

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
Applicant

AND **TRAVELL NGATOKO**
Respondent

AND **NEW ZEALAND RUGBY LEAGUE**
Interested Party

**DECISION OF SPORTS TRIBUNAL
DATED 3 FEBRUARY 2017**

Hearing: 31 January 2017 by telephone conference

Tribunal: Sir Bruce Robertson (Chairperson)
Chantal Brunner
Paula Tesoriero

Present: Paul David QC, counsel for Applicant
Jude Ellis, Drug Free Sport New Zealand
David Fraundorfer and Sam Fellows, counsel for
Respondent
Travell Ngatoko, Respondent
Wayne Capper in support of Respondent
Kevin Bailey, New Zealand Rugby League

Registrar: Sam Anderson

1. Travell Ngatoko has played rugby league at the provincial representative level for the Taranaki Sharks for several seasons. In 2016, the Sharks qualified for the National Championship, the second tier national competition run by New Zealand Rugby League.
2. Drug Free Sport New Zealand (DFSNZ) laid one charge against Mr Ngatoko. DFSNZ alleged that the analysis of the 'A' Sample collected on 17 September 2016 from Mr Ngatoko after he played in a National Competition game confirmed the presence of 11-nor-delta-9-tetrahydrocannabinol-9-carboxylic acid (a metabolite of cannabis) in a concentration above the WADA Decision Limit. This metabolite is a specified substance, prohibited in-competition, under class S8 Cannabinoids on the WADA 2016 Prohibited List. Mr Ngatoko did not request a 'B' sample analysis.
3. This arises under Rule 2.1 of the Sports Anti-Doping Rules (SADR). Mr Ngatoko accepted that 189ng/ml of cannabis was detected in the urine sample he provided on 17 September 2016. Under relevant Rules cannabis has been classified as prohibited for use in competition where the concentration is greater than 180ng/ml. Mr Ngatoko accepted this was a violation.
4. Without opposition he was provisionally suspended on 13 December 2016.
5. The sole point for determination by the Tribunal is the appropriate sanction.
6. The amendment to the 2016 SADR from 1 January 2017 is not relevant to this determination.
7. If DFSNZ proved that the relevant conduct was intentional a four year period of ineligibility would apply. That is not an issue in this case.
8. Therefore a period of two years of ineligibility is mandated unless Mr Ngatoko established no significant fault. Although not formally accepted, DFSNZ acknowledged that Mr Ngatoko was likely to establish that position and on all of the evidence we are persuaded that is the case. There is no evidence that his cannabis use was in any way related to sporting enhancement. The critical matter for assessment is the degree of fault.
9. This is the first case we have considered involving cannabis under the new regime but we deal with the matter simply as an appraisal of the relevant facts and conscious of the need for consistency of

approach. Cases decided under the SADR 2009 Code are of limited value in this exercise as are decisions from other jurisdictions.

10. Mr Fraundorfer submitted that having regard to the seven weeks since the provisional suspension was imposed a reprimand only should now be imposed. Mr David argued that a suspension of four to six months was called for with due allowance for the period of suspension to date and noted the potential to back date to as early as the date when the sample was taken.
11. The starting point is that sport and cannabis do not mix. This is an offence of strict liability. As was pertinently submitted by Mr David *"... a player who uses cannabis during the playing season should have a strong perception of significant risk that this conduct will lead to a violation. The activity is illegal and it is generally well known in sporting and rugby league circles that a positive test breaks the sporting rules."*
12. On Mr Ngatoko's account it was submitted that the offending was at the lowest possible level because:
 - a. the extremely low reading;
 - b. it was not for performance enhancing reasons;
 - c. the lack of information following the changes to the competition;
 - d. Mr Ngatoko's admissions and co-operation; and
 - e. the benefit this case will have for other rugby league players and management.
13. The first two matters are valid and relevant to the level of culpability. The level at which a violation occurs was substantially increased by WADA to avoid isolated cannabis use being a problem. With the new level more sustained use is necessary before the limit is reached at all. The fact that at testing Mr Ngatoko advised he had smoked cannabis recreationally and thereafter was totally co-operative in all aspects of the processes is of relevance.
14. We do not consider the absence of specific anti-doping education to be particularly important. This was an athlete breaching the general law of the land. We were told that New Zealand Rugby League had advised Taranaki that teams in the National Competition were subject to drug testing but it seems the message was not specifically passed on to the team that Mr Ngatoko played for. The onus under the WADA regime places the responsibility for not breaching on each individual athlete. Any reasonable athlete should have known that smoking cannabis risks breaching the sports rules. No doubt the rugby league world will now be fully conversant with

the applicable regime but although this breakdown of communication may be some explanation it is no excuse.

15. There is nothing in the personal circumstances or history of Mr Ngatoko which aggravates matters. He was an amateur but experienced player with a record of dedication to his sport. As he was playing at a national level he is inevitably a role model for others in the sport and has responsibilities arising therefrom.
16. We are satisfied that the integrity of the anti-doping regime and the potential for abuse to creep in where there is any interface between drugs and sport even when there has been no intention to cheat from it, require that the circumstances are responded to in a meaningful way.
17. The majority of the Tribunal consider that six months suspension is the minimum period which is consistent with the applicable penalty framework even although this had no cheating aspect and was a classic example of casual indifference and thoughtlessness.
18. A suspension period always operates from at least the date of provisional suspension. There is a discretion to backdate up to the date of testing but providing that half the suspension applies after the date of the hearing and the imposition of the penalty.
19. The Tribunal is unanimously persuaded that in light of the immediate acknowledgment of the breach and total cooperation in the proceedings the greatest available backdating is appropriate. The six months suspension will operate from 3 November 2016 and conclude on 3 May 2017.
20. Six months suspension concluding on 3 May 2017 is the decision of the Tribunal.

Dated 3 February 2017



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Sir Bruce Robertson
Chairperson

