

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND JOSHUA POASA

Respondent

AND NEW ZEALAND RUGBY LEAGUE

Interested Party

**DECISION ON APPLICATION IN ANTI-DOPING RULE VIOLATION
4 February 2011**

Panel: Barry Paterson QC (Chair)
Ron Cheatley
Rob Hart

Registrar: Brent Ellis

Attendances: Paul David (Counsel for Applicant)
Graeme Steel and Jayne Kernohan for Applicant
Joshua Poasa in person
Sharon Bird assisting Joshua Poasa
Kevin Bailey for New Zealand Rugby League

Introduction

1. Mr Poasa was subject to a random test by Drug Free Sport after a rugby league match in Mt Maunganui on 26 September 2010. The presence of the metabolite of the prohibited substance cannabis was found to be in his system upon analysis of his A Sample.
2. Mr Poasa subsequently waived his right to have the B sample tested.
3. Mr Poasa, on the application of New Zealand Rugby League, was provisionally suspended on 18 November 2010.
4. At the hearing conducted by telephone conference on 1 February 2011, Ms Ma-Lisa Kaka gave evidence in support of Mr Poasa.

The Evidence

5. The evidence of Mr Poasa was that he went to a party the weekend after the first training camp for the Northland team. This would have been 14 August 2010. At that party he smoked some cannabis; he did so for recreational purposes and it was not smoked to enhance his performance while playing sport. He states that this was the last time that he has smoked cannabis.
6. Ms Kaka's evidence was that after the Portland Club, which Mr Poasa plays for, played its last game, several of the players went to a house warming party in Kamo. There were several players and supporters present, as well as players from other clubs. She saw Joshua in a group of older players and noted that he shared a joint with those players. She said that this was the only time she observed him smoking at the party. Ms Kaka believes that Mr Poasa made a mistake because of peer pressure.

Submissions on behalf of Mr Poasa

7. The Tribunal is grateful for the assistance that Ms Bird gave Joshua. She is a volunteer administrator for rugby league in Northland and obviously takes an interest in the wellbeing of the players. She noted that the last couple of months have been particularly hard for Joshua

because of the suspension given in November last. Since he was suspended he has on advice not participated in two of his other sports, namely touch rugby and basketball. He has been randomly tested since and has tested negative. He has received huge support from his parents who, along with his coach, were present on the conference call.

8. Joshua is sorry for what he has done and, in Ms Bird's submission, has learnt his lesson. He wants to achieve in rugby league and she submitted he has already been penalised enough by the provisional suspension.
9. Mr David, for Drug Free Sport, accepted that the evidence suggests that Joshua did not smoke cannabis for performance-enhancing purposes. He is an 18 year old athlete who has made a mistake and there are some mitigating factors. He may have been let down by the environment and, apart from his age, the fact that he has not been able to play other sports may be a mitigating factor.
10. Mr David did, however, note that the cannabis was smoked after Joshua had attended his first training camp on 8 August, at which he received education information on doping. The party at which he smoked cannabis was on 14 August and he signed an acknowledgment of receiving the 2010 Athlete Handbook, the 2010 Athlete Wallet Card and the Athlete Information Brochure on 15 August. However, he did receive doping education at the camp on 8 August 2010 immediately prior to smoking the cannabis.

Discussion

11. The Tribunal accepts on the evidence, including that of Ms Kaka, that Joshua did not smoke cannabis for performance-enhancing purposes.
12. The normal starting point in this Tribunal on cannabis matters is now suspension for a period of 4 months. Aggravating and mitigating factors are applied.

13. The evidence suggests that there may be a culture of cannabis smoking in rugby league in Northland. There may have been peer pressure brought to bear on an 18 year old. However, it is an aggravating factor that Joshua had been advised of the provisions of the Anti-Doping Code and, in particular, cannabis at the camp on 8 August. While he may not have signed the acknowledgment until 15 August, he knew on 14 August that cannabis was a prohibited substance.
14. In the Tribunal's view, the mitigating factors, some of which are acknowledged by Drug Free Sport, equate to the aggravating factors. The appropriate sanction is for a period of approximately 4 months' suspension. However, it is often necessary to extend the actual period if the violation is committed at the end of a season. This is because a sanction has no effect if it extends over the athlete's off-season. This is largely so in Joshua's case. There will, however, be pre-season games commencing on or about 1 March 2011 and Joshua has been penalised by his inability to compete in other sports in which he would normally compete.
15. In the circumstances, a suspension from 18 November 2010 to 21 March 2011 is considered to be appropriate.

Decision

16. Mr Poasa is, in accordance with rule 14.4 of the Sports Anti-Doping Rules 2010 (the rules), declared ineligible for a period from 18 November 2010 to 21 March 2011.
17. The suspension has cross-sport effect and will apply to any other sport which is bound by the rules. If there is a further infringement, the rules provide that the minimum period of ineligibility will be one year and it may be as high as 4 years.

Publication

18. Ms Bird asked, in view of Joshua's age, whether the sanction could be kept confidential. Under rule 13.3.2 of the rules, this Tribunal is required to publicly report this decision. The request to suppress Joshua's name can not be acceded to.

Dated 4 February 2011



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B J Paterson QC
Chairman