

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

 Applicant

AND **KAEL MCENTEER**

 Respondent

AND **NEW ZEALAND RUGBY LEAGUE**

 Interested Party

**DECISION OF TRIBUNAL
11 OCTOBER 2018**

Tribunal Sir Bruce Robertson (Chairman)
 Alan Galbraith QC
 Dr James Farmer QC

Participants Adam McDonald, counsel for Applicant
 Hayden Tapper, Drug Free Sport NZ
 Kael McEnteer, Respondent
 Sam Fellows, counsel for Respondent
 Kevin Bailey, for NZ Rugby League

Registrar Neela Clinton

Background

1. This is the Tribunal's eighth case arising from Medsafe's *NZ Clenbuterol* investigation. Medsafe passed information from the website's database to Drug Free Sport New Zealand (DFSNZ), which investigated the names to see who were registered as members of New Zealand sports organisations and therefore subject to the Sports Anti-Doping Rules (SADR).
2. DFSNZ confirmed a list of customers who were bound by SADR and details of their internet purchases of clenbuterol and other anabolic steroids from *NZ Clenbuterol*. In October 2017 DFSNZ commenced its first batch of proceedings against those who had purchased prohibited substances online.

Proceedings

3. Kael McEnteer, the respondent, is an athlete identified in the Medsafe investigation. DFSNZ filed proceedings against Mr McEnteer on 7 September 2018 alleging he had breached 2014 SADR 3.2 and 3.6 by his online purchase of 40ml of clenbuterol on 20 November 2014. At the time of the alleged breach Mr McEnteer played rugby league for the Victoria Hunters.
4. Mr McEnteer was provisionally suspended without opposition on 14 September 2018. On 25 September he filed his Form 2 admitting the violation and said he purchased the clenbuterol in the off-season because he thought it was a weight-loss supplement. On 10 October counsel filed a joint memorandum proposing an appropriate sanction. A copy of the memorandum is annexed.
5. The Tribunal having considered all available material is satisfied it is able to accept the proposed sanction without the need for a hearing and makes the orders proposed.

Order

6. Mr McEnteer's suspension will be for a period of two years backdated by 12 months to commence from 14 September 2017.

Dated: 11 October 2018



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Sir Bruce Robertson
Chairman

ANNEXURE:

Sports Tribunal of New Zealand

ST 13/18

between

DRUG FREE SPORT NEW ZEALAND

Applicant

and

KAEL MCENTEER

Respondent

JOINT MEMORANDUM REGARDING SANCTION

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JOINT MEMORANDUM REGARDING SANCTION

MAY IT PLEASE THE TRIBUNAL

1. The parties have had the opportunity to confer and have reached an agreed position to present to the Tribunal.
2. The parties have considered the statements filed in this matter in light of other recent Tribunal cases involving athletes who purchased substances from NZ Clenbuterol. The parties jointly submit that the appropriate sanction for Mr McEnteer for breach of Sports Anti-Doping Rules 2014 (**SADR**) 3.2 and 3.6 is a period of **two years ineligibility backdated by 12 months from the date of provisional suspension**, being 14 September 2018.

Background

3. Drug Free Sport New Zealand (**DFSNZ**) notified Mr McEnteer by a letter dated 24 August 2018 that it alleged Anti-Doping Rule Violation proceedings against him. DFSNZ alleged that he had breached rr3.2 (use or attempted use of a prohibited substance) and 3.6 (possession of a prohibited substance) of the SADR by purchasing 40ml of clenbuterol on or about 20 November 2014 from a website trading as NZ Clenbuterol; and using or attempting to use it at various times from that date.
4. Mr McEnteer admitted the violations in a letter to DFSNZ, dated 30 August 2018.
5. DFSNZ filed Anti-Doping Rule Violation proceedings against Mr McEnteer on 7 September 2018. He was provisionally suspended on 14 September 2018. Mr McEnteer subsequently filed a Form 2 admitting the violations.
6. Clenbuterol is prohibited at all times as an S1 anabolic agent under the Prohibited List 2014. It is a non-specified substance, prohibited both in-competition and out-of-competition.
7. Under r14.2 of the SADR, the period of ineligibility for breach of rr3.2 and 3.6 for a violation involving a non-specified substance is two years for a first violation.

No change to period of ineligibility


8. Mr McEnteer filed a statement in which he states that he:
 - (a) Purchased clenbuterol to lose excess weight in the off-season for aesthetic reasons and not to enhance sports performance.
 - (b) Did not know that clenbuterol was prohibited.
 - (c) Did not conduct proper research prior to ordering the substance.
9. Mr McEnteer agrees that in light of his obligations under the SADRs and lack of caution in ordering the substance, his degree of fault was significant in relation to the Anti-Doping Rule Violations.

10. In this case, the parties agree that there is no evidence that warrants reducing the period of ineligibility under r14.5, or increasing the period of ineligibility under r14.6.


Backdating

11. The starting point under the SADR 2014 is that the period of ineligibility should start from the date of the final hearing. Any period of provisional suspension shall be credited against the total period of ineligibility served.
12. Rule 14.9.1 gives the Tribunal a discretion to start the period of ineligibility at an earlier date where there have been "substantial delays in the hearing process or other aspects of Doping Control not attributable to the athlete". In decisions involving the Medsafe Clenbuterol investigation, including *DFSNZ v Lachlan Frear and DFSNZ v Ware*, the Tribunal has considered that the time it had taken DFSNZ to advance the investigation has resulted in substantial delay for which the athletes were entitled to some allowance.
13. Rule 14.9.2 also allows the period of ineligibility to be started earlier where the athlete promptly admits the violation after being confronted with the Anti-Doping Rule Violation by DFSNZ. As noted, Mr McEnteer wrote to DFSNZ admitting the violations four working days after being confronted with them. The parties agree that the Tribunal could properly find that this amounts to a timely admission by Mr McEnteer.
14. A combination of delay and a timely admission have led the Sports Tribunal in cases involving NZ Clenbuterol to backdate the period of ineligibility by six to twelve months.
15. For these reasons the parties respectfully submit that it would be open to, and appropriate for, the Tribunal to impose upon Mr McEnteer a period of two years ineligibility backdated by 12 months from the date of preliminary suspension, being 14 September 2018, for his breaches of rr3.2 and 3.6 of the SADRs.

dated: 10 September 2018



Adam McDonald Counsel for the Applicant



Sam Fellows Counsel for the Respondent