

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
Applicant

AND **TAANI PRESTNEY**
Respondent

AND **NEW ZEALAND RUGBY LEAGUE**
Interested Party

DECISION

Dated 15 December 2011

Hearing: By telephone conference on 9 November 2011

Tribunal: Barry Paterson QC, Chairman
Sir Bruce Robertson
Ron Cheatley

Present: Isaac Hikaka (counsel)
Jayne Kernohan for Drug Free Sport New Zealand
Taani Prestney in person
Allana Prestney (Respondent's mother)

Registrar: Brent Ellis

INTRODUCTION

1. The respondent, Taani Prestney, played in a rugby league match in Wellington on 4 September 2011. At the end of the match he was required to give a urine sample under the provisions of the Sports Anti-Doping Rules 2011 (the **Rules**).
2. The sample when tested at the Australian Sports Drug Tests Laboratory contained 1,3-Dimethylpentylamine (Methylhexanamine). Methylhexanamine is a Specified Substance under the Prohibited List. Mr Prestney waived his right to have the B sample tested.
3. NZ Rugby League made application under the Rules for provisional suspension. This Tribunal provisionally suspended Taani on 30 September 2011.
4. Mr Prestney and his mother provided witness statements, as did Eliza Graham, the Manager of Mr Prestney's team. Ms Graham was out of the country at the time of the hearing but Drug Free Sport had indicated that it did not wish to cross-examine her on her statement which it saw mainly as a character reference.
5. When considering the matter after the hearing, the Tribunal formed the view that it required further evidence from Ms Graham. In accordance with its powers, it requested this further evidence and Ms Graham has provided a witness statement. This further investigation has delayed the decision.

BACKGROUND

6. NZ Rugby League, in support of its provisional suspension application, produced copies of Mr Prestney's registration form signed on 13 August 2011. This discloses that Mr Prestney is 22 years of age and includes a declaration which acknowledges, amongst other matters, that he has read and understands the Sports Anti-Doping Rules.

7. Also produced in support of the provisional suspension application was a copy of NZ Rugby League's Drug Free Sport seminar registration. It was signed by Mr Prestney but is undated.
8. In the doping control form signed by Mr Prestney on 4 September 2011, he acknowledged that he had consumed a dose of the substance Jack3d on 2 September 2011.
9. NZ Rugby League adopted the then Sports Anti-Doping Rules at a board meeting on 29 June 2007. The Rules apply to Mr Prestney.
10. In his notice of defence, Mr Prestney admitted the violation but stated he would participate in the proceeding and make submissions on any sanction or penalty which might be imposed. He admitted taking Jack3d, and stated in that notice:
 - (a) I was not present at the seminar held for the MCZ team at the beginning of season due to work commitments.
 - (b) I was unaware that Jak 3D was a prohibited substance.
 - (c) I do not normally take any form of substance, but my brother left some at home when he moved to Australia 1/9/11, so I decided to just use it.

THE EVIDENCE

11. Taani's witness statement acknowledged taking Jack3d before he went to do some weight training at his mate's place. He said no-one witnessed him taking it as he was the only one home at the time.
12. On 3 September, he travelled from New Plymouth to meet up with his team for training in Palmerston North. He mentioned to some of his team mates that he had taken some of the substance the day before. He was informed by them that it contained a banned substance, something he said he was unaware of at the time. Later in the day, he spoke to the team manager, Eliza Graham, who he said advised him not to take any more as it contained a banned substance.

13. Mr Prestney stated that the Jack3d which he took belonged to his brother who had been taking it for some time as part of his weight training programme at the local gym. The brother flew to Australia on 1 September and gave the Jack3d to Mr Prestney and told him he might as well use it up as the brother could not take it with him. He said his brother only used the substance prior to weight training and he took it for the same reason and that reason only.
14. Mr Prestney was cross-examined at the hearing. He acknowledged that he had looked at the label but did not read the ingredients, nor enquire as to what they may be. His understanding of the effect of Jack3d, received from his brother, was that it gave him more energy to do weights.
15. This was Mr Prestney's first season with his rugby league team. He was adamant that he had not attended a drug free sports seminar.
16. Allana Prestney, Taani's mother, gave corroborating evidence although it did not take the matter any further. She did not believe that her son took Jack3d to enhance his game. To her knowledge, he had not taken any substance before. He was a 21-year old and still lived under her roof.
17. She confirmed that her other son used Jack3d as part of his weight training programme. She also confirmed that Taani had gone to do weights on 2 September 2011. He had been a representative player for many years and she did not believe he needed to enhance his game as he had natural talent and determination to always play well and he did.
18. The statement from Eliza Graham, the team manager of the Mid Central Zone Rugby League Premier Team was that Mr Prestney was reliable, trustworthy and honest. It was her opinion that he did not intend to take Jack3d to enhance his sports performance.

As noted by Mr Hikaka for Drug Free Sport, this is little more than a character reference.

19. There were two reasons for Ms Graham being asked to provide a further statement. First, was Mr Prestney's insistence that he had never attended a drug free seminar as he was engaged at work at the time of the seminar. Ms Graham's evidence was that she had Mr Prestney sign the form saying he attended the presentation which she personally presented to him. She confirmed he did not attend the seminar given to the team. At the presentation, Ms Graham gave him the Athlete Guide 2011 and the hand held Athlete Guide (Drug Free Sport's publications). She informed him that if he was to take any prescription or non-prescription medication, he would have to contact either herself as the team manager or call the 0800 drug free number on the Guide. She stated that at the presentation it was stated that Jack3d was prohibited and this was done because she was aware that players from Taranaki had used this substance previously before coming to zone competition matches.
20. The second reason for requesting evidence from Ms Graham was Mr Prestney's statement that he had told her, before the match, that he had taken Jack3d. Ms Graham's evidence is that she was not aware that he had taken Jack3d before the game in question although he had queried her about the use.

SPECIFIED SUBSTANCE

21. The mandatory penalty for a violation of this type is 2 years' suspension. As Methylhexaneamine is a Specified Substance under the Rules, the suspension period can be reduced if the athlete can establish, on the balance of probabilities, how the substance entered his body and that the taking of the substance was not intended to enhance the athlete's sports performance. He is required to produce corroborating evidence, in addition to his own, which establishes to the comfortable satisfaction of the

Tribunal the absence of an intent to enhance sports performance. If he can satisfy these requirements, the suspension (i.e. the period of ineligibility) may be reduced but the reduction depends upon the degree of fault on the part of the athlete.

DISCUSSION

22. Mr Hikaka for the applicant accepted that there was sufficient evidence to satisfy the Tribunal that the substance entered Mr Prestney's body through him taking Jack3d.
23. In respect of the second element, namely an absence of any intention to enhance Mr Prestney's sports performance, Mr Hikaka submitted that the statement from the coach was insufficient. The Tribunal agrees.
24. There are two matters which are relevant. The first is that Mr Prestney did declare on the doping control form that he had taken Jack3d. This was before he knew the result of the test. The second is that his mother confirms that Mr Prestney's brother used Jack3d to assist in weight training.
25. The Tribunal is satisfied to the required standard that the source of the Jack3d was Mr Prestney's brother who had been using it to assist in weight training. It is likely in these circumstances, and the Tribunal accepts that, Mr Prestney took the substance for the same purpose.
26. The issue is whether taking Jack3d to assist in weight training is an intention to enhance Mr Prestney's sports performance for the purposes of r 14.4 of the Rules. There is a parallel in the case of ***Drug Free Sport New Zealand v Blair Jacobs*** (ST 24/10, 22 June 2011) when this Tribunal determined "by a narrow margin" that the purpose was not to enhance performance but rather focussed on overcoming work tiredness.

27. On a strict interpretation of r 14.4, Mr Prestney's use of Jack3d to give him more energy as a weight lifter was to enhance his sports performance. On a more liberal construction of the rule, the purpose was not to enhance Mr Prestney's performance in the rugby league match to which the Rules applied, but was to improve his ability to lift weights.
28. Like the panel in **Jacobs**, this Tribunal by a very fine margin finds that Mr Prestney has satisfied the second requirement and he did not intend to enhance his sports performance. It notes that athletes who take supplements or substances such as Jack3d for purposes relating to their physical wellbeing or improvement run a very high risk that they will be held to have taken them to enhance their sports performance.
29. It is necessary now to consider Mr Prestney's degree of fault. There is a serious duty on an athlete to ensure that prohibited substances do not enter his body. As Mr Hikaka submitted, there was a high degree of fault in this case. There was a total lack of enquiry, Mr Prestney knew before he took the field that Jack3d was a prohibited substance, yet he took the field; and, from Ms Graham's evidence, it is apparent he was warned of the dangers of Jack3d, notwithstanding his evidence to the contrary.
30. There is conflict between the evidence of Ms Graham and Mr Prestney as to whether Mr Prestney told Ms Graham of the fact before he took the field. Ms Graham in her evidence accepts there was a discussion but she clearly states that she did not know this when Mr Prestney commenced the game.
31. There are mitigating factors, namely Mr Prestney's youth and the fact that he was inexperienced. He is not an elite athlete and would not have had the same exposure to drug education as they do. The Tribunal is of the view that he was rather naïve in what he did but all athletes must be vigilant and where there is any doubt must remove themselves from participation. The fact that

he may not have been aware of the consequences of taking the drug will not usually be relevant to the degree of fault.

32. In the **Jacobs** case, the Tribunal imposed a period of ineligibility of 12 months. In many respects, Mr Prestney's degree of fault is higher than that of Mr Jacobs. However, the mitigating factors mentioned will be taken into account.
33. In the circumstances, it is the Tribunal's view that the appropriate period of ineligibility is 12 months.
34. During the period of ineligibility, Mr Prestney may not participate in sports which are subject to the Rules. Softball, another sport in which Mr Prestney participates, falls within this category. The Tribunal notes that Mr Prestney may have participated in softball matches during his provisional sentence. This in itself may be a further infringement under the Rules, as would be so playing before 30 September 2012.
35. NZ Rugby League should ensure that Mr Prestney undertakes another Drug Free Sport seminar before he plays again.

DECISION

36. Mr Prestney is declared ineligible in accordance with the Rules for a period of 12 months from 30 September 2011.

Dated 15 December 2011



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B J Paterson QC
Chairman