

1. Vaibhav Sharma (Mr Sharma) is a cricketer who was a member of the Ellerslie Cricket Club in the 2021/22 and 2022/23 cricket seasons.
2. Drug Free Sport New Zealand (DFSNZ) alleged that Mr Sharma breached Rules 2.6 (Possession of a Prohibited Substance) and 2.2 (Use or Attempted Use by an Athlete of a Prohibited Substance or Prohibited Method) of the Sports Anti-Doping Rules 2022 (SADR) following the interception by New Zealand Customs Service of a package addressed to Mr Sharma containing prohibited substances.
3. Mr Sharma has denied the alleged breaches and defends the allegations.
4. The Tribunal must assess, to its comfortable satisfaction, whether Mr Sharma committed Anti-Doping Rule Violations (ADRVs) as alleged by DFSNZ. The Tribunal must further decide the appropriate sanction, if any, to impose on Mr Sharma.

Facts

5. The parties have jointly agreed on the following facts.
6. On 22 October 2022 the New Zealand Customs Service intercepted a package, sent from India. Mr Sharma's name, address, and phone number, at the time of interception, were recorded on the package. Mr Sharma owned the property and resided at the address to which the package had been sent. He lived at the address from August 2021 to January 2023.
7. The sender's details were recorded on the package.
8. The package contained the following substances, prohibited under the WADA International Standard Prohibited List 2022:
 - (a) Nadrol-50, oxymethalone 50mg, 15 bottles x 50 tablets;
 - (b) Sustanon, sustanon 250mg, 5 x 10ml vials;
 - (c) Tren-A-100, trenbolone acetate, 100mg/ml, 3 x 10ml vials;
 - (d) Masteron, drostanolone propionate 100mg/ml, 2 x 10ml vials;
 - (e) Deca-300, nandrolone decanoate, 300mg/ml, 6 x 10ml vials;
 - (f) Cyp-300, testosterone cypionate, 300mg/ml, 3 x 10ml vials;
 - (g) Test Depot, testosterone enanthate, 250mg/ml, 2 x 10 ml vials;

(h) Cypionex, testosterone cypionate, 250mg/ml 5 x 10ml vials; and 2 2023-06-07

(i) Clen-40, clenbuterol, 40mcg, 15 bottles x 100 tablets.

Alleged Anti-Doping Rule Violations (ADRVs)

9. DFSNZ allege Mr Sharma breached Rules 2.6 and 2.2.

Rule 2.6

10. Rule 2.6 prohibits the possession of a prohibited substance.

11. The definition of possession is the actual, physical *Possession*, or the constructive *Possession* (which shall be found only if the *Person* has exclusive control or intends to exercise control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists); provided, however, that if the *Person* does not have exclusive control over the *Prohibited Substance* or *Prohibited Method* or the premises in which a *Prohibited Substance* or *Prohibited Method* exists, constructive *Possession* shall only be found if the *Person* knew about the presence of the *Prohibited Substance* or *Prohibited Method* and intended to exercise control over it. Provided, however, there shall be no anti-doping rule violation based solely on *Possession* if, prior to receiving notification of any kind that the *Person* has committed an anti-doping rule violation, the *Person* has taken concrete action demonstrating that the *Person* never intended to have *Possession* and has renounced *Possession* by explicitly declaring it to an *Anti-Doping Organisation*. Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a *Prohibited Substance* or *Prohibited Method* constitutes *Possession* by the *Person* who makes the purchase.

12. The purchase (including by any electronic or other means) of a Prohibited Substance constitutes possession. The act of purchasing a Prohibited Substance alone constitutes possession, even where, for example, the product does not arrive, is received by someone else, or is sent to a third-party address.

Rule 2.2

13. Rule 2.2 prohibits the use or attempted use of a prohibited substance.
14. The definition of use is the utilisation, application, ingestion, injection or consumption by any means whatsoever of any Prohibited Substance or Prohibited Method. The definition of an attempt is purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an anti-doping rule violation.

Sanctions

15. Rule 10.2.1 provides that the starting point for sanction for breaches of Rules 2.6 and 2.2 shall be a period of ineligibility of four years. For the purposes of imposing sanctions, the violations of rules 2.6 and 2.2 are to be treated as one violation (Rule 10.9.3.1).
16. The ineligibility period is to be four years where the violation was intentional (rule 10.2.1).
17. If the violation is not intentional the ineligibility can be reduced to two years (rule 10.2.1.1)
18. Should DFSNZ not establish to the comfortable satisfaction of the Tribunal that either of the ADRVs occurred there should be no sanction imposed on Mr Sharma and the charges be dismissed.

Applicant's case

19. DFSNZ filed the following documents, all to be taken as read (subject to cross-examination) for the purposes of the hearing:
 - (i) Forms 1 and 6
 - (ii) Notification of ADRV
 - (iii) Statement of Mr Tapper with exhibits dated 18 April 2023
 - (iv) Transcript of interview with Mr Sharma dated 5 April 2023
 - (v) Statement of Mr Tapper dated 26 May 2023

- (vi) Submissions of DFSNZ and supporting authority dated 19 June 2023
 - (vii) Submissions regarding Constructive Possession (handed up (via email) on 22 June 2023)
20. DFSNZ relies on the package with Mr Sharma's name, address and phone number as evidence that Mr Sharma had possession of the prohibited substances and that he was attempting to use them. DFSNZ says that Mr Sharma was the intended recipient of the package, it is highly likely he purchased them and arranged for them to be sent to him and there is no material evidence to suggest to the contrary. DFSNZ submitted that it makes no sense for a third party to use Mr Sharma's name and phone number alongside the address as it raised the odds that Mr Sharma would receive the package.
21. Mr Tapper of DFSNZ conducted a cost estimate of the intercepted substances which came to \$3,853.50.

Respondent's position

22. The respondent filed the following documents, all to be taken as read (subject to cross-examination) for the purposes of the hearing:
- (i) Form 2
 - (ii) Affidavit of Mr Sharma dated 17 May 2023
 - (iii) Affidavit of Mr Ranijwalla dated 12 May 2023
 - (iv) Affidavit of Mr Sharma in reply dated 21 June 2023
23. Counsel for Mr Sharma, Mr Patterson, also filed a synopsis of submissions of Counsel for the Respondent and supporting authorities on 21 June 2023.
24. Mr Sharma denies possession and attempted use of any prohibited substances. Although he accepts the package was addressed to him and had his phone number on it, he says he knew nothing about the package. Mr Sharma says that he did not place an order for the substances and that he did not make a purchase.
25. Mr Sharma was questioned at his initial interview by Mr Tapper about various transactions from his bank account and whether he had plausible explanations for them. Mr. Sharma made certain payments, referred to in the bank statements as 'Australia gifts' into a 'chitty' (the chitty was described by Mr. Sharma as a lottery pool,

with a group of 30 participants who contribute each month). Mr. Sharma acknowledged that these payments were not in fact gifts - he said that he regarded the payments as savings, but if he had described them as such in the banking transactions “then I might get taxed for it...”

26. In his affidavit, dated 17 May 2023 Mr Sharma says that he has never had anything to do with the use of performance enhancing drugs or banned substances and that he has no knowledge about such substances.
27. Mr Sharma says that he does not have any contacts in India.
28. Mr Sharma says that the front doorstep of his house is visible from the street and that is where parcels are left. He says that he has two former flat mates who would have known his personal details and that his personal details, including his phone number, were public on Facebook up until early 2022.
29. Mr Sharma also says that some unknown guests, associates of his flat mates, attended parties hosted at his address. He says he can only assume that someone else has used his personal details to order the substances for themselves.
30. Mr Sharma also filed an affidavit from his friend Mr Ranijiwalla who says that to his knowledge Mr Sharma has never been engaged in doping activity. Mr Ranijiwalla also says that at a party held at Mr Sharma's home he heard two big and bulky men discussing their use of steroids.
31. Mr Patterson submitted that it would be an unjustified leap to conclude that Mr Sharma's name, address and phone number being on the package meant that he had purchased the substances. He submitted that it was possible that a malicious actor could easily have obtained Mr Sharma's name, address and phone number from the internet, create a purchasing account without the need to prove their identity and have the package sent to Mr Sharma in order to derail his cricketing career. He also submitted that it was possible that an importer could have had the package sent to Mr Sharma with a view to intercepting the package before it made it into Mr Sharma's hands ('catching').
32. He further submitted that there have been other cases of bad actors purchasing prohibited substances in another's name. He relied on several authorities to illustrate this point.

33. Mr Patterson also relied on *Troy*¹ to demonstrate that Mr Sharma was not in possession of the substances. That case, where a package addressed to the athlete was intercepted by customs, dismissed a breach of Rule 2.6 allegation on the basis that the athlete did not have actual physical possession or constructive possession, did not know about the presence of the prohibited substances and did not have exclusive control over the package. *Troy* also said there was no evidence that the contents of the package were tested, that belief that the package contained prohibited substances did not amount to knowledge, and that an ingredient list within the package is not sufficient to prove the ingredients were prohibited substances.

Discussion

34. The only legal issue for the Tribunal that appears to arise is whether *Troy* is good law. DFSNZ submitted the WADA Code has moved on since *Troy* was decided, updating the rules so that purchase of prohibited substances, in and of itself, constitutes possession. The applicable rules for Mr Sharma's case were set out by DFSNZ as in [11] and [12] above as were the rules that were in place at the time of the *Troy* case.
35. The sentence at the end of [11] (Notwithstanding anything to the contrary in this definition, the purchase (including by any electronic or other means) of a *Prohibited Substance* or *Prohibited Method* constitutes *Possession* by the *Person* who makes the purchase) has been added since *Troy*. The Tribunal accepts that the rules have changed since the *Troy* case was decided and that purchase constitutes possession.
36. The Tribunal is being asked to draw an inference, to the standard of being comfortably satisfied, that Mr Sharma had purchased the prohibited substances contained in a package that was intercepted by the New Zealand Customs Services in Auckland on 22 October 2022. The parcel was addressed to Mr Sharma at his correct address in Auckland. His correct telephone number was also on the package.
37. Those are the salient facts. The evidence of Mr Ranijiwalla and the evidence of Mr Sharma about associates who came to a party and talked about steroids is mere speculation and of no probative value.
38. It is accepted that DFSNZ has the onus or burden of proving the alleged ADRVs. Mr Sharma does not have to prove anything at all. That includes not having to prove or

¹ *IRB v Luke Troy* CAS 2008/A/1664

establish the various possibilities as to other people being responsible for purchasing the prohibited substances, which have been suggested or raised by Mr Patterson during the hearing and in his submissions.

39. In that regard the Tribunal is essentially being asked to consider two possibilities, both of which would be consistent with Mr Sharma's innocence. The first is that the prohibited substances were purchased by some unknown person who was using Mr Sharma's address as a place for delivery. The second is that some unknown person sent them to Mr Sharma in the hope that he would be caught in possession of them, and that this in turn would damage or curtail Mr Sharma's cricketing career. Mr Sharma could not think of anybody who would want to do that, but nonetheless it has been raised as a possibility.
40. In considering the first possibility there are several things that would have to happen before the unknown person who purchased the prohibited substances could successfully collect the package from outside the front door of Mr Sharma's home. The person would have to know when the package was likely to be delivered. That could be possible, at least as far as the probable date of delivery was concerned, but it is extremely doubtful that they would know the likely time of delivery. Furthermore, the Tribunal assumes that the person would have to be able to keep surveillance on the front door of Mr Sharma's home either from a vehicle or from a house across the street.
41. The other main difficulty for this unknown person is that Mr Sharma's telephone number was on the package. In the Tribunal's view this detail is crucial because it means there was every chance that a telephone call would be made to Mr Sharma before the package is delivered. And, of course, if that happened the likelihood of the unknown person being able to uplift the package was greatly reduced. In that process, of course, the unknown person would have not only lost the prohibited substances but just under \$4,000 being the probable cost of purchase.
42. Having carefully considered this first possibility the Tribunal concludes that it is totally implausible, and it is rejected. The crucial factor is Mr Sharma's telephone number being on the outside of the package. It is difficult to think of any reason why somebody, who was supposedly using Mr Sharma's address as a delivery point for prohibited substances, would have done that. The Tribunal would also have expected the unknown person in that scenario to have used a fictitious name.

43. Turning to the second possibility that has been suggested, the Tribunal reminds itself that Mr Sharma comes within the category of a recreational athlete who at the relevant time was playing club cricket in Auckland. There was some mention of it being a social grade. That being the case, and without intending any disrespect to Mr Sharma, there was no suggestion that he had some burgeoning cricketing career or one that was headed towards higher honours, be it playing in premier grade or some representative team. In those circumstances the Tribunal finds it extremely difficult to accept that anybody would want to harm Mr Sharma 's cricketing career, let alone spend just under \$4,000 to achieve that. Of course, Mr Sharma could not think of anybody who would want to harm him in that way either.
44. The Tribunal regards this second possibility as being quite fanciful and it is rejected.
45. By a process of elimination what the Tribunal is left with then is that Mr Sharma was the person who purchased these prohibited substances and arranged for them to be sent to himself in Auckland. That is entirely consistent with the salient facts; it was addressed to him at his correct address at a time he was living there, and on the package was his correct telephone number. It is acknowledged that DFSNZ cannot establish how he purchased them, and nothing has been made of his bank statements, but the Tribunal does not think that matters as there are various ways that they could have been purchased.
46. The Tribunal rejects Mr Sharma's denials and finds that his claims of a total lack of knowledge of either the importing transaction in question or the broad nature of the drugs imported, is simply not credible. It is satisfied that DFSNZ has established to its comfortable satisfaction that Mr Sharma purchased the substances and was therefore in possession of them.
47. Having established that Mr Sharma possessed the substances, the Tribunal must consider what Mr Sharma intended to do with them once he received them.
48. One option is that he intended to supply or sell all of it. That is not the view of DFSNZ. Supply is a more serious matter than use or attempted use, and there is little evidence to support it, apart from the fact Mr Tapper thought the quantity was greater than a single person would be likely to use or consume, having regard to the expiry dates on the containers. We should eliminate that first option.

49. The other two options are that all of the substances were intended for personal use, or some was intended for personal use and some for supply; both would result in the alleged drug violation being proved.

Conclusion

50. The Tribunal is comfortably satisfied that Mr Sharma had possession of the prohibited substances because his name, address and phone number are on the package. The Tribunal is comfortably satisfied that he was the intended recipient and finds it implausible that a third party, for whatever reason, would have arranged the delivery of the package with Mr Sharma's personal details on it. The Tribunal therefore finds that there has been a breach of Rule 2.6.
51. The Tribunal is also comfortably satisfied that Mr Sharma attempted to use the prohibited substance. It seems implausible that he would purchase the substances if he did not intend to use them. The Tribunal therefore finds that there has been a breach of Rule 2.2.
52. Intentional breaches of Rule 2.6 and Rule 2.2 will attract a period of ineligibility of four years.

ORDERS

53. The Tribunal orders as follows:
- 1) A period of ineligibility from participation in any capacity in a competition or activity organised, sanctioned, or authorised by Cricket New Zealand or by any other sporting organisation that is a signatory to the SADR, of four years, is imposed on Mr Sharma under Rules 10.2, backdated to commence from 28 April 2023. That means he is ineligible to participate in competitive sports until 28 April 2027.
 - 2) Costs are not ordered, as none are sought, but they are reserved should DFSNZ wish to apply.

- 3) This determination should be the final determination by the Tribunal in this matter, and it may be published in the usual way.

Dated: 28 June 2023



**John Macdonald
Chair**



**Warwick Smith
Deputy Chair**



**Ruth Aitken DNZM
Member**