

1. Sean Winters is a member of the New Zealand Powerlifting Federation, and his sport has adopted the 2020 Sports Anti-Doping Rules (SADR) promulgated by Drug Free Sport New Zealand (DFSNZ) as its anti-doping policy.
2. Mr Winters returned a positive result for Octodrine and its metabolite Heptaminol from a test conducted on 19 July 2020.

Proceedings

3. On 8 September 2020, DFSNZ filed an Application for the Provisional Suspension of Mr Winters. On 16 September 2020, a telephone conference was convened by the Tribunal Chairman and Mr Winters advised that while he did not oppose the application, he wished to have his 'B' sample tested. A provisional suspension was imposed that day.
4. Subsequently, the 'B' sample was analysed and its contents confirmed the result of the original test.
5. On 30 October 2020, Mr Winters filed his Form 2 and associated material. He advised that he admitted the violation, acknowledged that the Tribunal may impose a penalty without a hearing and advised that he did not wish to participate in that process.
6. In a written statement filed with his Form 2, Mr Winters stated that he took a great deal of care in researching any supplements he took and that neither of the supplements he was taking at the relevant time had the prohibited substance listed as ingredients. He pointed to two prior negative drug tests as evidence of his compliance with the anti-doping regime.
7. Further, Mr Winters argued that the fact that he had to self-fund his sporting endeavours and did not have the resources or funding to retain a nutritionist or test every single supplement he took, meant that he should not be held to the same level of scrutiny as elite level athletes.
8. On 20 November 2020, reply statements were received from Hayden Tapper, Investigations and Intelligence Manager at DFSNZ and Ryan Morrow, Science Manager at DFSNZ.
9. On 26 November 2020, Mr Winters filed his statement in reply. He explained that he had spoken with the Store Manager of Xplosiv Supplements Tauranga, where he had purchased the Fireblast Ultra supplement. From this conversation, Mr Winters had

been able to determine that he had purchased the previous formula that did contain Octodrine. He stated that he had purchased this supplement in June 2020, and when he spoke to the Store Manager on 25 November 2020, he was advised that the new formula had only been in stock for the past couple of months and the date of manufacture for this stock was 21 September 2020. The Store Manager further stated that the prior version had sold out, which Mr Winters argued had contradicted the advice from the Chief Executive of Xplosiv Supplements who had stated that the product was removed from sale.

10. On 18 December 2020, the parties filed a joint memorandum on sanction that suggested a period of ineligibility of two years be imposed, backdated to 19 July 2020. A copy of that memorandum is annexed.
11. The Tribunal having considered all the available material is satisfied that it is able to accept the proposal and make orders accordingly. It was accepted that there was no significant fault or negligence. The prohibited substance was also not taken to enhance his sporting performance.

Order

12. Mr Winters' suspension will be for a period of two years backdated to commence from 19 July 2020. This means that Mr Winters is ineligible to participate in competitive sport until 19 July 2022.

Dated: 18 December 2020



.....
Sir Bruce Robertson
Chairman

Sports Tribunal
NZST 05/20

between
DRUG FREE SPORT NEW ZEALAND
Applicant
and
SEAN WINTERS
Respondent

JOINT MEMORANDUM ON SANCTION
18 December 2020

LeeSalmonLong

Barristers and Solicitors
LEVEL 16 VERO CENTRE 48 SHORTLAND STREET
PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND
TELEPHONE 64 9 912 7100
EMAIL: harriet.bush@lsl.co.nz SOLICITOR ACTING: HARRIET BUSH

JOINT MEMORANDUM ON SANCTION

MAY IT PLEASE THE TRIBUNAL

Introduction

1. This memorandum is filed jointly by the parties in relation to the appropriate sanction for the respondent, Mr Winter's, breach of r 2.1 of the Sports Anti-Doping Rules 2020 (**SADRs**).
2. Following the teleconference on 24 November 2020 the parties have conferred in relation to sanction. They respectfully submit that it would be open to, and appropriate for, the Tribunal to impose **a period of two years ineligibility** on Mr Winters, backdated to 19 July 2020, for breach of r 2.1 of the SADRs.

Background

3. Mr Winters is registered with the New Zealand Powerlifting Federation. He participated in the Auckland Powerlifting Championships on 19 July 2020. DFSNZ conducted in-competition testing at the event on 19 July 2020. Mr Winters was one of three athletes tested.
4. On 7 September 2020 DFSNZ brought an application for Mr Winters to be provisionally suspended due to the presence of the prohibited substance octodrine and its metabolite heptaminol in Mr Winter's A sample. Under the World Anti-Doping Prohibited List 2020, octodrine and its metabolite heptaminol are specified substances prohibited in competition. Mr Winters was provisionally suspended on 16 September 2020. Testing of Mr Winters' B sample confirmed the adverse analytical finding.
5. DFSNZ filed anti-doping rule violation proceedings against Mr Winters on 14 October 2020. On 30 October 2020 Mr Winters admitted the violations and indicated that he wished to participate in sanction. Mr Winters filed evidence stating that he is aware of his anti-doping obligations and takes care to ensure that there are no prohibited substances in any of the supplements he takes. He stated that at the time of his test he was taking Redcon1 Total War and Wizard Nutrition Fireblast Ultra, and suggested that these products might have contained Octodrine.
6. On 20 November 2020 DFSNZ filed reply evidence that included correspondence with the manufacturers of Total War and Fireblast Ultra about whether their products could have contained Octodrine. Both manufacturers confirmed that, while previous versions of their products contained Octodrine, the current versions of the products do not, and they take steps to ensure that Octodrine is not present in their products. Octodrine was previously listed (using the names aminoisoheptaine and Juglans Regia) on both products, but the formulae were changed due to regulatory requirements. Medsafe recommended that Octodrine be classified as a prescription medicine in New Zealand in July 2019.

Applicable sanction

7. Under r 10.2.1.2, the period of ineligibility for presence of a specified substance is four years where DFSNZ can establish the violation is intentional. If DFSNZ cannot establish intention, the period of ineligibility is two years.
8. On the evidence before the Tribunal, DFSNZ does not seek to establish intention in this case.
9. The parties also agree that there is insufficient evidence before the Tribunal for the sanction to be reduced below a two-year period of ineligibility. In particular, the parties agree that the evidence does not establish that the adverse analytical finding was the result of a contaminated substance.¹

Backdating

10. Mr Winters admitted the violations on filing his Form 2. The parties respectfully submit that this amounts to a timely admission under r 10.11.2 and the period of ineligibility should be backdated to the date of sample collection.

Disposal

11. For these reasons, the parties respectfully submit that it would be open to, and appropriate for the Tribunal to impose a period **of two years' ineligibility, backdated to 19 July 2020** on Mr Winters for breach of r 2.1 of the SADR.
12. DFSNZ also notes that under r 9, as Mr Winters' anti-doping rule violation occurred in connection with an in-competition test, his result in the Auckland Powerlifting Championship competition is automatically disqualified.
13. If the Tribunal considers that the agreed position is appropriate, the parties respectfully submit that the matter can be dealt with on the papers.

Dated 18 December 2020



Harriet Bush
Counsel for DFSNZ

¹ See rule 1.5.1.2.

Sean Winters
Respondent