

**BEFORE THE SPORTS DISPUTE TRIBUNAL
OF NEW ZEALAND**

SDT/14/04

BETWEEN NEW ZEALAND RUGBY LEAGUE INC

Applicant

A N D

VINCE WHARE

Respondent

**DECISION OF THE NEW ZEALAND SPORTS DISPUTES TRIBUNAL
17 February 2005**

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Tribunal: Nicholas Davidson, Q.C. (Deputy Chairperson)
Dr Farah Palmer
Ron Cheatley

Representation: Vince Whare – Respondent
Bruce Milne - representing Vince Whare
Mr Kevin Bailey - for NZRL

Attending: Brent Ellis – Registrar Sports Dispute Tribunal

Introduction

1. New Zealand Rugby League Inc. (“**NZRL**”) made application to the Tribunal following a determination by the NZ Sports Drug Agency (“**the Agency**”) that Vince Whare had committed a doping infraction evidenced by a sample provided at the Pacific Rim Tournament, North Harbour Stadium, Albany on 23 October 2004.
2. The determination of the Agency recorded a finding of a metabolite of Cannabis which is banned by the World Anti-Doping Agency (“**WADA**”) Code 2004 Prohibited List under S3 – Cannabinoids according to the Schedule maintained pursuant to the NZ Sports Drug Agency Act 1994.
3. By letter of 10 December 2004 NZRL advised the Tribunal that Mr Whare had been suspended from all rugby league participation and of the reference to this Tribunal.

The athlete’s response

4. Mr Whare filed a Statement of Defence admitting the breach, and apologising. This is referred to further.

Process

5. In the normal course a pre-hearing conference is convened to deal with preliminary issues, and set a timetable to a full hearing, either in person or by teleconference. In this case a pre-hearing conference was convened for 31 January, but given the stance adopted by Mr Whare and those speaking on his behalf, that teleconference became the final hearing.

Matters advanced on behalf of the athlete

6. Mr Whare explained the circumstances in which the violation occurred. He was adamant that he had not been a regular user of cannabis, and this use occurred after the end of the season in which he had played for the Canterbury Bulls. In what he thought was a gap between his playing seasons he used cannabis while drinking with friends, and when he was not in training.
7. When he was selected for the New Zealand Maori League Team, he did not use cannabis further, but the residue of his cannabis use was detected.
8. Mr Milne is the manager of the Canterbury Bulls and said Mr Whare had played for the Bulls over the past three seasons and was a well respected player and vice-captain. Mr Milne expressed the view that he may have used cannabis because he missed out on higher selection, but Mr Whare, consistent with his frankness before the Tribunal, put that aside.
9. Something should be said about the degree of remorse shown by Mr Whare. He apologised directly to NZRL (Mr Bailey) and to the Tribunal for this violation. He clearly felt considerable shame. He has suffered to some degree by being suspended from any participation in

the game and he has found the absence from the game and training in isolation to have been difficult.

10. He has an absolute commitment to the game, and to his family including his two very young children. He is a hardworking man on six days each week and he has considerable financial commitments.
11. Whare contributes to the community through his league involvement. For instance, he volunteers to give his time to children with cancer at the Christchurch Public Hospital, and assists with school-age league teams.
12. The Tribunal acknowledged Mr Whare's frank and honest approach to the violation and noted his genuine remorse.

NZRL Anti-doping by-law

13. NZRL, in keeping with other sports, condemns the use of prohibited substances and prohibited methods in sport. Clause 11 of the NZRL Anti-doping by-law provides that "*Every person who commits a doping violation is liable for sanction, involving a period of ineligibility as required by the WADA Code*".
14. In the case of *New Zealand Olympic Wrestling Union v Stewart* (SDT/11/04, decision 21 October 2004) the Tribunal dealt with a wrestler who tested positive for the presence of cannabinoids after competing at the 2004 Australian National Wrestling Championships. The athlete accepted the positive test result and did not dispute it, taking responsibility and explaining his actions as set out in that decision.
15. In *Stewart*, and in *Hogarth* (SDT/06/04, decision 30 August 2004), the Tribunal was faced with specific rules of Wrestling New Zealand,

which left some doubt as to whether violation carried a mandatory period of ineligibility.

16. The Rules of Wrestling New Zealand are different from those of NZRL, but in that case, applying the principle that rules containing sanctions should be construed in favour of the athlete, the Tribunal concluded that there was no obligation to impose a period of suspension.
17. The same principles apply in this case. A period of ineligibility should only be “*as required by the WADA Code*”. Any other interpretation would lead to a harsh result having regard to the provisions in the WADA Code, which allow relief from strict penalties, including suspension, when the athlete can establish the basis for leniency (see below).

What the athlete must prove for a more lenient sanction

18. WADA provides a more lenient regime for “*specified substances*” which include cannabis. This leniency is based on the likelihood of accidental violation because the substance is used in medications, or they are less likely to be abused as doping agents.
19. There is no suggestion in this case that the use of cannabis was intended to enhance performance, nor would it lead to a danger to other competitors. As such, provided the athlete can establish how the substance entered his/her system, Article 10.3 allows for lesser sanction. The basis for lesser sanctions is discussed in other Decisions of the Tribunal and will be further reviewed in a Decision soon to be released. There is no issue as to the circumstances in which cannabis was found in Mr Whare’s system.
20. Article 10.3 of the WADA Code indicates that the appropriate sanction for a first offence ranges from a minimum of a warning and reprimand

to a maximum period of one year's ineligibility. Nothing in the rules of NZRL negates that.

21. In *Stewart* the Tribunal made observations about the seriousness with which the use of illegal “recreational” drugs in sport should be viewed. Each case will turn on its own facts. The use of illegal drugs tarnishes the image of the sport and in particular that of the Code effected. In some cases such substances may enhance performance, and may represent danger to officials and other competitors. Heavier penalties will apply in such circumstances.
22. *Stewart's* case is similar to this. There should be some punitive element, as a deterrent, and to mark the fact that the violation is serious. It is recognised that the public release of the decision is a source of embarrassment, but the Tribunal observed in the hearing that Mr Whare can take something from this and pass on his experience and the caution to others. A penalty consistent with that imposed in *Stewart* is appropriate.
23. The Tribunal is concerned to see consistency so far as possible with an earlier Decision on similar facts. It records, however, that suspension has advantage over fine as financial penalties can impact on individuals in very different ways. Suspensions may also fall unequally, and that must be reflected in any such decision. The Tribunal records that future violations of this kind may see suspension imposed and it intends to fully review this issue at an early opportunity.

Formal Orders

24. Mr Whare is reprimanded and directed to pay a fine of \$250 to the Tribunal, and costs of \$250 to NZRL. The costs should be paid within 56 days of the decision or within such further period as the Tribunal may direct on application by Mr Whare. In this regard his financial

position has been brought to account. Any further violation would invoke more severe sanction.



N R W Davidson

N R W DAVIDSON, Q.C.

(Deputy Chairperson)

for the Tribunal