

BETWEEN

NEW ZEALAND RUGBY LEAGUE INC.

Applicant

AND

Vince WHARE

Respondent

**DECISION OF TRIBUNAL
28 NOVEMBER 2006**

Hearing: By teleconference 22 November 2006

Appearances: Vince Whare for himself

Tribunal Members participating: Nicholas Davidson QC (Deputy Chair)
Adrienne Greenwood
Ron Cheatley

Registrar: Brent Ellis

Introduction

1. On 20 August 2006, Vince Whare was tested by Drug Free Sport NZ (“**DFS**”) at Rugby League Park, Christchurch.
2. On 2 October 2006 DFS issued a determination under Sections 16(b) and 18(1) of the New Zealand Sports Drug Agency Act 1994, that the sample taken from Mr Whare established a doping infraction, for cannabinoids – S8 on the Prohibited List of the World Anti-Doping Agency (“**WADA**”).
3. The determination stated that this was Mr Whare’s second infraction for cannabis. Mr Whare first appeared before this Tribunal after a similar determination, the Decision given 7 March 2005, under SDT 14/04. That infraction occurred following a sample taken at the Pacific Rim tournament at Albany on 23 October 2004. On that occasion the Tribunal accepted that there was no suggestion that the use of cannabis was intended to enhance performance, nor would it lead to a danger to other competitors. Mr Whare established the basis upon which the substance entered his system, and that allowed some flexibility in the sanction which applied. Applying the approach of the Tribunal at that time, and which has since developed, he was reprimanded and directed to pay a fine and costs. There was no suspension imposed.

NZ Rugby League Inc.

4. NZ Rugby League Inc. has adopted an Anti-Doping By Law which includes compliance with the WADA Code.

The Hearing

5. A teleconference was convened on 22 November 2006 attended by Mr Whare. He had sent a signed statement confirming that the use of cannabis was not intended to enhance performance. In his words “*regretfully it was taken for recreational use*”, a day or so before competition.
6. At the hearing he confirmed his position and said that the use was associated with some very difficult personal circumstances. He explained these to us in a frank way, and we have no doubt regarding his truthfulness on this score. We can understand those circumstances which led to his use of cannabis, taken for relief during some trying days in his life. He said that he is not an habitual user, notwithstanding this being a second violation.

7. He said that he has "*never been fitter in his life*" and at 28 years of age has been performing at a high level in the sport, selected for the NZ Residents team this year. He has been a rugby league player since the age of four years and has played many games for his province and in the Barter Card Cup. Rugby league means a great deal to him and he will be much affected by a period of ineligibility.
8. He was contrite and he did not attempt to offer any further excuse. He has already felt the adverse response of some involved in his sport, even before this Decision.

Disposition

9. Recreational use allows the Tribunal scope in the sanction imposed for a first violation. A second violation for cannabis use carries a life time suspension, or where the athlete can establish that the use was not intended to enhance sports performance, a mandatory sanction of two years' ineligibility, unless the athlete can establish no fault or negligence, or no significant fault or negligence under Article 10.5.
10. We have no evidence before us that cannabis may enhance performance in rugby league. We do not need to pursue that further in this case because we are satisfied that Mr Whare did not intend to enhance his performance. If anything it may have adversely affected his performance. The use constituted no danger to other competitors. Mr Whare did not attempt to invoke Article 10.5. This conclusion directs a two year period of ineligibility.

Commencement of sanction

11. Article 10.8 of the WADA Code provides that the period of ineligibility applies from the date of the decision but it may be from the date ineligibility is accepted or otherwise imposed. Mr Whare was stood down on 5 October 2006 and the period of two years ineligibility is thus imposed from that time. Article 10.8 provides for a period of provisional suspension being credited against the total period of ineligibility to be served.

Impact of sanction

12. Under Article 10.9 of the WADA Code no person who has been declared ineligible may during the period of ineligibility participate in any capacity in competition or activity (as defined), other than authorised anti-doping courses. Further, the WADA Code requires mutual recognition within sports which are signatories to the Code. The effects will thus be felt beyond the boundaries of rugby league into his other sports of touch and indoor netball.

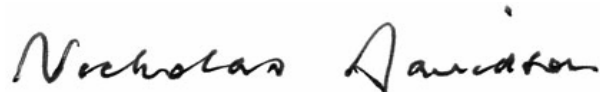
13. The Tribunal recognised the impact of ineligibility and suggested that he may wish to participate in drug education within sport, something to which he readily acceded. That is up to him. The Tribunal endorses the lesson to be learned from someone who will suffer severely from committing anti-doping violations.

Decision

14. In accordance with Article 10.3 of the WADA Code, as adopted by NZ Rugby League Inc., Mr Whare is ineligible to participate in rugby league for a period of 2 years from 5 October 2006.

Appeal Rights

15. Mr Whare has a right of appeal against this decision. The Tribunal notes his ready acceptance of the violation and that he did not contest the sanction indicated to him at the hearing.



For and on behalf of the Tribunal

Nicholas Davidson QC

Presiding Member

Ron Cheatley

Adrienne Greenwood

28 November 2006