

Background

1. The Tribunal conducted a hearing on Tuesday 27 February 2018 in New Plymouth. A decision on the penalty was issued on 28 February 2018, and the Tribunal advised that the reasons would be provided as soon as possible. These are the reasons.
2. Travell Ngatoko is a rugby league player living in Taranaki and is a member of New Zealand Rugby League which has agreed to the Sports Anti-Doping Rules (SADR) promulgated by Drug Free Sport New Zealand (DFSNZ) as its anti-doping policy.
3. DFSNZ alleged that on 18 March 2017, Mr Ngatoko played for the Coastal Cobras in a pre-season rugby league match at Okato, Taranaki, knowing he was serving a period of ineligibility.
4. At the time, Mr Ngatoko was serving six months' suspension following an anti-doping violation in 2016 (ST 17/16). The suspension was due to end on 3 May 2017.

Proceedings

5. Mr Ngatoko was interviewed by Ms Lisa Grace from DFSNZ on 28 July 2017. He freely admitted that he had played in the match and that he knew he was banned at the time but said that his coach, Noho Parata, had advised him that it was "all goods" and to come along on the day. This he did. Ms Grace said that Mr Ngatoko told her that when he arrived at the ground he was assured by a Taranaki Rugby League Board member on the day and again by his coach that he was ok to play. Mr Ngatoko also said that, because it was a pre-season game he thought it would be ok to play.
6. DFSNZ applied for the provisional suspension of Mr Ngatoko on 22 November 2017. DFSNZ alleged that Mr Ngatoko had breached Rule 10.12.1 of the SADR by playing in a pre-season rugby league match on 18 March 2017, knowing that he was serving a period of ineligibility imposed by the Tribunal for an anti-doping rule violation.
7. On 29 November 2017 a teleconference was convened to consider the provisional suspension application. Mr Ngatoko was unrepresented and advised that he did not oppose the provisional suspension application. Mr Ngatoko was provisionally suspended on 29 November 2017 and timetabling orders were made in relation to the substantive anti-doping rule violation proceedings.
8. On 15 January 2018, Mr Ngatoko filed his Form 2 admitting the violation and provided material in support.

9. Mr Ngatoko having admitted the violation, the sole issue for determination at the hearing was the sanction to be imposed.

Relevant SADR Provisions

10. As Mr Ngatoko has admitted playing in a pre-season rugby league match on 18 March 2017, in breach of SADR 10.12.1, the Tribunal is required to determine the sanction which is to be imposed in relation to that rule violation.
11. The sanctions for violation of SADR 10.12.1 (Prohibition Against Participation during *Ineligibility*) are set out in SADR 10.12.3 and state that “a new period of ineligibility equal in length to the original period of ineligibility shall be added to the end of the original period of ineligibility”. This period may be adjusted based on the athlete’s degree of fault and other circumstances of the case.
12. The entire rule provides:

10.12.3 Violation of the Prohibition of Participation During *Ineligibility*

Where an *Athlete* or other *Person* who has been declared *Ineligible* violates the prohibition against participation during *Ineligibility* described in Rule 10.12.1, the results of such participation shall be *Disqualified* and a new period of *Ineligibility* equal in length to the original period of *Ineligibility* shall be added to the end of the original period of *Ineligibility*. The new period of *Ineligibility* may be adjusted based on the *Athlete* or other *Person’s* degree of *Fault* and other circumstances of the case. The determination of whether an *Athlete* or other *Person* has violated the prohibition against participation, and whether an adjustment is appropriate, shall be referred by *DFSNZ* or the *Anti-Doping Organisation* whose results management led to the imposition of the initial period of *Ineligibility* to the *Sports Tribunal* under Rule 8 or the hearing body of the *Anti-Doping Organisation* whose results management led to the imposition of the initial period of *Ineligibility*. This decision may be appealed under Rule 13.

Submissions

13. The relevant starting point is a period of six months ineligibility, being the length of the suspension Mr Ngatoko was serving at the time of the subsequent breach.
14. An initial point was discussed with counsel as to whether the period of further disqualification, which was required to be equal in length to the original period of disqualification, must begin from the end of the original period of disqualification or whether it ran from the date of the Tribunal’s decision on the present application. If it were the former, then Mr Ngatoko would already have served the new period of

six months. The initial period expired on 3 May 2017 and six months from that day would have expired on 3 November 2017.

15. We think that a literal interpretation supports that conclusion. However, taking a broader, purposive approach in order to avoid a nonsensical result, we conclude that, in cases where the original period of disqualification has expired before the Tribunal hearing, the new period of disqualification must be taken to commence from the date of the Tribunal's decision on the present application, subject to any question of backdating considered further below.
16. In relation to the question of fault by Mr Ngatoko, DFSNZ submitted that any reasonable player in Mr Ngatoko's position ought to have known that he could not play in the game on 18 March 2017 and should not have done so. While the game was a pre-season fixture, it had all the obvious hallmarks of an organised match. In principle, we agree with that submission. Players have personal responsibilities to make themselves aware of their obligations in relation to the anti-drug regime, particularly where (as in Mr Ngatoko's case) he has already been found to have infringed the rules.
17. As referred to above, Mr Ngatoko had explained in his statement that he was encouraged to take part by the words and actions of Mr Parata and the Board member who were in attendance. However DFSNZ submitted that those facts did not lessen Mr Ngatoko's degree of fault when his obligations under the SADR are taken into account. Having considered Mr Ngatoko's degree of fault, it was submitted, a period of ineligibility of six months should be imposed.
18. DFSNZ further submitted, very fairly, that while the provisions on prompt and timely admission are not directly applicable to a breach of SADR 10.12.1, Mr Ngatoko could be given credit for his early admission of fault as SADR 10.12.3 allows consideration of "other circumstances of the case" when deciding on a period of ineligibility. Such credit could be reflected by backdating the start date of the period and DFSNZ considered that the Tribunal would be entitled to reduce the further period imposed by backdating the commencement date for a short period to reflect Mr Ngatoko's frank admissions and co-operation.
19. Mr Ngatoko submitted that his lawyer at the time of the earlier violation that resulted in his original period of ineligibility had not told him what he could and could not do under the terms of his ineligibility. He stated that had he known he could not play in a pre-season game he would not have done so. In relation to this, we refer to our observations in paragraph 16 above and say that, if his lawyer did fail to communicate

adequately with him, it was still incumbent on him to make enquiry as to what the effect of the ban was. A call to DFSNZ would have achieved that information.

20. Mr Ngatoko provided a letter of support from Wayne Capper, Operations Manager of Taranaki Rugby League who emphasised that Mr Ngatoko plays an integral part in rugby league in Taranaki. He is a grass-roots volunteer motivated by wanting to assist the community and to lose him to a further ban would have a major impact on that community. Mr Capper also acknowledged the lack of education provided by Taranaki Rugby League in the matter of drug testing and said that the League would support any DFSNZ initiatives to ensure that the drug free message became better known within the community.
21. We were advised at the hearing that the season commences at the beginning of April and that it comprises two halves, the second of which are representative games with selection based on performance in the first half of the season. We have taken this into account as being an important "circumstance" that under Rule 10.12.3 enables us to make an adjustment to the new period of ineligibility. Our conclusion is that it would be disproportionate and unfair if, because of the timing of this proceeding and for no other reason, Mr Ngatoko were to miss the opportunity of obtaining representative selection.

Decision

22. The Tribunal's decision is that the period of ineligibility of (in this case) six months prescribed by Rule 10.12.3 will be reduced to four months, operative from 28 February 2018. However, Mr Ngatoko is given credit for having already served a three months' period of provisional suspension from 29 November 2017 to 28 February 2018. He will accordingly remain ineligible for a further period of one month until 31 March 2018.
23. The Tribunal has chosen a four months period of ineligibility so that, taking account of the three months' period of suspension already served, he will be able to begin playing from the beginning of the season in April. We have come to this conclusion because, as referred to above, any longer period of suspension would in effect preclude him from obtaining a reasonable chance of selection for the representative matches in the second half of the season if he is not able to play in the first half of the season. That would, in a practical sense, mean that he was effectively (though not formally) banned for the whole season. While we do not make any criticism of DFSNZ or any other party in this respect, that is an outcome that results from the eight months gap between the

time of the breach and the commencement of the proceeding and the further three months gap before the Tribunal hearing was held.

Conclusion

24. A four months period of ineligibility is imposed but credit is given for the three months that Mr Ngatoko has already served while provisionally suspended. The commencement date is 28 February 2018.
25. Mr Ngatoko is suspended from all participation in sport until 31 March 2018 which is four months from the date of his provisional suspension.
26. The Tribunal advises Mr Ngatoko that under SADR, he may not during the period of ineligibility participate in any capacity in a competition or activity authorised or organised by New Zealand Rugby League or a rugby league club or other member organisation, or by any other sporting organisation which is a signatory to SADR. Given the fact that he was unrepresented at the Tribunal hearing, we urge Mr Ngatoko to take steps to ensure that he fully understands the effect of this Decision.

Dated: 16 March 2018



.....
Dr James Farmer QC
Deputy Chairperson