

BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE

No. 10/18

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
 Applicant

AND **CHRIS JOHNSTON**
 Respondent

DECISION ON APPLICATION AND SANCTIONS

Judicial Committee: Barry Paterson QC, Chair
 Dr Ian Murphy
 Ben Castle

Counsel: Harriet Bush for applicant
 Justin Cameron for respondent

Registrar: Stuart Doig

1. The applicant (DFSNZ) by an application dated 29 September 2018 alleged that the respondent, Mr Johnston, committed anti-doping violations under the provisions of the Sports Anti-Doping Rules 2014 (SADR 2014).
2. The violations alleged were breaches of:
 - (a) Rule 3.2 SADR 2014 – Use or Attempted Use of a Prohibited Substance;
 - (b) Rule 3.6 SADR 2014 – Possession of a Prohibited Substance.
3. By notice dated 26 October 2018, Mr Johnson admitted the violations but advised he wished to participate in the proceeding by making submissions on sanction. Mr Johnston had been previously advised by letter of 12 September 2018 of the allegations against him and his counsel acknowledged on 19 September 2018 that Mr Johnston had purchased the prohibited substance, namely Clenbuterol.
4. Counsel for the parties have filed a joint memorandum advising that the parties have agreed on what the appropriate sanction should be based on the facts of this case. Both parties have waived the right to a hearing.

Facts

5. Mr Johnston purchased and paid for 20 millilitres of Clenbuterol on or about 22 September 2014, such purchase being from NZ Clenbuterol. It is Mr Johnston's position that the Clenbuterol was purchased for use by his wife in an attempt to reduce weight. Clenbuterol is used for this purpose. Both Mr and Mrs Johnston have provided statements in which they say that the Clenbuterol was in fact not used because of the state it was in when it arrived.

Sanction

6. The prescribed sanction for the violations admitted is a Period of Ineligibility of 2 years (Rule 14.2 SADR 2014). In the circumstances of this case, the only provision of SADR 2014 which would permit a reduction of this Period of Ineligibility is if Mr Johnston can establish no fault or negligence, or no significant fault or negligence (Rule 14.5 SADR 2014).
7. It has been accepted on behalf of Mr Johnston that he did not take any steps to consider his obligations under SADR 14 or to determine whether taking

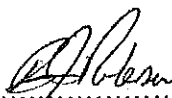
Clenbuterol would breach that provision. Consequently the parties have agreed that there are no circumstances under which the Period of Ineligibility can be reduced under Rule 14.5. The notes to SADR 2014 state that an athlete is required to produce evidence of a specific and relevant nature to explain the departure from the expected standard of behaviour. In the circumstances the Period of Ineligibility will be 2 years.

8. The Period of Ineligibility would normally commence from the date on which Mr Johnston was provisionally suspended, namely 9 October 2018. However, in certain circumstance an athlete may have the starting date backdated under the provisions of Rules 14.9.1 and 14.9.2 of SADR 2014. Counsel for DFSNZ has acknowledged that it is open to this Committee under the provisions of these rules and the circumstances of this case to backdate the commencement date of the Period of Ineligibility for a total of 12 months.
9. Rule 14.9.1 SADR 2014 allows the backdating of the Period of Ineligibility where there has been "*substantial delays in the hearing process ... not attributable to the athlete*". In accordance with early decisions of this Committee and the Sports Tribunal of New Zealand, Mr Johnston is entitled to have the starting date backdated under this provision.
10. Under Rule 14.9.2 there may be backdating if the athlete promptly admits the violation after being confronted with the allegation. As noted above, Mr Johnston did promptly admit the violation.
11. In the circumstances, this Committee agrees that it is appropriate to backdate the starting date of the Period of Ineligibility for a total of 12 months, being six months for delay and six months for the prompt admission
12. As the violations have been admitted, the sanction imposed is a Period of Ineligibility of 2 years commencing on 9 October 2017.
13. During the Period of Ineligibility, Mr Johnston is prohibited from participating in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or other member organisation of a *Signatory's* member organisation, or in *Competition* authorised or organised by any professional league or any *International* or *National-level*

Event Organisation or any elite or national-level sporting activity funded by a governmental agency.

14. Under the provisions of Rule 5.2.3 of the New Zealand Rugby Union Anti-Doping Regulations (26 July 2012), Mr Johnston is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 12 February 2019



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Barry Paterson QC
Chairman, Judicial Committee