attend an RTP education and information session via Zoom wherein SAIDS would provide more detail for all athletes included in the RTP.

The link for the education and information session was sent to the Respondent on 29th November 2022 (see Annexure "C"). The Respondent did not attend this session.

- 1.3. On 8th December 2022, SAIDS sent the Respondent an education and information package on a flash-drive via courier, detailing the requirements to make *Whereabouts Filings* and of the *Consequences* of any failure to comply with those requirements. The package was delivered to the Respondent's place of residence on 9th December 2022 at 16:36. The Respondent signed for and accepted this package by hand (see Annexure "D"). A screenshot of the education and information details included on the flash drive is attached (see Annexure "E").

First Whereabouts Failure

- 1.4. On 8th June 2023, SAIDS communicated with the Respondent informing it of a Missed Test on 8th June 2023 (see Annexure "F") to which the Respondent responded on the 19th June 2023 (see Annexure "G").

- 1.5. On 23rd June 2023, SAIDS wrote to the Respondent and confirmed the Missed Test against it (see Annexure "H").

- 1.6. The Respondent was afforded the right to request an administrative review of SAIDS's decision to confirm a Missed Test against it, by no later than 30th June 2023, which the Respondent

did not request.

Second Whereabouts Failure

- 1.7. On 14th June 2023, SAIDS communicated with the Respondent informing it of the Missed Test on 14th June 2023 (see Annexure "I") to which the Respondent responded on the 14th June 2023 (see Annexure "J").
- 1.8. On 23rd June 2023, SAIDS wrote to the Respondent and confirmed the Missed Test against it (see Annexure "K").
- 1.9. The Respondent was afforded the right to request an administrative review of SAIDS's decision to confirm a Missed Test against it, by no later than 30th June 2023, which the Respondent did not request.

Third Whereabouts Failure

- 1.10. On 12th September 2023, SAIDS communicated with the Respondent informing it of the Missed Test on 9th September (see Annexure "L") to which the Respondent responded on the 14th September 2023 (see Annexure "M").
- 1.11. On 27th September 2023, SAIDS wrote to the Respondent and confirmed the Missed Test against it (see Annexure "N").
- 1.12. The Respondent was afforded the right to request an administrative review of SAIDS's decision to confirm a Missed Test against it, by no later than 4th October 2023, which the Respondent did not request.

- 1.13. SAIDS conducted an internal review of the Whereabouts Violation ("**WV**") and determined that there was no apparent departure from the International Standard for Results Management ("**ISRM**").
- 1.14. On 17th October 2023, SAIDS issued the Respondent with a Notice of Allegation (the "**NoA**") for a potential violation of the 2021 SAIDS ADR due to a WV. SAIDS indicated that that the AAF may result in an ADRV pursuant to Article 2.4 of the ADR.
- 1.15. Pursuant to the NoA, the Respondent was provided with a reasonable time within which to respond and put forward an explanation for its WV, and to challenge the prima facie evidence of an anti-doping rule violation ("**ADRV**"). Within the timeline provided the Respondent did not confirm receipt of SAIDS communication.
- 1.16. On 1st November 2023 the Respondent contacted SAIDS and advised that it disputed the *prima facie* AAF and that it wished to avail itself of the right time to place facts and circumstances before SAIDS on the question of *Consequences*. Despite this, the Respondent did not provide any further evidence or response to SAIDS, despite numerous follow ups.

2. **FORMAL CHARGES**

The Respondent is charged as follows:

- 2.1. In terms of Article 2.4 of the SAIDS ADR, "*Any combination of three (3) missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve*

(12) month period by an Athlete in a Registered Testing Pool” is an ADRV.

2.2. SAIDS has notified the Respondent in respect of a total of three (3) Missed Tests in a twelve-month period, in particular:

2.2.1. A Missed Test on 8th June 2023 (see Annexure “F”).

2.2.2. A Missed Test on 14th June 2023 (see Annexure “I”).

2.2.3. A Missed Test on 12th September 2023 (see Annexure “K”).

2.3. Any combination of three (3) Missed Tests and/or Filing Failures, as defined in the ISRM, within a twelve (12) month period by an Athlete in the RTP is a breach of Article 2.4 of the ADR.

2.4. SAIDS has given due consideration to the explanations given by the Respondent including an assessment of the credibility and plausibility of its statements (if any). The Respondent has failed to rebut the allegation of an ADRV, and has not provided any actual and verifiable evidence to indicate why it missed three tests within a twelve (12) month period.

2.5. Pursuant to the forgoing, SAIDS is satisfied that the Respondent has committed an ADRV by virtue of a violation of Article 2.4 of the ADR and accordingly now issues this NoC in accordance with Article 7.1 of the WADC International Standard for Results Management (“**ISRM**”). Consequently, the Respondent is hereby charged with committing the following ADRV’s (Charge):

- Article 2.4

"Any combination of three (3) missed tests and/or filing failures, as defined in the International Standard for Results Management, within a twelve (12) month period by an Athlete in a Registered Testing Pool".

- 2.6. The documents enclosed with the NoC together with the enclosed explanations constitute the evidence that SAIDS relies upon in support of the Charge. However, SAIDS reserves its right to introduce further evidence in support of the Charge if its deemed appropriate to do so, in particular, within the context of any proceedings before an Independent Doping Hearing Panel (the "IDHP").

3. **PLEA BY THE RESPONDENT**

The Respondent, through his attorney, and personally, pleaded "Not Guilty" to the charges.

4. **SUBMISSIONS BY MS WAFEEKAH BEGG ON BEHALF OF THE APPLICANT**

The Prosecutor repeated the charges as set out above, as well as advising of the offer made to the Respondent to accept a voluntary provisional sentence. She indicated that the allegations reflected under the Factual Background of the matter, specifically the Respondent's lack of acceptable evidence relating to his failure to respect the 1st 2nd and 3rd Whereabouts tests, should be read as a finding of 'Guilty'. She further indicated that that she would be calling Mr Jonathan Carlse to substantiate the process followed, and indicating as well as highlighting the mandatory consequences as a result of the Whereabouts failures.

The Prosecutor then called the Doping Control Officer Mr Jonathan Carlse, who testified that he had endeavoured to assist the Respondent on all occasions, as well as understanding the difficulties that the Respondent was

facing in respect of his personal circumstances, transport and accommodation. Mr Carlse went on to testify that he felt that the Respondent did not fully understand the rules relating to testing procedure, and the fact that he had to explain to the Respondent that even if it were "only one minute" past the time period envisaged for the tests, he would still be in violation of the Rules.

5. **SUBMISSIONS BY THE RESPONDENT**

The Respondent, together with his attorney, highlighted the reasons for the failure to adhere to the Whereabouts Information.

He indicated that he had resigned from Rowing South Africa (RSA) as a result of what he believed was the negative attitude, and "non-assistance" given to him by RSA.

He conceded that he had missed the three Whereabouts Tests, but he had endeavoured to fulfil his obligations in respect of the 1st Test, but was unable to do so as the result of having no transport, he had even attempted to get to the testing after the time period, by means of the Gautrain, which was confirmed by the Doping Officer.

He highlighted and explained in detail his unfortunate personal circumstances and the challenges that he faced after the death of his mother, as well as what led to his resignation from RSA, and confirmed that he was under the impression that RSA would have notified SAIDS of his resignation.

As a result of his circumstances he was unable to fully understand his responsibilities in regard to what was required of him even though he had received the Information Pack from SAIDS, but had not availed himself of the information relating to Athletes belonging to a Testing Pool.

In view of his personal circumstances and the fact that he believed that the addresses contained in the Whereabouts document were in fact correct, he again conceded that he had not amended his Whereabouts Information as a result of the difficulty regarding the numbering of the house which was made available to him by RSA.

6. **THE APPROPRIATE RULES**

The appropriate rules to apply in this instance are those contained in Article 10.3.2 of SAIDS' ADR.

7. **OBSERVATIONS**

It is clear from the evidence given by the Respondent that he had endeavoured to answer all questions honestly, and as a result of his lack of understanding of the procedures and the rules, and the fact that he had not communicated his resignation to SAIDS, he had found himself in the position whereby he had missed 3 tests in 1 calendar year, but strongly believed that RSA should have assisted him and at least notified SAIDS that he was no longer part of them, or that he fell into the category the Testing Pool.

His personal circumstances were again highlighted, as well as the fact that he had now been able to obtain permanent employment as a Rowing Coach at St. John's School, and this enabled him to look after his brother and his aunt, with whom he resided, and to re-engage in his studies with the University of Johannesburg.

8. **FINAL REPRESENTATIONS**

The Prosecutor advised the Panel of the mandatory consequences which include:

- A. Disqualification of Results

8.1 Pursuant to Article 10.10 of the ADR, any results obtained by the Athlete in Competitions that the Athlete had participated in between 27th September 2023¹ and the date of any imposed period of *Ineligibility* shall be Disqualified, including the forfeiture of any medals, titles, awards, points and prize and appearance money.

B. Period of Ineligibility

8.2 Our records indicate that this is the Athlete's first ADRV.

8.3 The Athlete will therefore be subject to the mandatory period of *Ineligibility* specified in Article 10.3.2 for a first offence, which for a violation of Article 2.4, is a period of *Ineligibility* of **2 (two) years.**

Take note that:- Any period of *Ineligibility* imposed may be:

8.3.1 Reduced, down to a minimum of one (1) year, depending on the Athlete's degree of Fault. The flexibility between two (2) years and one (1) year of *Ineligibility* in Article 10.3.2 is not available to Athletes where a pattern of last-minute whereabouts changes or other conduct raises a serious suspicion that the Athlete was trying to avoid being available for Testing.

8.4 C-Partially suspended, if the Athlete provides Substantial Assistance to SAIDS pursuant to Article Publication

- 8.5 Once determined, this matter shall be immediately Publicly Disclosed by SAIDS in accordance with Article 14.3 of the ADR. At a minimum, this means that information regarding this matter shall be placed on the SAIDS website.
- 8.6 Please note that any *Consequences* shall have a binding effect on SAIDS and any national federation in South Africa, as well as every Signatory to the WADC in all sports and countries.
- 8.7 Mr Dockrat, on behalf of the Respondent, pleaded that the 2-year sanction imposed should be reduced to 1 year, as a result of the Athlete having been totally honest and forthcoming with all information as well as the fact that he had officially resigned from RSA at the time of the first test, and therefore would not have been subject to the Whereabouts procedure, had SAIDS been formally notified on writing.

9 FINDINGS

- 9.1 After deliberating, the Panel imposed a sentence of two (2) years reduced to one (1) year as from the date of the charge, being 12 September 2023.
- 9.2 THE PANEL RESOLVED that as the charges related to a Whereabouts failure and not a Doping infraction, it is therefore recommended that the Respondent should not in any way be prejudiced or sanctioned by his employers namely St. John's School in his capacity as a Rowing Coach, due to the fact that he had formally resigned from RSA. having notified them prior to the 1st Whereabouts Test.
- 9.3 The Panel ordered the Respondent to bear the costs of the Hearing.

THUS DATED at JOHANNESBURG on this the 29th day of JANUARY 2024



Raymond Hack (CHAIRPERSON)

THUS DATED at JOHANNESBURG on this the 29th day of JANUARY 2024



Corinne Berg

THUS DATED at JOHANNESBURG on this the 29th day of JANUARY 2024



Dr Andy Branfield