

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

A N D ADAM STEWART

Respondent

AND BIKE NZ INCORPORATED

Interested Party

**DECISION ON JURISDICTION TO APPLY RULE 14.8 OF THE SPORTS
ANTI-DOPING RULES (2010)**

Dated 6 December 2010

Counsel: Paul David for Applicant
Garth Gallaway and Ben Walker for Respondent
Maria Clarke for Interested Party

Panel: Barry Paterson QC, Chairman
Nick Davidson QC
Alan Galbraith QC

Registrar: Brent Ellis

1. By a decision dated 8 September 2010, this Tribunal imposed on Adam Stewart a period of two years' ineligibility commencing from 7 September 2010. That sanction was imposed under the provisions of rule 14.2 of the Sports Anti-Doping Rules (2010) (the Rules).
2. The decision of 8 September 2010 was issued as a matter of urgency and the parties did not have time to make submissions on the possible effect of rule 14.8 of the Rules. Its decision noted that a further decision on this rule would be made in due course.
3. Since 8 September 2010, the term of one member of the Panel which considered that decision has expired. Pursuant to the general powers in the Tribunal's Rules, it was determined that a new panel would consider the application of rule 14.8. As jurisdictional issues have arisen, this panel has been appointed to determine the jurisdictional issue. A new panel will then consider the application of rule 14.8 if this panel determines that the Tribunal has jurisdiction.
4. Bike NZ takes the position that it is not for this Tribunal to determine which of Adam Stewart's results are to be disqualified as that is a matter for Union Cycliste Internationale (UCI) to determine. The issue therefore is whether this Tribunal or UCI should consider the application of rule 14.8.
5. Rule 14.8 (which is in identical terms of article 10.8 of the World Anti-Doping Code) states:

Disqualification of Results in Competitions Subsequent to Sample Collection or Commission of an Anti-Doping Rule Violation

In addition to the automatic *Disqualification* of the results in the *Competition* which produced the positive Sample under Rule 14.1.2 or 14.1 (Automatic *Disqualification* of Individual Results), all other competitive results obtained from the date a positive Sample was collected (whether *In-Competition* or *Out-of-Competition*), or other *Anti-Doping Rule Violation* occurred, through the commencement of any *Provisional Suspension* or *Ineligibility* period, shall, unless fairness requires otherwise, be *Disqualified* with all of the resulting *Consequences* including forfeiture of any medals, points and prizes.

Bike NZ's Submissions

6. Bike NZ submits that for two reasons that it is UCI that considers this matter. Its first reason is that article 313 of the UCI Regulations relating to anti-doping is in similar terms to rule 14.8, the only difference being that the words "with all of the resulting *Consequences* including forfeiture of any medals, points and prizes" do not appear. The absence of the "Consequences" reference (with the resulting absence of any reference to "the athlete's results") in the UCI Regulations means that the results to which the disqualification applies must be a matter for the UCI to determine.

7. The reference to the *Athlete's* results is that the Rules define *Consequences* in the following terms:

Consequences of Anti-Doping Rules Violations or Consequences: An Athlete's or other *Person's* violation of an anti-doping rule may result in one or more of the following: (a) *Disqualification* means the *Athlete's* results in a particular *Competition* or *Event* are invalidated, with all resulting consequences including forfeiture of any medals, points and prizes; (b) *Ineligibility* means the *Athlete* or other *Person* is barred for a specified period of time from participating in any *Competition* or other activity or funding as provided in Rule 14.9 (Status During *Ineligibility*); and (c) *Provisional Suspension* means the *Athlete* or other *Person* is barred temporarily from participating in any *Competition* prior to the final decision at a hearing conducted under Rule 12.5.

8. Secondly, Bike NZ submits that the scope of the *Athlete's* results, in the case of a cyclist such as Adam Stewart, require a detailed analysis of the events in which he competed and the manner in which the results, medals, placings, points and rankings are determined.

9. Ms Clarke for Bike NZ submits that in cycling an Athlete's results may be individual results, team results or team results in which individual points are also obtained. Thus, other cyclists may be affected by the application of the rule and this would require those other cyclists being afforded the opportunity to be heard.

Discussion

10. On the face of the Rules, this Tribunal has jurisdiction. The Board of Bike NZ resolved that the Sports Anti-Doping Rules made under the provisions of the Sports Anti-Doping Act 2006 and as amended from time to time by Drug Free Sport are Bike NZ's anti-doping policy.
11. Rule 13.1.1 of the Rules provides that this Tribunal is the body responsible for hearing and determining anti-doping rule violations. It determines whether a violation has been committed and, if so, the consequences of a violation on the Athlete or any other person who has committed the violation.
12. This matter has come properly before the Tribunal in accordance with its Rules and the Tribunal has imposed the period of *Ineligibility* in accordance with an application made in accordance with the Rules. Rule 14.8 provides for additional sanctions over and above the period of *Ineligibility* imposed under rule 14.2. It provides for all other competitive results obtained from the date that the *Anti-Doping Rule Violation* occurred, through to the commencement of the *Ineligibility* period, unless fairness requires otherwise, be *Disqualified* with the resulting *Consequences*.
13. There is no provision in rule 14.8 which suggests that an international organisation and not the Tribunal hearing the *Anti-Doping Rule Violation* occurred, should impose these additional sanctions unless fairness requires otherwise.
14. The Tribunal does not accept that the difference between article 313 of the UCI Regulations and rule 14.8 gives jurisdiction to the UCI. Bike NZ has accepted the Rules as its anti-doping policy. This Tribunal is charged with administering those Rules. Adam Stewart, as a member of Bike NZ, is bound by its own anti-doping rules and the Rules. The absence of the *Consequences* provision from article 313 is not relevant to the obligation of this Tribunal to apply rule 14.8.
15. The second matter relied upon by Bike NZ does, not, in the Tribunal's view, alter the situation. There appears to be a concern in Bike NZ's

submission that applying rule 14.8 may affect team results. This, in the Tribunal's view, is not the case. The Tribunal, under rule 14.2, applies a period of *Ineligibility* against the Athlete. The powers under rule 14.8 when construed in context and against the definition of *Consequences* refer to the results of the Athlete who has committed the violation. The Rule does not refer to team results. Rule 14.12 does refer to team results but that Rule does not apply where only one member of the team commits a violation.

16. Bike NZ gave several examples of the difficulties in applying rule 14.8 in a cycling context. If the results are a team result and not an individual result then rule 14.8 does not, in the Tribunal's view, apply to the team result.
17. The position may be more difficult in a case where the rider rides individually in a race but the result is added to the results of other riders in the team to obtain a team result. However, in view of the provisions of rule 14.12, the Tribunal considers that there is no concern in this case that team results could be affected. It is therefore not necessary to give other members of the teams in which Adam Stewart participated the right to be heard.
18. It is accepted that there is a practical problem in ascertaining which results are affected. This is so because Adam Stewart in the relevant period participated in domestic, national and international events. The practical problem does not go to the Tribunal's jurisdiction.
19. If, after considering any submissions which may be made by Adam Stewart, the panel considering the application of rule 14.8 determines to disqualify Adam Stewart's individual results, it will make an order accordingly. All results from the starting period determined by the Tribunal would then be invalidated and he would be required to forfeit medals, points and prizes from those events. It would be for Bike NZ and UCI to implement such an order. The Tribunal's role is not to enforce that particular provision.

Decision

20. The Tribunal determines that it does have jurisdiction to consider the consequences under rule 14.8.

Further Submissions

21. Mr Stewart is given until 17 December 2010 to make written submissions on the application of rule 14.8 to Mr Stewart's results before the period of *Ineligibility* began. On receipt of these submissions a conference will be convened to make hearing arrangements.

Dated 6 December 2010



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B J Paterson QC
Chairman