

NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE (“JC”)

No /18

BETWEEN **DRUG FREE SPORT NEW ZEALAND (“DFSNZ”)**
Applicant

AND **BRANDYN LAURSEN**
Respondent

DECISION OF JC ON ANTI-DOPING VIOLATIONS BY THE RESPONDENT

Hearing and Decision: On the papers, 8th June 2018

JC: Nigel Hampton QC (Chair), Ian Murphy and Michael Heron QC

Counsel: Adam McDonald for DFSNZ
Andrew Skelton for Respondent

Registrar: Keith Binnie

Background

1. DFSNZ brought Anti-Doping Rule Violation Proceedings (“the proceedings”) against the Respondent in March 2018, alleging that the Respondent had both possessed and used/attempted to use a prohibited anabolic agent, viz. clenbuterol (“the drug”) in 2014 and in 2015; being in breach of Rules 3.6 (possession) and 3.2 (use) of Sports Anti-Doping Rules 2014 (“SADR 2014”) and Rules 2.6 (possession) and 2.2 (use) of Sports Anti-Doping Rules 2015 (“SADR 2015”).
2. The Respondent formally admitted to the JC, and at the soonest opportunity, all of the violations alleged against him.
3. DFSNZ explained to the JC the reasons for the considerable delay between the commission of the violations and the bringing of the proceedings.
4. Suffice to say here, that:
 - (a) it was not until 16 March 2018 that DFSNZ first notified the Respondent (by telephone) of the alleged violations;
 - (b) the Respondent admitted the violations on 23 March 2018; and
 - (c) the JC, on 4 April 2018, made an order provisionally suspending the Respondent.
5. Independent of the Respondent’s formal admissions, the JC has reviewed the evidence adduced on behalf of DFSNZ, through the affidavits of Nicola Squire (of Medsafe) and Lisa Grace and Jude Ellis (both of DFSNZ). The contents of those affidavits and the attached exhibits, to the satisfaction of the JC, contained clear evidence showing prima facie proof of all the alleged violations.
6. In addition, and as already stated above, the Respondent, acting with legal advice, admitted the violations.
7. The Respondent, his mother and Kent Harris (the Respondent’s rugby coach and mentor) presented evidence (in affidavit form) in order to attempt to establish that the violations by the Respondent were unintentional, and were committed by him in pursuit of off-season weight loss (a known use of this particular drug).

Regulatory Context

8. By Rule 10.7.4.1 of SADR 2015, multiple violations committed by a person before that person is first notified of her/his first (in time) violation, shall be considered together as one single first violation, and the sanction to be imposed shall be founded on the violation that carries the more severe sanction.
9. Under Rule 10.2 SADR 2015, the period of ineligibility for a breach of either of Rules 2.6 or 2.2, involving the drug here, is four (4) years.
10. Also pursuant to Rule 10.2 SADR 2015, the period of ineligibility is reduced to two (2) years where the violator can establish that her/his violation was not intentional. The term “*intentional*” is defined in Rule 2.2.3 and, in short

summary, means actual knowledge in the actor of her/his conduct being a violation, or recklessness in that regard (i.e. knowledge of a “*significant risk*” of a violation and manifest disregard of such risk).

Findings

11. On the basis of the uncontested (by DFSNZ) evidence before it, both from the Respondent and the other defence witnesses confirming crucial aspects of his account of events, the JC concluded that it was satisfied, to the requisite standard, that the Respondent’s violations were “*not intentional*”.
12. The JC was reinforced in that conclusion by the lack of any material which might be seen to contradict the Respondent’s account and DFSNZ’s lack of challenge to, and indeed its acceptance of, the defence evidence.
13. Such a finding by the JC is in keeping with recent decisions where somewhat similar factual situations have been considered and discussed by the Sports Tribunal (*Lachlan Frear* ST 07/17; *Ware* ST 09/17) and the JC (*Whakatoka* 07/17).

Sanctioning

14. The entry level for sanction here is a period of two (2) years ineligibility.
15. Rule 10.11.1 SADR 2015 allows a discretion in the JC to start that ineligible period at an earlier date where there have been “*substantial delays in the hearing process not attributable to the athlete*”. Again in keeping with recent JC decisions (*Berry* 01/17; *Quaqua-Dodds* 02/17), the JC reached the view that the Respondent was entitled to an allowance to be made in his favour, as to commencement of sanction, given the substantial delay here present (refer to paragraphs 3 and 4 above).
16. In addition, by Rule 10.11.2 SADR 2015, the JC is permitted to recognise and implement, by way of an earlier commencement date of the sanction, the timeliness of the athlete’s admission of her/his violation. Here there was an almost immediate admission – refer to paragraph 4(b) above.
17. In appropriate cases, the effects of a combination of both delay and timely admission may be allowed to be cumulative, and in practical terms allow a significant “backdating” of the start point of the imposed ineligibility. Such backdating has been allowed in both the JC (*Neild* 10/17) and the Sports Tribunal (*Lachlan Frear* ST 07/17).
18. Having carefully considered all the relevant factors here, the JC has come to the conclusion that it would be appropriate in these circumstances to backdate the period of two (2) years ineligibility to be imposed on the Respondent, by ten (10) months from the date of the provisional suspension imposed on him, being 4th April 2018.

Order

19. The Respondent, Brandyn Laursen, is hereby sanctioned by having imposed upon him a period of ineligibility of two (2) years, commencing on 4th June 2017.
20. In accordance with Rule 10.12.1 SADR 2015, the Respondent may not, during his period of ineligibility, participate in any capacity in a Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory or Signatory's member organisation, or a club or other member organisation of a Signatory's member organisation, or in Competitions 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.
21. The Respondent is advised that, under Regulation 5.2.3 of the New Zealand Rugby Union's Anti-Doping Regulations 2012, he is entitled to have these findings and/or sanctions in this Decision referred to a Post-Hearing review body.

Nigel Hampton QC
Chair of JC
8th June 2018