

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 05/18

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

 Applicant

AND **HARRISYN JONES**

 Respondent

AND **NEW ZEALAND CRICKET**

 Interested Party

**DECISION OF SPORTS TRIBUNAL
27 AUGUST 2018**

Tribunal Sir Bruce Robertson (Chairman)
 Dr Lynne Coleman
 Ruth Aitken

Participants Harriet Bush/David Bullock, counsel for Applicant
 Lisa Grace, Drug Free Sport NZ
 Harrisyn Jones, Respondent
 Sam Fellows, counsel for Respondent

Registrar: Neela Clinton

Background

1. This is another case arising from Medsafe's *NZ Clenbuterol* investigation, the Tribunal's seventh case. Medsafe passed information from the website's database to Drug Free Sport New Zealand (DFSNZ), which investigated the names to see who were registered as members of New Zealand sports organisations and therefore subject to the Sports Anti-Doping Rules (SADR).
2. DFSNZ's investigation confirmed a list of athletes who were bound by SADR and details of their internet purchases of clenbuterol and other anabolic steroids from *NZ Clenbuterol*. In October 2017 DFSNZ commenced its first batch of proceedings against those athletes who had purchased prohibited substances online.

Proceedings

3. Harrisyn Jones, the respondent, is an athlete identified in the Medsafe investigation. DFSNZ filed Anti-Doping Rule Violation (ADRV) proceedings against Mr Jones on 17 May 2018. At the time of the alleged breaches in 2015 Mr Jones was a member of the Carisbrook Dunedin Cricket Club. DFSNZ alleged Mr Jones on or about 12 February 2015 purchased one 10ml spray of clenbuterol from the *NZ Clenbuterol* website and used it at various times in breach of 2015 SADR 2.2 and 2.6.
4. Mr Jones was provisionally suspended without opposition on 24 May 2018. On 20 July 2018 Mr Jones filed his Form 2 admitting the violation so the Tribunal was only required to determine the penalty to be imposed.
5. Clenbuterol is a non-specified substance prohibited at all times under the Prohibited List 2015 as an *S1 Anabolic Agent*. Under SADR 10.2 the sanction is a four year period of ineligibility, but if the athlete can establish the violation was unintentional, the period of ineligibility can be reduced to two years. It was accepted on the evidence that Mr Jones' violation was not intentional. SADR 10.11.1 and 10.11.2 enables the Tribunal to commence the period of suspension earlier than the hearing date where there have been substantial delays and/or timely admission by the athlete.

6. On 3 August 2018 counsel filed a joint memorandum which recorded the relevant facts and jointly proposed a sanction consistent with previous Medsafe cases determined. That is a period of two years ineligibility backdated by 10 months for timely admission and substantial delay. A copy of the memorandum is annexed (Annexure 1).
7. On 6 August 2018 the Tribunal advised counsel that it wished to reconsider the appropriate length of time backdated for delay as the standard was set in December 2017 when the first batch of Medsafe cases were decided. On 15 August the Tribunal invited the parties to review their position on sanction as it had discussed the issue at its AGM on 14 August 2018 and considered the further passage of time should be reflected in any sanction. The Tribunal suggested that the total period of backdating for delay and co-operation should be increased to 12 months. The parties were offered the opportunity to have a hearing on this issue if required. The Tribunal noted that 12 months is the maximum period that can occur as SADR states that the athlete must serve at least one-half of the period of ineligibility going forward.
8. On 21 August 2018 the parties filed a second joint memorandum proposing a two year sanction backdated by 12 months. A copy of the second memorandum is annexed (Annexure 2).
9. As the circumstances here are similar to those in the other cases determined by the Tribunal, and having considered the material relating to Mr Jones, the Tribunal is satisfied it is able to accept the proposed amended sanction without the need for a hearing and makes an order accordingly.

Orders

10. Mr Jones' suspension will be for a period of 2 years backdated by 12 months to commence from 24 May 2017.

Dated: 27 August 2018



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Sir Bruce Robertson
Chairman

ANNEXURE 1:

Sports Tribunal of New Zealand

ST0S/18

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

HARRISYN JONES

Respondent

JOINT MEMORANDUM IN RELATION TO SANCTION

3 August 2018

LeeSalmonLong

Barristers and Solicitors

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JOINT MEMORANDUM IN RELATION TO SANCTION

MAY IT PLEASE THE TRIBUNAL

1. Counsel refer to the Tribunal's email of 23 July 2018 requesting that the parties consider whether they are able to reach an agreed position on sanction to present to the Tribunal.
2. The parties have now had the opportunity to confer and have reached an agreed position.
3. The parties have considered the statements filed in this matter in the light of facts in other recent Tribunal cases involving athletes who purchased substances from NZ Clenbuterol and the sanctions imposed in those matters. The parties jointly submit that the appropriate sanction for Mr Jones for breach of Sports Anti-Doping Rules 2015 (**SADR**) 2.2 and 2.6 is a period **of two years ineligibility backdated by 10 months from the date of provisional suspension**, being 24 May 2018.

Background

4. Drug Free Sport New Zealand (**DFSNZ**) filed Anti-Doping Rule Violation proceedings against Mr Jones on 17 May 2018 alleging that he had breached rr 2.2 (use or attempted use of a prohibited substance) and 2.6 (possession of a prohibited substance) of the SADR 2015 by purchasing 10 ml of clenbuterol on or about 12 February 2015 from the website trading as NZ Clenbuterol; and using or attempting to use it at various times from that date.
5. Mr Jones admitted the violations informally in an email to DFSNZ on 18 May 2018. He was provisionally suspended on 24 May 2018. On 20 July 2018 Mr Jones filed Form 2 admitting the violations.
6. Clenbuterol is prohibited at all times as a S1 anabolic agent under the Prohibited List 2015. It is a non-specified substance, prohibited both in-competition and out-of-competition.
7. Under r 10.2 of the SADR, the period of ineligibility for breach of rr 2.2 and 2.6 for a violation involving a non-specified substance is four years. Where the Athlete can establish that the Anti-Doping Rule Violation was unintentional, the period of ineligibility shall be two years.

Two or four years sanction

8. It is for the athlete to satisfy the Tribunal, on the balance of probabilities, that the violation was not intentional. The parties agree that there is evidence from which the Tribunal could be satisfied that Mr Jones' violation was unintentional:
 - (a) The term "intentional" is defined in SADR 10.2.3 as "meant to identify those Athletes who cheat."
 - (b) The definition has two limbs requiring either knowledge by the athlete that he or she engaged in conduct they knew constituted

an anti-doping rule violation or knowledge by the athlete that there was a significant risk that the conduct might constitute or result in a rule violation and manifestly disregarded that risk.

- (c) In its decision in *DFSNZ v Lachlan Frear* and *DFSNZ v Ware* the Tribunal considered that where an athlete purchased clenbuterol because of a belief that it was a weight-loss product and out of a desire to lose weight for reasons other than sport, and did not turn their mind to their obligations under the SADRs the violation would be unintentional. There is evidence suggesting Mr Jones was in a similar position.
 - (i) Mr Jones has filed a statement in which he states that he was recovering from an injury and wanted to lose weight and strengthen his core and not to enhance sports performance.
 - (ii) Mr Jones states that he was not aware that clenbuterol was prohibited.
 - (iii) He also states that when he received the package it looked suspicious, he did further research and decided not to use it.
 - (iv) The email evidence only shows one purchase of clenbuterol.

Backdating

- 9. The starting point under the SADRs 2015 is that the period of ineligibility should start from the date of the final hearing. Any period of provisional suspension shall be credited against the total period of ineligibility served.
- 10. Rule 10.11.1 gives the Tribunal a discretion to start the period of ineligibility at an earlier date where there have been "substantial delays in the hearing process not attributable to the athlete". In decisions involving the Medsafe Clenbuterol investigation, including *DFSNZ v Lachlan Frear* and *DFSNZ v Ware*, the Tribunal has considered that the time it had taken DFSNZ to advance the investigation has resulted in substantial delay for which the athletes were entitled to some allowance.
- 11. Rule 10.11.2 also allows the period of ineligibility to be started earlier where the athlete promptly admits the violation after being confronted by DFSNZ. As noted, Mr Jones emailed DFSNZ admitting the charges laid against him the day after this proceeding was filed. The parties agree that the Tribunal could properly find that this amounts to a timely admission by Mr Jones.
- 12. A combination of delay and a timely admission have led the Sports Tribunal in cases involving NZ Clenbuterol to backdate the period of ineligibility by six to ten months.
- 13. For these reasons the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose upon Mr Jones a period of two years ineligibility backdated by 10 months from the date of preliminary

suspension being 24 May 2018, for his breaches of rr 2.2 and 2.6 of the SADRs.

14. If the Tribunal considers that the agreed position is appropriate, the parties respectfully submit that the matter can be dealt with on the papers. Counsel are available to attend a teleconference should the Tribunal wish to hear from Counsel on sanction.

Dated 3 August 2018



Harriet Bush
Counsel for the Applicant



Sam Fellows
Counsel for the Respondent

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

HARRISYN JONES

Respondent

**SECOND JOINT MEMORANDUM IN RELATION TO
SANCTION**

21 August 2018

Lee Salmon Long

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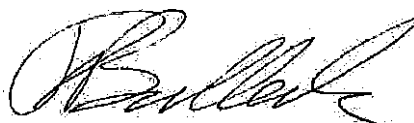
SOLICITOR ACTING: HARRIET BUSH

SECOND JOINT MEMORANDUM IN RELATION TO SANCTION

MAY IT PLEASE THE TRIBUNAL

1. Counsel refer to the Tribunal's email of 15 August 2018 requesting that the parties reconsider their position on sanction given the suggestions of the Tribunal.
2. The parties have now had the opportunity to confer and have reached an agreed position.
3. The parties have considered the statements filed in this matter in the light of facts in other recent Tribunal cases involving athletes who purchased substances from **NZ** Clenbuterol and the sanctions imposed in those matters. The parties have also considered the position of the Tribunal. The parties jointly submit that the appropriate sanction for Mr Jones for breach of Sports Anti-Doping Rules 2015 (**SADR**) 2.2 and 2.6 is a period **of two years ineligibility backdated by 12 months from the date of provisional suspension**, being 24 May 2018.
4. For these reasons set out in the joint memorandum dated 3 August 2018 the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose upon Mr Jones a period of two years ineligibility backdated by 12 months from the date of preliminary suspension, being 24 May 2018, for his breaches of rr 2.2 and 2.6 of the SADRs.
5. If the Tribunal considers that the agreed position is appropriate, the parties respectfully submit that the matter can be dealt with on the papers. Counsel are available to attend a teleconference should the Tribunal wish to hear from Counsel on sanction.

Dated 21 August 2018



David Bullock
Counsel for the Applicant



Sam Fellows
Counsel for the Respondent