

Background

1. On 13 April 2019, Hinewai Pouwhare-Anderson was tested in an in-competition test in powerlifting. The test result was positive for clenbuterol, which is a non-specified substance prohibited at all times. On the doping control form, Ms Pouwhare-Anderson listed taurine, BCAA, and two branded workout supplements (Ghost, and MusclePharm) that she had taken within the last seven days.

Proceedings

2. On 27 May 2019, Drug Free Sport New Zealand (DFSNZ) filed proceedings alleging a violation of Rule 2.1 of the Sports Anti-Doping Rules 2019 (SADR) evidenced by the presence of a prohibited substance in the sample collected. An Application for Provisional Suspension was filed and served on Ms Pouwhare-Anderson the same day.
3. Ms Pouwhare-Anderson elected not to have a 'B' sample tested; admitted the violation and expressed a reluctance to participate in the process in any way. She was advised of the framework, the fact that consequences flow; and that there is an onus on her of these consequences are to be ameliorated in any way.
4. Ms Pouwhare-Anderson was provisionally suspended without opposition on 5 June 2019, during a teleconference that also provided timetabling directions.

Issue

5. The sole issue for the Tribunal was to determine the penalty to be imposed.

Relevant SADR Provisions

6. SADR 10.2 provides:

Ineligibility for Presence, Use or Attempted Use, or Possession of Prohibited Substances or Prohibited Methods

The period of *Ineligibility* imposed for a violation of Rules 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Rules 10.4, 10.5 or 10.6:

10.2.1 The period of *Ineligibility* shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a *Specified Substance*, unless the *Athlete* or other *Person* can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a *Specified Substance* and *DFSNZ* can establish that the anti-doping rule violation was intentional.

10.2.2 If Rule 10.2.1 does not apply, the period of *Ineligibility* shall be two years.

Discussion

7. This case is a stark reminder of the nature and effect of the framework which DFSNZ has determined is necessary and appropriate for all sports people in New Zealand. What is required or best for elite sports people and at international levels is not an issue for us but this case vividly demonstrates what must happen when an athlete charged fails to engage.
8. The system is not concerned or interested in the actual culpability of the person charged. Unlike every other adjudicative body in the New Zealand the Tribunal is prevented from assessing a fair, reasonable and proportionate response which properly reflects what has occurred. Preventing an athlete from participating in any sporting activity for four years is an extraordinary sanction but this Tribunal is powerless to do anything else.

Conclusion

9. We consider that in circumstances where the athlete has not raised any positive defence, the Tribunal cannot depart from a period of ineligibility of four years and we make this order.
10. However, the athlete can and should receive credit for her timely admission of the violation, and this credit will ensure the period of ineligibility is backdated to 13 April 2019, the date of the test.
11. This means that Ms Pouwhare-Anderson is ineligible to participate in any competitive sport until 13 April 2023.

Dated: 12 July 2019



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Sir Bruce Robertson
Chairman