

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

 Applicant

AND **NICHOLAS BYRNE**

 Respondent

AND **CYCLING NEW ZEALAND**

 Interested Party

**DECISION OF SPORTS TRIBUNAL
27 AUGUST 2018**

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

Participants Paul David QC, counsel for Applicant
 Hayden Tapper, Drug Free Sport NZ
 Nicholas Byrne, Respondent
 David Neild, counsel for Respondent
 Hughie Castle, for Cycling New Zealand

Registrar Neela Clinton

Background

1. Nicholas Byrne who currently lives in Australia, was a former teenage competitive cyclist and had recently began competing again. On 20 April 2018 Mr Byrne returned a positive result after he had competed in the Senior Men's 25 kilometre Time Trial discipline at the New Zealand Age Group Road Cycling Championships.

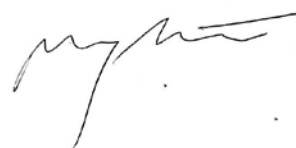
Proceedings

2. On 15 June 2018 Drug Free Sport New Zealand (DFSNZ) filed proceedings alleging a violation of Rule 2.1 of the Sports Anti-Doping Rules 2018 (SADR) evidence by the presence of a prohibited substance in the sample collected on 20 April 2018.
3. The analysis of the sample confirmed the presence of Androsterone, Etiocholanone and Testosterone and 5 β Adiol which are non-specified substances prohibited at all times under class S1.1B Anabolic Agents on the 2018 Prohibited List. This sample also was alleged to have confirmed the presence of anastrozole and its metabolites which are specified substances prohibited at all times under S4.1 Hormone and Metabolic Modulators on the 2018 Prohibited List.
4. Mr Byrne was provisionally suspended without opposition on 29 June 2018. Mr Byrne requested an analysis of the B sample which was tested on 11 July 2018. The B sample results confirmed the A sample results.
5. On 24 July 2018 DFSNZ filed substantive anti-doping rule violation proceedings. On 7 August 2018 Mr Byrne filed his Form 2 admitting the violation and asked to be heard on the issue of sanction. The relevant starting point is SADR 10.2.1 which provides that the period of ineligibility shall be four years unless Mr Byrne is able to prove that the violation was not intentional.
6. On 20 August 2018 DFSNZ filed a memorandum and statement from Dr Leonard in support of its application. The matter was set down for a teleconference hearing on 27 August 2018 to determine the penalty to be imposed.
7. Counsel filed a joint memorandum dated 24 August 2018 in relation to sanction. Mr Byrne accepted his conduct was in breach of the SADR and he was subject to a four year period of ineligibility. A copy of the memorandum is annexed.
8. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes orders as proposed.

Orders

9. Mr Byrne's suspension will be for a period of four years backdated to commence from 20 April 2018 recognising his timely admission and cooperation.
10. Mr Byrne's results in the Senior Men's 25 Kilometre Time Trial at the 2018 National Age Group Championship is disqualified.

Dated: 27 August 2018



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Sir Bruce Robertson
Chairman

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**JOINT MEMORANDUM OF PARTIES IN RELATION TO AGREED
SANCTION**

24 August 2018

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1. The applicant, Drug Free Sport New Zealand, and the Respondent, Nicholas Byrne, file this joint memorandum to set out their agreement on sanction.

SADR 2.1 Violation

2. Mr Byrne has admitted a violation of SADR 2.1 for the presence of prohibited substances and their metabolites in his sample. The sample was taken in competition after Mr Byrne had competed at the New Zealand Age Group Cycling Championship in the Senior Men's 25 Kilometres Time Trial on 20 April 2018. Mr Byrne was a registered member of Cycling NZ and subject to the 2018 SADR.
3. Mr Byrne's sample contained testosterone (of exogenous origin) and its metabolites and anastrozole and its metabolites. Testosterone and its metabolites are non-specified substances prohibited at all times under SI.1B Anabolic Agents of the Prohibited List 2018. Anastrozole and its metabolites are specified substances prohibited at all times under S 4.1 Hormone and Metabolic Modulators of the Prohibited List 2018.
4. Testosterone is taken to promote strength and in lower doses promote lean muscle mass.
-- Anastrozole is taken to counter-act the effects of taking testosterone. - - - - -
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Applicable Sanction

5. SADR 10.2.1 provides that the applicable sanction for the violation of SADR 2.1 involving non-specified substances is 4 years. If the athlete establishes that the violation was not intentional under SADR 10.2.1.1 the applicable period of ineligibility is 2 years under SADR 10.2.1.1.

Agreement on sanction

6. In response to the alleged breach of SADR 2.1 Mr Byrne admitted that he had committed the violation in his Form 2. In his Form 2 and statement he said that he intended to establish that the violation was not intentional and that he was not significantly at fault in order to reduce the applicable period of ineligibility. DFSNZ filed a memorandum and statement in response.

7. Mr Byrne has considered the material which is before the Tribunal with his legal advisers and reflected on his position. He now accepts that the period of ineligibility of 4 years under SADR 10.2.1 is applicable to his violation and withdraws the defences set out in his Form 2 and his statement.
8. DFSNZ acknowledges that Mr Byrne admitted the violation in a timely manner. It has agreed with Mr Byrne that it would be appropriate for the period of ineligibility to be backdated to the date of the sample collection, 20 April 2018, to reflect this admission under SADR 10.11.2. Mr Byrne has been provisionally suspended since 29 June 2018 and is entitled to credit for the period of time under SADR 10.11.3. If the Tribunal back-dates the start date under SADR 10.11.2 this period will have been credited.
9. Mr Byrne's result in the 25 kilometres Senior Men's Time Trial at the 2018 National Age Group Championship is automatically disqualified under SADR 9.
10. Counsel for DFSNZ and Mr Byrne ask the Tribunal to approve the agreement on sanction by the parties and to make orders declaring that Mr Byrne is ineligible for a period of 4 years under SADR 10.2.1 starting from April 20 2018, and that Mr Byrne's result in the Senior Men's 25 Kilometre Time Trial at the 2018 National Age Group Championship is disqualified.



Paul David QC

Counsel for Applicant



Daniel Kalderimis/ David Neild

Counsel for Respondent

24 August 2019