

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND NIGEL CORDES

Respondent

**AND NEW ZEALAND POWERLIFTING
FEDERATION**

Interested Party

DECISION

Dated 7 June 2013

Hearing: 24 May 2013
by telephone conference

Present: Paul David, Counsel for Drug Free Sport New Zealand
Graeme Steele, Drug Free Sport New Zealand
Nigel Cordes in person

Panel: Barry Paterson QC (Chairman)
Anna Richards
Rob Hart

Registrar: Brent Ellis

1. Drug Free Sport New Zealand (DFS) brings this application under the provisions of Rule 14.10.2 of the Sports Anti-Doping Rules 2012 (the Rules). It alleges that Mr Cordes, while subject to a period of ineligibility under the Rules, committed a violation by participating¹ contrary to the provisions of Rule 14.10.1.
2. After being provisionally suspended by this Tribunal on 15 August 2012, Mr Cordes was by a decision of the Tribunal dated 12 October 2012 suspended for a period of 18 months from 15 August 2012.
3. The violation for which Mr Cordes received the sanction of a period of 18 months' Ineligibility was for ingesting a Specified Substance. The standard sanction of two years' *Ineligibility* was in the circumstances of the case reduced to a period of 18 months.
4. The allegation made in this application is that Mr Cordes participated in 12 cricket games between 3 November 2012 and 9 March 2013. Mr Cordes admitted the allegation and accepted that he had violated the provisions of Rule 14.10 of the Rules. The issue is one of what sanction is to be imposed for this further violation.
5. Under Rule 14.10.2 "the period of *Ineligibility* which was originally imposed shall start over again as at the date of the *Violation*." However that further period of *Ineligibility* may be reduced under Rule 14.5.2 if Mr Cordes establishes that he bears *No Significant Fault or Negligence* for violating the prohibition against participation. Mr Cordes seeks to have the provisions of Rule 14.5.2 applied in his favour. In his notice of defence he stated:

"The only reason the violation was committed was because I was unaware of my ban from all sports. I believed my ban was from competing as a power lifter. I admit my fault on this. Even though I still can't find any rules for a banned athlete."

¹ In an activity.

6. Mr Cordes gave evidence before the Tribunal. His evidence was that before he began playing cricket he checked the earlier decision and endeavoured to find out whether that decision prevented him from playing cricket. He could not find any indication that it did.
7. Mr David for DFS submitted that the operation of the *No Significant Fault Principle* was to be applied in the same manner as it is applied when considering violations involving the presence of a prohibited substance. He quoted from a CAS Advisory Opinion which stated in effect that it was only when the departure of the athlete from the required conduct under the duty of utmost care was not significant, that the standard sanction could be departed from.
8. There was obvious fault on Mr Cordes' part. If he had checked with DFS or taken advice on the provisions of Rule 14.10.1 of the Rules he would have been aware that he would commit a further violation by playing cricket.
9. Rule 14.10.1, although couched in technical terms, clearly states that participation in any capacity in an activity authorised or organised by any signatory of the WADA code or a club which is a member of that signatory is a further violation.
10. The issue is whether Mr Cordes can establish that his fault was not significant.
11. A case similar to that of Mr Cordes was considered by the United States Anti-Doping Agency in 2010. It involved a Mr Williams, a cyclist, who had been declared ineligible. In that case Mr Williams was able to bring himself within the provisions of what in this case is Rule 14.10.2. The grounds on which he did this were his lack of awareness of the extent of the rule, his pre-racing enquiry that led him to believe that participation in the race was not prohibited, and his post-race conduct, including his prompt

acceptance of responsibility. These factors pointed to a non-intentional violation and led to a finding of a lack of significant fault or negligence.

12. The factors which assist Mr Cordes in this case is that the sport in which he participated, namely cricket, was different from the sport in which he was suspended by this Tribunal. His evidence is that he did seek to check whether he was prohibited from competing in cricket. It is noted that the Tribunal's decision of 12 October 2012 which imposed the 18 month period of *ineligibility* did not draw his attention to the fact that the suspension applied across all sports which adopted the WADA code, albeit that there was such a warning in his earlier provisional suspension decision.
13. In the particular circumstances of this case, the Tribunal determines that Mr Cordes is entitled to a benefit under the *No Significant Fault* Rule.
14. If the original period of *Ineligibility* was to commence from the last date of the violation, namely 9 March 2013 the suspension would expire on 9 September 2014. The previous period of ineligibility, if it had not been for the further violation, expires on 15 February 2014.
15. As has been noted Mr Cordes was not without fault. It is the Tribunal's view that the circumstances of this case are such that a further period of approximately four months should be added to the initial suspension. This can be achieved by replacing Mr Cordes original period of *Ineligibility* with a period of 15 months' *Ineligibility* from 9 March 2013. The suspension will then terminate on 9 June 2014 rather than on 15 February 2014.

Decision

16. Mr Cordes' period of *Ineligibility* imposed by the decision of 12 October 2012 is replaced by a period of *Ineligibility* of 15 months commencing on 9 March 2013.

Dated 7 June 2013



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B J Paterson QC
Chairman