

BETWEEN DRUG FREE SPORT NEW ZEALAND
Applicant

AND WOODS ROGERS
Respondent

AND NEW ZEALAND POWERLIFTING FEDERATION INC.
Interested Party

**DECISION OF TRIBUNAL
Dated 11 October 2010**

Hearing: 28 September 2010 by telephone conference

Attendances: Paul David, counsel for Drug Free Sport New Zealand
 Graeme Steel and Jayne Kernohan, Drug Free Sport New Zealand

Panel: Alan Galbraith QC, Chairman
 Adrienne Greenwood
 Anna Richards

Registrar: Brent Ellis

1. This was an application for the imposition of a period of ineligibility under Rule 3.1 of the Sports Anti-Doping Rules, brought by Drug Free Sport New Zealand, in respect to positive tests to a number of prohibited substances arising from an out of competition test of Mr Rogers on 23 June 2010.
2. The analysis certificate indicates the presence of various prohibited substances:
 - Testosterone:Epitesterone in a ratio of 64:1 (threshold ratio is 4:1);
 - Oxymesterone;
 - Metabolites of Methandienone;
 - Metabolites of Methyltestosterone;
 - Metabolites of Oxymetholone; and
 - 19-norandrosterone (a metabolite of Nandrolone, Norandrostedione or Norandrostediol).
3. New Zealand Powerlifting Federation (NZPF) subsequently applied to the Tribunal to have Mr Rogers provisionally suspended. A hearing was held and the Tribunal made a provisional suspension order commencing on 12 August 2010.
4. Mr Rogers did not participate in either the hearing of the provisional suspension application or the hearing in respect to this application. Nor did Mr Rogers take any steps to file or advise a defence or any matters of mitigation.
5. The Tribunal is satisfied that Mr Rogers was appropriately informed of the date for and the process by which he could participate in the hearing of this application. The Tribunal has had put before it correspondence from Mr Rogers which made it unlikely that Mr Rogers would participate and which, on any reasonable interpretation, is an acknowledgement that he has taken prohibited substances. The thrust of Mr Rogers' position in that correspondence is that it is only by taking such substances that he has any chance of lifting the level of weights to which he aspires.

6. The Tribunal has been provided with an NZPF "Athlete Acknowledgement and Agreement concerning the Sports Anti-Doping Rules 2007 and the Provision of Personal Information" form which was signed by Mr Rogers and dated 27 January 2010.
7. The Tribunal has also been provided with the NZPF "Registration Form for the Year 2010" and "Code of Conduct" forms also signed by Mr Rogers on 27 January 2010.
8. Although Mr Rogers was suspended from competition by the NZPF as a result of an incident at the Oceania Powerlifting Championships in Christchurch in February 2010 the Tribunal is satisfied that this suspension did not affect his membership of the Federation and accordingly the Tribunal has jurisdiction.
9. The extent of the breach, as seen in the number of prohibited substances which the analyst's certificate reveals Mr Rogers tested positive for, is such that the Tribunal would ordinarily have regarded these factors as "aggravating circumstances" under Rule 14.6 of the Sports Anti-Doping Rules. Under this Rule, if aggravated circumstances are present then the Tribunal can consider imposing a term of ineligibility exceeding the usual penalty of two years (up to a maximum of four years' ineligibility).
10. The Tribunal also considers that the aggressive and insulting attitude of Mr Rogers towards various parties, as reflected in his correspondence, is also an "aggravating" factor in a general sense. However, the Tribunal accepts that this may not fall into the type of "aggravating circumstances" contemplated by the Sports Anti-Doping Rules, or indeed the WADA Code, which may be more focussed on conduct associated with the commission of an anti-doping violation rather than subsequent inappropriate conduct, rudeness or lack of remorse. However, Rule 14.6 and its commentary do not limit what can be aggravating circumstances and the commentary expressly states that the examples it lists of aggravating circumstances are not exclusive. In any event, this point does not have to be decided as the extent of the breach, as described above, clearly puts the case in the category of "aggravating circumstances". Mr David for Drug Free Sport agreed that the circumstances of this case fall within the "aggravating circumstances" category.

11. However, Mr David as counsel for Drug Free Sport New Zealand, very properly accepted that, despite the unfortunate language, a reasonable interpretation of Mr Rogers' correspondence was an admission of breach of the Rules.
12. The WADA Code, upon which the Sports Anti-Doping Rules are based, contains an additional provision in Article 10.6, which is the article dealing with aggravating circumstances and is the counterpart to Rule 14.6. The additional provision in Article 10.6 of the WADA Code broadly states that an athlete can avoid the application of the aggravating circumstances rule by admitting the anti-doping rule violation promptly after being confronted with the anti-doping rule violation by an Anti-Doping Organisation. There is no equivalent provision to this in Rule 14.6 of the Sports Anti-Doping Rules. This may be an omission in the Sports Anti-Doping Rules.
13. By analogy to Article 10.6, Mr David accepted on behalf of Drug Free Sport that in the present circumstances, where there has been a prompt and "frank" admission, it would be inappropriate for the Tribunal to apply the discretion to increase the penalty beyond two years' ineligibility as allowed in Rule 14.6 of the Sports Anti-Doping Rules. Drug Free Sport thus did not seek a higher penalty than two years' ineligibility.
14. Given the position of Drug Free Sport, and the prompt and frank admission, the Tribunal considers that, a period of two years' ineligibility is appropriate in the particular circumstances of this case.
15. The Tribunal accepts that jurisdiction is established and that an anti-doping violation has occurred. The Tribunal accordingly imposes a period of ineligibility for a period of two years commencing on 12 August 2010.

DATED this 11th day of October 2010



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A R Galbraith QC
Deputy Chairman of Sports Tribunal