

Arbitral Award

The Arbitration Panel

composed of

Dr. Christoph Vedder, Professor of law Munich, Germany, Chairman
Dr. Dirk-Reiner Martens, Attorney at law, Munich, Germany, Arbitrator
Dr. Dwight M. Santiago Perez, Medical Doctor, [San Juan](#), Puerto Rico, Arbitrator

in the dispute of

World Masters Athletics (WMA), South Africa
represented by Mr. Monty Hacker, Attorney at law, WMA Executive Vice-President,
Johannesburg, South Africa, instructed by
Mr. Friedel Schunk, WMA Treasurer, Chairman of WMA Legal und Legislation Committee,
Achim, Germany

versus

Mr. Neil Griffin, Slough, England
represented by (redacted)

having held a hearing in Munich, on September 26, 2006, attended by the parties and their
above mentioned representatives

having heard the submissions of the parties

having heard as witnesses or expert witnesses
Prof. Dr. Kerri Wichman, WMA Anti-Doping Officer, Member of WMA Anti-Doping and
Medical Committee, Helsinki, Finland
Mr. Winston Thomas, Chairman of British Masters Athletics Federation (BMAF)

having considered the written statements of the parties accompanied by various documents

having admitted a set of documents relating to a TUE application by Mr. Griffin of 2001,
submitted at the hearing

delivers the following award:

1. The Facts

1. Mr. Neil Griffin competed in the 2nd WMA Indoor Championships which took place March 15 - 20, 2006 in Linz, Austria in the shot put event in the M 55 class (55 to 59 years) and won the [silver](#) medal. He was subject to a targeted doping control after his competition on March 15, 2006. His A sample (code 1307465) was analysed by the WADA accredited laboratory in Seibersdorf, Austria. The analysis revealed the presence of Indapamida, a diuretic agent, and a Testosterone : Epitestosterone ratio (T : E ratio) of 26,5 : 1, whereas the threshold for men is 4 : 1.

2. Mr. Griffin was notified of the analytical findings by letter of March 24, 2006 and gave his explanation mainly indicating that he took prescribed medication which were declared as an attachment to the Doping Control Form (DCF) and for which he had applied for a Therapeutic Use Exemption (TUE). He did not request the analysis of the B sample and repeated his waiver by

letter of June 13, 2006. Mr. Griffin was provisionally suspended by the WMA Anti-Doping and Medical Committee as of June 9, 2006. Mr. Griffin did not deny to have taken Indapamida (a diuretic) and Sustanol which contains testosterone, and repeated that admission in a letter dated June 13, 2006.

3. However, Mr. Griffin had applied for two TUEs by Standard Application Forms, dated March 10, 2006, one for testosterone, one for Indapamida, which were received by the competent WMA Anti-Doping officer only upon his return to Helsinki after the closing of the Linz Championships. The requested TUEs were never granted to Mr. Griffin.

4. In reply to a March 8, 2006 written question of Mr. Griffin whether he was able to compete in Linz, in an e-mail of March 12, 2006 Mr. Massin (WMA Secretary General) informed Mr. Griffin that

A WMA hereby consents to you competing in Linz. However, please bear in mind that this consent is granted entirely without prejudice to the rights of IAAF, WMA and BMAF to deal with your case in accordance with the IAAF Anti-Doping Rules in the event that the IAAF or the WMA Anti-Doping and Medical Committee do not accept the explanation given by you for the presence of one or more prohibited substances found in your urine sample.@

5. This information is to be understood against the background of Mr. Griffin having been tested positive for testosterone at the WMA World Championships at San Sebastian, Spain in August 2005. In order to compete in San Sebastian Mr. Griffin, on January 3, 2005 by an Abbreviated Application Form, had applied for a TUE for Salbutamol and Beclometasone, which was approved and of which he was notified on January 18, 2005. On January 3, 2005 he had further applied, by a Standard Application Form, for a TUE for testosterone. This exemption was never granted nor did Mr. Griffin receive any express answer or notice to his application.

6. At the San Sebastian Championships Mr. Griffin was submitted to a doping control. The analysis of his A sample revealed the presence of both Indapamida and a T : E ratio of 27,9 : 1. In the DCF, dated August 29, 2005, Mr. Griffin only declared the use of Salbutamol and Beclometasone. However, due to various reasons within the responsibility of WMA including the death of the then WMA Secretary General, the result was not properly managed by WMA and Mr. Griffin was not prosecuted nor provisionally suspended. Mr. Massin informed Mr. Griffin about the San Sebastian result as late as February 9, 2006 in a letter. Mr. Griffin gave a written explanation on February 14, 2006. However, after the Linz Championships WMA expressly waived to prosecute Mr. Griffin for the result of the test in San Sebastian.

7. At the end of 2005 the ASan Sebastian problem@ became known to Mr. Griffin and gave rise to an exchange of letters between various persons including Mr. Griffin himself. By various messages of January 18, 2006, February 5, 2006 and March 3, 2006 Dr. Wichman warned Mr. Griffin about the use of testosterone. By letter of January 18, 2006 Dr. Wichmann referred to the approved TUE for other substances

A but using testosterone is another matter. As you know it is on a strongly prohibited list of drugs.@

Mr. Griffin acknowledged receipt of this message on February 5, 2006. In an e-mail of March 3, 2006 Dr. Wichman stated:

A... you should abstain from using testosterone, indapamida or any other prohibited substance. Taking part in coming competitions you are running the risk of being tested. ...@

On March 10, 2006 Mr. Griffin applied for TUEs (see under 3) and received Mr. Massin's letter of March 12, 2006 (see under 4).

8. Already in March/April 2001 before the WMA World Championships in Brisbane Mr. Griffin had applied for a TUE for testosterone which had been rejected of which he was notified by letter of June 3, 2001.

2. Establishment and Jurisdiction of the Arbitration Panel

9. Mr. Griffin who, as a member of BMAF which is affiliated to WMA is under the jurisdiction of WMA, signed the entry form for the 2nd WMA Indoor Championship, held on March 15 to 20, 2006 in Linz, Austria in order to compete for the shot put event. With his signature Mr. Griffin expressly gave his consent to be subject to drug testing and acknowledged the regulations of WMA and IAAF for the championships, in general and for doping control, in particular.

10. Chapter 3 of the IAAF Constitution which contains the IAAF's anti-doping rules in connection with Chapter 4 on disputes provide for dispute resolution by arbitration. As neither WMA is a Member or an Area Association of IAAF nor Mr. Griffin participated in a competition under the jurisdiction of IAAF or its Members or Area Associations, according to Rule 30 par. 1 IAAF's rules apply by reference only. Mr. Griffin is not amongst the number of AInternational-Level athletes@ in the sense of the ADefinitions@ for IAAF anti-doping rules in connection with Rule 35 par. 7.

11. WMA is not a stakeholder of WADA and did not submit itself to the Court of Arbitration for Sport (CAS). Therefore CAS has no statutory jurisdiction in WMA matters. Instead, WMA appointed an ad hoc-panel to resolve the dispute between WMA and Mr. Griffin. This ad hoc-panel finds its legal foundation in the agreement of the parties as expressed in the entry form signed by Mr. Griffin.

12. The jurisdiction and composition of the Panel was not challenged during the written phase of the proceedings. At the commencement of the hearing both parties expressly reiterated their consent that the dispute is to be resolved by the Panel and that its decision shall be final and binding.

3. Applicable Law

13. By signing the entry form Mr. Griffin expressly acknowledged WMA and IAAF rules for the running of the Championships, in general and for the doping control, in particular. The entry form states that doping tests will be conducted in accordance with IAAF and WMA rules and regulations@. Therefore, as the WMA statutes and rules refer to the relevant IAAF rules the IAAF rules on doping and on disputes including, as expressly stated in the entry form the Procedural Guidelines for Doping Control (PGDC) apply to the dispute as in force in March 2006. The entry form further determines that, in the case of a conflict between the PGDC and the WADA Code, the latter shall prevail except for the rules pertaining to applications for exemptions.

14. The application of IAAF rules was not contested during the written phase of the proceedings. The whole proceedings commencing with the doping control was handled with express reference to IAAF rules and PGDC. At the commencement of the hearing both parties expressly reiterated their consent that the dispute is to be resolved according to IAAF rules and the WADA Code. IAAF Rules 30 to 44 which constitute the anti-doping chapter of IAAF's Constitution are adopted so as to comply with the WADA code. The Panel finds no conflict between IAAF rules and PGDC on the one and the WADA Code on the other hand regarding the Rules which are to be applied in the case of Mr. Griffin and, hence, applies IAAF rules and PGDC.

4. Anti-Doping rule violation

15. According to Rule 38 par. 8, applicable by reference and analogy respectively, the Panel tries and decides the case impartially and in respect of the guiding principles enunciated

therein. According to Rule 38 par. 9 the Panel has to consider first whether or not an anti-doping rule violation has been committed. WMA, as the prosecuting authority, has the burden of proving the anti-doping rule violation to the comfortable satisfaction of the Panel.

16. According to Rule 32 par. 2 in the [introductory part](#)

A Doping is defined as the occurrence of one or more of the following anti-doping rule violations ... A

One of these anti-doping rule violations, according to Rule 32 par. 2 (a) constitutes *A the presence of a prohibited substance or its metabolites or markers in an athlete's body tissues or fluids*®.

The list of prohibited substances, A The 2006 Prohibited List® attached to the WADA Code and adopted in IAAF's PGDC, comprises in S.1 under the heading of anabolic steroids *inter alia* testosterone. Furthermore, Mr. Griffin admitted to have taken testosterone, which in itself constitutes an anti-doping rule violation according to Rule 32 par. 2 (b) (ii).

17. The analysis of Mr. Griffin's A sample revealed the presence of Indapamida, a diuretic agent which may be used as a masking agent. Diuretics are prohibited substances by virtue of S.5 of the 2006 Prohibited List. The analysis of the A sample further revealed a T : E ratio of 26,5 : 1, which exceeds the threshold of 4 : 1 fixed by the WADA Prohibited List under S1. 1. b as reproduced in the PGDC. A ratio found above this threshold indicates that testosterone was administered exogenously except otherwise proved by the athlete by clear and convincing evidence. Mr. Griffin did not attempt to give such evidence.

18. The reliability of the analytical findings and the correctness of the chain of custody or other procedural issues relating to the handling of the sample or the results management have not been challenged.

19. This leads to the conclusion that Mr. Griffin committed an anti-doping rule violation unless he was granted a TUE. The use of prohibited substances is justified if the use of such a substance is allowed by a TUE. According to Rule 34 par. 5 a TUE must be obtained prior to the doping control. Mr. Griffin had applied for a TUE for testosterone before the World Championship in Linz but the TUE was not granted. The TUE applied for by Mr. Griffin before the San Sebastian Championships had not been granted either. Mr. Griffin was not in the possession of a TUE for testosterone when he was tested on March 15, 2006. In addition, none of his various TUE applications for testosterone were approved.

5. *Exceptional Circumstances*

20. According to Rule 38 par. 11 the athlete shall have the opportunity to establish that there are exceptional circumstances in his case. As Mr. Griffin is not an International-Level athlete in the sense of IAAF Rules (see under 10.) the determination of exceptional circumstances is not reserved to the IAAF Doping Review Board, as provided for in Rule 38 par. 13, 16 and 17, and, hence, the Panel is not obliged to refer the matter to the Doping Review Board. Instead, the Panel itself has jurisdiction to decide this issue. According to Rule 38 par. 14 the Panel shall consider whether in its view the circumstances are exceptional, based on the evidence presented

21. According to Rule 40 par. 2 and 3 two categories of exceptional circumstances exist: circumstances where the athlete bears no fault or negligence for the violation and circumstances where the athlete bears no significant fault or no significant negligence for the violation. Mr. Griffin pleaded for no significant fault or negligence. Taking into account the principles laid down in Rule 38 par. 12 exceptional circumstances involving no fault or negligence cannot be established in this case.

22. The point of departure is

A ... the athlete's personal duty to ensure that no prohibited substance enters his body tissues or fluids.®

as stated in Rules 32 par. 2 (a) (i) and 38 par. 12 (i). The examples enumerated in Rule 38

par. 12 (iii) which exclude the determination of exceptional circumstances and the extraordinary situation described in (iv) do not apply to Mr. Griffin's case. The guiding principle remains that the circumstances must be truly exceptional, as provided in Rule 38 par. 2 (a) (ii).

23. Mr. Griffin considers the complex situation in January, February and March 2006 exceptional. He submits that, in particular but not alone, the letter of Mr. Massin of March 12, 2006, understood against the background of the ASan Sebastian problem - both his TUE application and the analytical result not properly and timely processed - led him to believe that his new TUE application would be approved soon and he would not commit a doping offence while competing in Linz.

24. However, the Panel finds that Mr. Griffin could not reliably expect that the use of testosterone would be allowed by the grant of a TUE. He made his application on March 10, 2006 which is five days before the shot put event. By virtue of paragraph 5.16 of the chapter on TUEs of the PGDC and information on the WMA website an application must be submitted at least 21 days before the competition. Even if a TUE would have been granted, according to paragraph 5.17 PGDC it would not produce retroactive effect. Furthermore, based on the experience from previous TUE applications for testosterone in 2001 and before the San Sebastian Championships Mr. Griffin could not anticipate that he would be allowed to take testosterone. Even if he had been granted an exemption for testosterone this TUE would have become invalid if a diuretic had been taken together with testosterone (S.5 of PGDC).

25. According to the pertinent rules and regulations and to all information available a standard application for the use of testosterone must be approved expressly prior to the competition and cannot be deemed to be granted implicitly. In the given situation Mr. Griffin should have been aware, that he, in fact, had no TUE and therefore ran the risk of being tested positive for a prohibited substance. Mr. Griffin has been informed about the situation and warned about the risk by the letters of Mr. Massin and Dr. Wichmann, written in January, February and March 2006 (see under 7.). The Panel finds no comprehensible, let alone a compelling reason, for Mr. Griffin to believe that he could legally compete in the World Championships in Linz while using testosterone. Against the background that testosterone is a strongly prohibited substance and that a TUE must be granted prior to the competition and taking into account content and wording of the various letters in the context of the given situation Mr. Griffin was significantly negligent. He significantly failed the obligations and requirements incumbent on a masters athlete who frequently competes in World Championships which are organized under IAAF and WADA rules.

26. The Panel acknowledges that the handling of both the sample taken from Mr. Griffin in San Sebastian and the application for a TUE for testosterone already submitted in early January 2005, by WMA are not acceptable. In particular, WMA deprived Mr. Griffin of the legal remedies available against the refusal of a TUE according to paragraph 5.26 of PGDC. However, these shortcomings do not constitute exceptional circumstances which might be of a kind that Mr. Griffin can be considered as having committed the anti-doping rule violation without significant negligence.

27. The Panel further recognizes that Mr. Griffin did not cheat. He declared openly that he takes testosterone and other medication in the exchange of letters prior to the Linz Championships. On the occasion of the doping control on March 15, 2006 Mr. Griffin handed over a set of documents including his TUE applications and some evidence about his medical situation. This was recorded in the DCF by using the words *Asiehe Beilage* which means *Asee attached*.

28. However, in an overall balance of the various elements which arose before the World Championships in Linz the Panel finds no evidence for exceptional circumstances in which the anti-doping rules violation were committed without significant negligence.

29. It is not within the realm of the Panel to decide upon the soundness of Mr. Griffin's TUE

applications for testosterone submitted in January 2005 and March 2006 and, hence, the Panel did not weigh the medical evidence produced in support of the applications.

6. The Sanction

30. The Panel concludes that Mr. Griffin committed an anti-doping rule violation according to Rule 32 par. 2 (a), when the presence of prohibited substances was detected in the sample Mr. Griffin gave on March 15, 2006. According to Rule 40 par. 1 (a) a sanction of ineligibility of a minimum period of two years is mandatory. As the Panel is not able to find exceptional circumstances the period of ineligibility cannot be reduced according to Rule 40 par. 3. According to Rule 40 par. 9 the period of two years shall start on the day of the decision of the Panel, the period of provisional suspension which Mr. Griffin served since June 9, 2006 however being deducted.

On these grounds

the Panel decides:

1. Mr. Neil Griffin is ineligible to compete for two years as of June 9, 2006 until June 8, 2008.
2. Each party bears its own costs.