BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 11/07
ST 12/07

Anti-doping rule violation proceedings

BETWEEN	**NEW ZEALAND RUGBY LEAGUE INCORPORATED**
	Applicant
A N D	**SONNY CAVANAGH & JOE VAIFALE**
	Defendants

Tribunal:	Kit Toogood QC (presiding member) Adrienne Greenwood Carol Quirk
Hearing:	8 September 2007 at Auckland
In attendance:	Kevin Bailey on behalf of New Zealand Rugby League Incorporated Sonny Cavanagh & Joe Vaifale Taite Raniera, representing the defendants
Registrar:	Brent Ellis

DECISION OF TRIBUNAL
Dated 8 September 2007

The decision of the Tribunal is that Sonny Cavanagh and Joe Vaifale, having committed anti-doping rule violations in relation to cannabis on 30 June 2007, shall be ineligible to play rugby league for a period of six weeks, the period to run from 28 August 2007.

[1] These are applications against two defendants, rugby league players, which have been heard under circumstances of extreme urgency.

[2] Yesterday, Friday 7 September 2007, the Tribunal received two applications under its Rules from the New Zealand Rugby League Incorporated (**NZRL**) alleging that the Board of

Drug Free Sport New Zealand (**DFS**) had determined that, on 30 June 2007, each of the defendants returned a urine sample which tested positive for cannabis, a banned substance under the anti-doping rules of NZRL. Because the alleged violations in this case occurred prior to 1 July 2007, the applications are being dealt with under the May 2003 Rules of the Tribunal.

[3] The defendants, Sonny Cavanagh and Joe Vaifale, are members of the Harbour League rugby league team. On 28 August 2007, the defendants were notified of the determination of DFS and, under the Rules of NZRL, were notified that they were provisionally suspended until the Tribunal made its determination in respect of the application. Thus, the players each missed the major semi-final of the Bartercard Cup which is the premier domestic rugby league competition in New Zealand. They sought an urgent disposition of the application by the Tribunal in the hope that they might be allowed to play in the Bartercard Cup final which is scheduled to take place at Mt Smart Stadium, Auckland tomorrow, Sunday 9 September 2007.

[4] Mr Kevin Bailey, for NZRL, and Mr Taite Raniera, the representative of the defendants, participated with the defendants in a pre-hearing conference conducted yesterday morning. After hearing from the parties, the Tribunal directed by consent that the application be accorded extreme urgency. The parties agreed to dispense with the formalities under the Tribunal's rules and agreed that the applications should be heard together. A hastily convened Tribunal heard the application in Auckland this morning, with Ms Quirk participating by telephone.

[5] At the hearing, each of the defendants admitted the violation alleged against him and accepted the jurisdiction of the Tribunal to determine penalty.

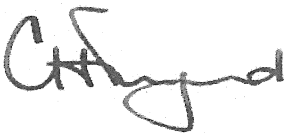
[6] The full reasons for the Tribunal's decision will be released towards the end of next week but, in the interests of informing the defendants and their team of the decision as soon as possible, the decision on these applications is released without reasons at this stage. Although this matter is being dealt with urgently, the Tribunal has listened carefully to the evidence and submissions on behalf of the defendants and given their views full consideration.

[7] The Tribunal is satisfied that neither of the defendants used cannabis for the purposes of enhancing their performance, but the Tribunal is also of the opinion that a period of ineligibility is appropriate in all of the circumstances. We are mindful that this has a severe consequence in that the defendants will not be able to participate in the most important game of the season.

Decision

[8] The decision of the Tribunal is that Sonny Cavanagh and Joe Vaifale, having committed anti-doping rule violations in relation to cannabis on 30 June 2007, shall be ineligible to play rugby league for a period of six weeks, the period to run from 28 August 2007 which is the date of their suspension. Under Article 10.9 of the WADA Code, they may not participate in any capacity in any sport which is governed by the WADA Code, including acting as an official or coach or participating in training.

[9] Full reasons for the decisions will be issued within 10 days.



Deputy Chairperson, for the Tribunal

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Registrar:	Brent Ellis
Date of decision:	8 September 2007

REASONS FOR DECISION OF TRIBUNAL

Dated 17 September 2007

Introduction

[1] Following an urgent hearing, the Tribunal determined on 8 September 2007 that Sonny Cavanagh and Joe Vaifale, having committed anti-doping rule violations in relation to cannabis on 30 June 2007, shall be ineligible to play rugby league for a period of six weeks, the period to run from 28 August 2007 which is the date of their suspension. The Tribunal

held that, under Article 10.9 of the WADA Code, they may not participate in any capacity in any sport which is governed by the WADA Code, including acting as an official or coach or participating in training.

[2] These are the reasons for the decisions, which the Tribunal indicated that it would give within 10 days.

[3] The players, Sonny Cavanagh and Joe Vaifale, are members of the Harbour League rugby league team. Following a Bartercard Cup match against Canterbury Bulls at Mt Smart No 2 Ground, Auckland, on 30 June 2007, the players were selected at random to provide a sample for drug testing. On 23 August 2007, Drug Free Sport New Zealand (DFS) issued a determination under sections 16B and 18(1) of the New Zealand Sports Drug Agency Act 1994. It determined each of the samples provided by the players had contained a metabolite of cannabis which is banned by the World Anti-Doping Code (the WADA Code) Prohibited List 2006 International Standard under S8 – Cannabinoids.

[4] NZRL made applications to the Tribunal alleging that the defendants had committed anti-doping rule violations and seeking the imposition of sanctions pursuant to the Rules of the Tribunal and the Constitution and applicable By Laws of the New Zealand Rugby League.

[5] On 28 August 2007, the players were notified of the determination of DFS and, under the Rules of NZRL, were notified that they were provisionally suspended until the Tribunal made its determination in respect of the application. Thus, the players each missed the major semi-final of the Bartercard Cup which is the premier domestic rugby league competition in New Zealand. They sought an urgent disposition of the application by the Tribunal in the hope that they might be allowed to play in the Bartercard Cup final which was scheduled to take place at Mt Smart Stadium, Auckland, on Sunday 9 September 2007.

[6] Mr Kevin Bailey, for NZRL, and Mr Taite Raniera, the representative of the defendants, participated with the players in a pre-hearing conference conducted on 7 September 2007. After hearing from the parties, the Tribunal directed by consent that the application be accorded urgency. The parties agreed to dispense with the formalities under the Tribunal's rules and a hastily convened Tribunal panel heard the application in Auckland on 8 September 2007, with Ms Quirk participating by telephone.

[7] During the pre-hearing conference, the Deputy Chairperson of the Tribunal referred Mr Raniera to the Minute of the Chairperson of the Tribunal dated 15 December 2006 (dealing with the Tribunal's approach to sanctions in anti-doping violations involving cannabis) and to the Tribunal's decision in *NZRL v Milner* SDT 20/06, 24/11/06, copies of which are available on the Tribunal's website. Mr Raniera was also told of the existence of the panel of lawyers who are prepared to provide advice and representation to athletes appearing before the Tribunal.

[8] Later that day, Mr Raniera provided the Tribunal and NZRL with copies of a statement on behalf of the players.

The players' personal circumstances

[9] Sonny Cavanagh is aged 31. He has been playing Bartercard Cup Rugby League since the competition began about 8 years ago and he is, in those circumstances, one of the team's senior players. His manager described him as being in the "twilight" of his career.

[10] Mr Cavanagh told us that he had smoked cannabis approximately two weeks before providing the sample. He had received a back injury in a match and was having difficulty sleeping. Although he was taking pain killers to alleviate his discomfort, they did not appear to be settling him down and he took up the suggestion of a friend that a cannabis smoke might help. He assured us, and we accept, that he did not take cannabis for the purposes of enhancing his performance. Although in some cases it might be arguable that pain relief is capable of enhancing performance, there was insufficient evidence to establish to our satisfaction that Cavanagh's playing ability was enhanced in this case.

[11] Joe Vaifale is aged 28 and also an experienced Bartercard Cup player. In fact, we learned that he was due to receive a 100-game medal, the day after the hearing, as one of only eight players to achieve the milestone of playing 100 Bartercard Cup matches. He explained to us that he smoked cannabis a week before the sample was taken. He told us he was not a regular user but smoked cannabis as part of his daughter's birthday celebration. He explained that taking the drug had nothing to do with his performance. We accept that assurance as there is no evidence to the contrary.

[12] Both players acknowledged that it was wrong to have breached the anti-doping laws of their code and apologised. They told us they had already apologised to their team and acknowledged that they had let down their team, their club, and the Harbour League franchise.

[13] The players told us that, while they were aware of the existence of anti-doping rules, they did not know that cannabis was included on the list of prohibited substances. They said that they understood that the main objective of the rules was to catch athletes who were using steroids or other stimulants. The players also told us that each of them had been tested many times during their careers as Bartercard Cup players and that they had always returned negative results, including from tests carried out on samples which both had given earlier this year. In essence, their complaint was that they had never been properly educated on the types of drugs that are prohibited.

Discussion

[14] The assertion of ignorance by the players is barely credible. Although cannabis was added to the prohibited list only in 2004, all Bartercard Cup players were provided with kits containing information relating to the anti-doping rules. The kits included wallet cards which list cannabis among the substances which are prohibited. Furthermore, there have been a number of New Zealand rugby league players who have faced disciplinary action before the Tribunal for cannabis breaches including, in December 2006, Blake Milner, a Bartercard Cup player for the Canterbury Bulls.

[15] We do not think any fault can be placed on the shoulders of NZRL. Mr Bailey referred to education programmes, facilitated by NZRL and run by DFS, in which all of the Bartercard Cup franchises were encouraged to take part.

[16] However, Mr Raniera, the Manager of the Harbour League team, acknowledged that while this opportunity had been made available to his team, he had not been able to make the necessary arrangements. Mr Raniera went further and said that, in hindsight, he should have done more as team manager to ensure that the players were fully educated on anti-doping matters.

[17] That may be so but in the end, as the WADA code makes clear, it is athletes themselves who are primarily responsible for ensuring that they comply with the anti-doping rules. It is no fault of anyone other than the players that they did not take advantage of the information provided to them and that, having been tested several times, they did not take more interest in the purpose of the testing.

[18] It is relevant to sanction that each of the players signed a declaration, in registering as a player for the Bartercard Cup competition, which included an acknowledgement that they had read and understood (among other things) the NZRL's rules concerning banned substances. Although Mr Cavanagh said that the players were required to sign these forms "on the bus" on the way to the first Bartercard Cup match, each of the players had been involved in the competition since its inception and would have signed similar forms in the past.

[19] Despite their complaints, both players said that they were prepared to accept responsibility for their actions, as they must. They undertook to educate other players in their sport and the community about the dangers of mixing cannabis with sport. They invited the Tribunal to take into account their clean records in previous drug tests and said they did not want to finish their playing careers under these circumstances. They asked the Tribunal not to make an example of them, particularly since they were unaware that the Tribunal "has changed its approach to anti-doping violations".

[20] This latter comment is a reference to the fact that, in December 2006, the Chairperson of the Tribunal released a Minute which was addressed to and subsequently sent to national sporting organisations throughout New Zealand, explaining that the Tribunal intended to take what might be said to be a firmer line with regard to the imposition of sanctions for cannabis violations. The Minute was, in part, a response to indications to the Tribunal in the numbers of cases coming before it, that athletes did not appear to be heeding the warnings and reprimands which the Tribunal imposed in other cases with regard to cannabis violations. The Minute also recorded the fact that, in many other jurisdictions, the sanctions imposed for cannabis violations included periods of suspension.

[21] It may well be that the players were unaware of the existence of this Minute and it would be hoped that NZRL and other sporting organisations would ensure that the information contained in the Minute is provided to regional organisations, franchises and clubs within their jurisdiction so that they, in turn, may ensure that athletes are fully informed of the risks associated with the use of cannabis while playing sport.

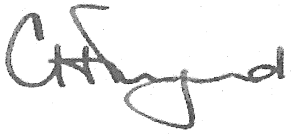
[22] But that did not persuade us that suspension was not an appropriate sanction in this case. *NZRL v Milner* SDT 20/06, 24/11/06, a case to which we have already referred, was determined by the Tribunal prior to the issuing of the December 2006 Minute but in the knowledge of its then impending release. In *Milner*, the Tribunal referred to its earlier decision in *Touch New Zealand v Koro* SDT 04/05, in which the Tribunal said that, if cannabis was not taken for the purposes of enhancing the athlete's performance, represents no danger to other competitors, officials or members of the public, and there are no aggravating circumstances, a reprimand and warning is likely to be the appropriate penalty. But the Tribunal went on to note that in cases decided after *Koro*, "aggravating circumstances" had been taken to include the signing of a participation agreement acknowledging the drug policy. Like the players in this case, Mr Milner had signed a participation agreement. The Tribunal declared him ineligible to participate in rugby league and other sport for a period of two months from the date of the decision. The Tribunal noted that the two month suspension was imposed at the end of the season but that it impacted on any participation in the sport, including training.

[23] We considered what the appropriate penalty would be in the case of these two players, taking *Milner* into account. In the view of the Tribunal, a further period of suspension was inevitable taking account of all proper considerations. We were mindful of all the things that had been said concerning the personal circumstances of the defendants. We considered it to be relevant that, at the time the Tribunal heard and decided the appropriate sanction, the players had already missed playing in the semi-final of the Bartercard Cup competition and that a further period of suspension would eliminate them from involvement in the final, a consequence as serious for their team as it was for them.

[24] For the reasons given, the Tribunal imposed a period of ineligibility of six weeks, backdated in effect to the commencement of the interim suspension of the athletes on 28 August 2007. The players told us that there were end of season rugby league matches scheduled for Labour Weekend. The period of suspension imposed by the Tribunal will enable the players to participate in such matches, if selected.

Recommendation

We recommend to NZRL that it circulates a copy of this decision, or a summary of it, to all regional or provincial leagues and franchises with a strong direction that managers and coaches should inform players of the likely consequences, in terms of probable suspension, of an anti-doping violation involving cannabis.



Deputy Chairperson, for the Tribunal