

Background

1. On 13 May 2019, a powerlifter Jason Anderson was tested out of competition at The Platform Gym in Palmerston North. The test result was positive for tamoxifen, which is a specified substance prohibited at all times. On the doping control form, Mr Anderson listed paracetamol, Viralex, MusclePharm pre-workout; and 2MA tablets that he had taken within the last seven days.

Proceedings

2. On 10 July 2019, Drug Free Sport New Zealand (DFSNZ) filed an Application for the Provisional Suspension of Mr Anderson. On 17 July 2019, a telephone conference was convened by the Tribunal Chairman and Mr Anderson advised that he did not oppose the application and waived his right to request a "B" sample analysis. Mr Anderson was provisionally suspended that day, and timetabling orders were made.
3. DFSNZ filed its Application for Anti-Doping Rule Violation Proceedings on 31 July 2019. It was accompanied with the written statements of two witnesses.
4. Joint memoranda were received on 13 August, 11 September and 18 October 2019 which variously sought extensions for Mr Anderson to file his defence and to obtain expert evidence.
5. Mr Anderson filed his defence on 18 October 2019, where he admitted the violation but expressed the desire to participate in the proceeding by making submissions on any sanction to be imposed. That same day he filed submissions and written statements from three witnesses.
6. Under SADR 10.2 the sanction is a two year period of ineligibility for a first violation where the violation involves a Specified Substance and DFSNZ is unable to establish intent. On 25 November 2019, the parties filed a joint memorandum as to sanction that submitted that a period of two years of ineligibility was appropriate, backdated to the date of the test having regard to Mr Anderson's timely admission of the violation. A copy of that memorandum is annexed.
7. The Tribunal having considered all the available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes the orders proposed. The prohibited substance was not taken to enhance performance but in a misguided

response to a long-term medical condition and stress. The circumstances here are similar to those in previous cases determined by the Tribunal.

Order

8. Mr Anderson's suspension will be for a period of two years backdated to commence from 13 May 2019 (the date of the test). This means that Mr Anderson is ineligible to participate in competitive sport until 13 May 2021.

Dated: 27 November 2019



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Sir Bruce Robertson
Chairman

New Zealand Sports Tribunal

ST08/19

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

JASON ANDERSON

Respondent

JOINT MEMORANDUM ON SANCTION

25 November 2019

LeeSalmonLong

Barristers and Solicitors

LEVEL 16 VERO CENTRE 48 SHORTLAND STREET

PO BOX 2026 SHORTLAND STREET AUCKLAND NEW ZEALAND

TELEPHONE 64 9 912 7100 FACSIMILE 64 9 912 7109 :

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 counsel for DFSNZ and counsel for Mr Anderson in advance of the teleconference scheduled for Friday 22 November 2019.
2. The parties have now had the opportunity to confer in relation to the appropriate sanction for Mr Anderson for breach of r 2.1 of the Sports Anti-Doping Rules 2019 (**SADRs**).
3. In light of the statements filed in this proceeding and the approach taken in similar cases before the Tribunal, the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose a period of ineligibility of two years on Mr Anderson for breach of r 2.1 of the SADRs, backdated to the date of the sample collection.

Background

4. Mr Anderson is a member of the New Zealand Powerlifting Federation, which has adopted the SADRs. On 13 May 2019, DFSNZ conducted an out of competition test on Mr Anderson. Mr Anderson's A sample tested positive for the presence of tamoxifen, a specified substance under s 4 of the WADA Prohibited list (hormones and metabolic modulators). It is prohibited in and out of competition.
5. As a result, DFSNZ filed an application for provisional suspension on 10 July 2019. Mr Anderson was provisionally suspended on 17 July 2019. He waived his right to have his "B" sample analysed.
6. DFSNZ filed the ADRV proceedings on 31 July 2019 alleging a violation of r 2.1 of the SADRs (presence of a prohibited substance in an athlete's sample). On 18 October 2019, Mr Anderson filed his form two, admitting the violation, but seeking to be heard on sanction.

Period of ineligibility

7. Under r 10.2.1, the period of ineligibility for a breach of r 2.1 involving a specified substance is two years, unless DFSNZ can establish that the violation was intentional. Rule 10.2.3 provides that "intentional" requires an athlete to engage in conduct that they knew constituted an ADRV or knew that there was a significant risk that the conduct might constitute or result in an ADRV and manifestly disregarded the risk.
8. Mr Anderson's evidence is that:
 - (a) He has struggled with an undiagnosed medical condition at various stages in his life;

- (b) In early 2019, he was particularly struggling with this medical condition. He spoke to a friend, who suggested that he used tamoxifen.
 - (c) He did not consider that tamoxifen was a prohibited substance, but took it because he was concerned about his health. He googled tamoxifen at the time, and confirmed that it would help with his medical condition. He stopped taking tamoxifen after approximately 10-14 days because of severe side effects.
- 9. Mr Anderson has subsequently received a formal diagnosis for his medical condition by his GP.
 - 10. In the circumstances, the parties consider that a period of two years ineligibility is appropriate.

Backdating

- 11. Rule 10.11.2 allows the period of ineligibility to be backdated based on timely admission where the athlete promptly admits the violation after being confronted by DFSNZ. Mr Anderson waived his right to have his B sample analysed, indicating that the violation was not disputed, and subsequently formally admitted the violation. The parties agree that the Tribunal could properly find that there was a timely admission in this case.
- 12. For the reasons above the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose a period of two years ineligibility on Mr Anderson, backdated to the date of sample collection, being 13 May 2019, for breach of r 2.1 of the SADR.
- 13. If the Tribunal considers the agreed position is appropriate, the parties respectfully submit that the matter can be dealt with on the papers and the teleconference adjourned. However, counsel are available to attend a teleconference should the Tribunal wish to hear from Counsel.

Dated 25 November 2019



Harriet Bush
Counsel for DFSNZ



David Fraundorfer / Pip Allan
Counsel for Mr Anderson