

**BETWEEN**                      **DRUG FREE SPORT NEW ZEALAND**  
  
   **Applicant**

**AND**                              **AARON NEEMIA**  
  
   **Respondent**

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**DECISION OF TRIBUNAL DATED 12 JUNE 2009**

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Hearing:                      Conference Call on 12 June 2009

Present:                      P David (counsel) and J Kernohan for Applicant  
   A Neemia in person  
   M Harlick for Softball NZ (Interested Party)  
   T Stroman-Neemia as witness

Tribunal Members:        B J Paterson (Chairman)  
   R Cheatley  
   C Quirk

Registrar:                    B Ellis

## **INTRODUCTION**

1. The respondent, Mr Neemia, played in the Mens' National Softball League final on 28<sup>th</sup> February 2009. He was tested in competition by Drug Free Sport on that date and the tests resulted in an adverse analytical finding for cannabis.
2. Softball NZ brought an application for provisional suspension and Mr Neemia was provisionally suspended on 30 March 2009.
3. At the time of his provisional suspension, Mr Neemia, who has played previously for the Blacksox, had been selected to represent New Zealand at the World Championships. He withdrew from that team and, because of his provisional suspension, has been unable to take up a softball contract in the United States during the New Zealand off-season.

## **SECOND OFFENCE**

4. This is Mr Neemia's second doping violation. This Tribunal in a decision of 7th April 2006 reprimanded Mr Neemia for testing positive after the Men's National League Final on 18th December 2005. At that time, he had played both for the Blacksox and the Samoan representative team and was due to play in an international fixture in Japan. In its decision reprimanding Mr Neemia for his drug use, the Tribunal stated:

Mr Neemia should note that if he were to offend again, he faces an automatic period of suspension of two years.

## **MR NEEMIA'S POSITION**

5. Mr Neemia accepts the violation and gave evidence and made submissions on the applicable sanction. His evidence was that he has had an ongoing knee injury for approximately two years. He has also been working 10-12 hour shifts. This combination has caused many sleepless nights.

6. Two or three days before the National Softball Final on 28<sup>th</sup> February, a friend visited. The friend gave him a cannabis joint to see if it would help him sleep. Mr Neemia affirmed that it was a one-off incident and he did not consider the effect of smoking the cannabis either on the upcoming final or drug-testing.
7. Mr Neemia's partner confirmed the evidence of the knee injury, the lack of sleep and the smoking of the cannabis.

### **DRUG FREE SPORT'S POSITION**

8. Mr David for Drug Free Sport addressed his submissions to the provisions of rules 14.4 and 14.7 of the Sports Anti-Doping Rules 2009 (the Rules), leaving it to the Tribunal to determine whether rule 14.4 applied. Rule 14.4 essentially allows the Tribunal to impose a reduced sanction if it is comfortably satisfied that the athlete did not intend to enhance his or her sports performance by taking a "specified substance" such as cannabis.
9. It is Drug Free Sport's position that, if rule 14.4 applies, the length of any sanction which must be imposed under rule 14.7 (which applies to a second violation) is dependent on Mr Neemia's degree of fault and the personal consequences to Mr Neemia have no bearing on the sanction. The submission, in summary, was that there was a significant level of fault by an international player who smoked cannabis for a second time just before a national final and this calls for a sanction above the minimum available.

### **CONSIDERATION**

10. The Tribunal is satisfied from the evidence that Mr Neemia did not smoke cannabis for performance-enhancing purposes.
11. If this matter were being considered under the WADA Code which applied up until 31 December last, this Tribunal would have had no discretion in the matter. The sanction was then a mandatory period of two years' ineligibility. The provisions of the amended WADA Code are

incorporated in the Rules. Rule 14.7 gives to this Tribunal a discretion of imposing a period of ineligibility of not less than one year and not more than four years.

12. Because rule 14.7 gives a discretion, it follows that a second violation does not automatically lead to the minimum sanction available. The Tribunal accepts that the relevant factor in fixing the sanction is the athlete's degree of fault.
13. The Tribunal accepts that the consequences to Mr Neemia of even a minimum period of one year of ineligibility are not inconsequential. He withdrew from the Blacksox squad and will miss the World Cup and he has been unable to take up a contract in the United States. However, the issue for this Tribunal is the degree of fault of Mr Neemia and not the consequences of this violation.
14. Mr Neemia is an international sportsman who is expected to set an example to other sportsmen, particularly the younger sporting participants. He had been warned less than three years before this violation that if he offended again, there would be a mandatory suspension of two years. As noted, the minimum period is now one year. This was the second time he smoked the cannabis two or three nights before a national final. The circumstances are such that the Tribunal does not accept that the minimum period of one year's ineligibility is appropriate.
15. Assessing the factors which go to the degree of fault, namely the status of Mr Neemia as an international player and the fact that after a strong warning less than three years ago, he was prepared to smoke cannabis again just prior to a national final, it is the Tribunal's view that the sanction should not be less than an eighteen months suspension.
16. The Tribunal has considered the consequences of Mr Neemia's knee injury but notes that, notwithstanding this injury, he participated in a tournament in Samoa in February and was selected by the Blacksox selectors for the World Cup in the belief that the management could

manage him through these problems. Taking cannabis for pain or sleep relief is not seen as a mitigating factor.

17. The appropriate sanction, in the Tribunal's view, is a period of ineligibility for eighteen months commencing from the date of provisional suspension, namely 30 March last.

**DECISION**

18. The sanction imposed upon Mr Neemia is a period of ineligibility of eighteen months from 30 March 2009. His status during the period of ineligibility will be as set out in rule 14.10 of the Rules.

Dated 12<sup>th</sup> June 2009



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**B J Paterson QC**  
**Chairman**