

BETWEEN

DRUG FREE SPORT NEW ZEALAND

Applicant

AND

NAT CONNELL

Respondent

**REASONS FOR DECISION OF TRIBUNAL
DATED 11th JUNE 2008**

**(Teleconference)
Hearing:**

Friday 16 May 2008

Present:

Nat Connell (Athlete)

Jahlal Ibrahim (Representative)

Graeme Steel (for Drug Free Sport)

Mark Rogers (Otago Nuggets)

Grant Chapman (Basketball New Zealand)

Tribunal Members:

Nicholas Davidson QC (Deputy Chairperson)

Ron Cheatley

Carol Quirk

Registrar:

Brent Ellis

Introduction

The respondent Nat Connell was the subject of an application for an anti-doping violation proceeding by Drug Free Sport NZ, after he was tested at the NZ Basketball League match between the Otago Nuggets and the Taranaki Dynamos on 28 March 2008.

A breach of the Sports Anti-Doping Rules (2007) Rule 3.1 was alleged based on the presence of a Prohibited Substance, cannabis, in his system.

The athlete did not contest the application, and he waived his right to analysis of the "B" sample.

He was the subject of a Provisional Suspension dated 24 April 2008 on the application of Basketball NZ (BBNZ). At a hearing on Friday 16 May 2008 he admitted the violation which resulted in a decision that he be suspended from all participation in basketball, with cross-code effect, up to and including Sunday 1 June 2008. This had the effect of a 6 week suspension and was recorded in the Advice of Decision of the Tribunal dated Tuesday 20 May 2008.

The Provisional Suspension

BBNZ sought provisional suspension referred to, pursuant to the provisions of Rule 12 of the Sports Anti-Doping Rules 2007. A teleconference was convened for this purpose, but the athlete chose not to attend. He had the right to apply to set aside the provisional suspension on an urgent basis, but that was not sought, and the Tribunal proceeded to a hearing on Friday 16 May 2008.

Plea

Mr Connell admitted the violation.

The Hearing

The hearing proceeded on the basis of a violation being admitted, for the presence of a metabolite of cannabis, at a level of 308 ng/mL +/- 30.8 ng/mL.

At this hearing, as with that involving **Drug Free Sport New Zealand v Steven Robinson** (ST 05/08), the Tribunal considered a letter from BBNZ, which described its commitment to the philosophies of Drug Free Sport NZ, and referred to other transgressions within basketball, involving cannabis, including the cases of **Basketball New Zealand Inc v Kareem Johnson** (ST 16/07, decision 6 December 2007) and **Basketball New Zealand Inc v Clifton Bush Junior** (ST

15/07, decision 10 October 2007). These were given some publicity, with the comment *"that such did not seem to have had any positive effect on the wider basketball community with the same problem arising within 12 months of the most recent decision by the Sports Tribunal NZ"*.

Essentially BBNZ sought that any sanction has *"positive educational and restorative influence on the athlete as well as being appropriately punitive"*. It sought a *"clear indication"* to the basketball community that transgressions will not be tolerated.

The explanation offered by Mr Connell, and supported by succinct submissions from his representative Mr Ibrahim, was that BBNZ was making too much of the previous transgressions, and referred to **Basketball New Zealand Inc v Mark Dickel** (SDT 18/06, decision released 14 August 2006), where a lesser sanction had been imposed, and sought *"consistency"* in the decision in this case. In **Dickel** the International Federation imposed a suspension by an independent process.

By the time of the hearing, Mr Connell had missed three games, and had thus lost his remuneration as a professional basketballer.

He referred to his having been tested on several occasions previously, without infringement. This was confirmed by reference to his having two out of competition tests in 2004 and 2007.

He has played 8 seasons in the National Basketball League, approximately some 100 games, and represented NZ.

The level of cannabis was described as *"high"* by Mr Steel for Drug Free Sport. The admitted use of cannabis occurred in the week leading up to competition, some 3 days prior to a game, and was explained as being taken for recreational purposes, with friends. The necessary evidence relevant to the level of cannabis to test Mr Connell's explanation is not yet available to the Tribunal, and the Tribunal must proceed on the basis of his explanation, thus constituting admitted use during the competition season, only a few days before a match, by an experienced athlete.

Mr Rogers for the Otago Nuggets acknowledged the need for role models, and to a degree supported the submission by Mr Ibrahim as to proportionality of penalty. He said that on his enquiries only 1.2% of tests were positive. He said that Mr Connell was a good ambassador for the game, and that the formal letter from

BBNZ was supported in principle, but the punishment by the provisional suspension, was enough together with adverse publicity, plea, and loss of income. Suspension impacted harshly on the team.

Discussion

The Tribunal accepts that Mr Connell did not smoke cannabis for performance enhancing purposes, and the lesser sanctions under Rule 14.3 of the Sports Anti-Doping Rules (2007) are available in principle. It refers to the decision in **New Zealand Rugby League Inc v Timoti Broughton** (ST 14/07, decision 20 December 2007), which addressed earlier decisions, and referred to a period of ineligibility of between 1 and 2 months being appropriate for cannabis violation. Since then the Tribunal has given a decision in the case of **Drug Free Sport New Zealand v Ted Hunia** (ST 03/08, decision 21 May 2008), and applied these principles emerging from the earlier decisions, when imposing a period of 6 weeks' suspension for use of cannabis the night before a National Championship.

The Tribunal saw no reason to depart from these issues of principle, and while bringing to account the provisional suspension, the Tribunal considers that the guidelines it has established should apply. There are similarities with **Hunia**, with the experience of the athlete, and the consumption of cannabis close to a competition game.

The Tribunal expressly does not bring to account the level of cannabis to contest the evidence and submission for Mr Connell, that it was used recreationally 3 days before competition.

Mr Connell is a professional athlete who was fully aware of his obligations.

While it has addressed the question of proportionality, it has established guidelines to sanction as set out above, and allowing for provisional suspension, the admitted breach, and the recognition of having let himself and his sport down, a 6 week suspension was imposed up to and including Sunday 1 June 2008. This has cross-code effect.

The athlete was reminded of the provision for suspension for two years for a second violation.

Comment

The Tribunal has made comment in **Robinson** which it repeats here.


In this case and that of **Robinson**, the Tribunal has been informed of what were described as levels of cannabis well in excess of that qualifying to constitute a violation. Without further evidence as to what should be taken from these levels, the Tribunal has drawn no further inference. It is likely that the Tribunal will seek assistance from Drug Free Sport where there are high levels of Prohibited Substances found, in particular cannabis, in order to test the explanation given as to the timing of, degree of, and impact of consumption. This may extend to issues of credibility, and may also bear on the extent to which the athlete is affected, if at all, by the consumption. These factors have had no bearing in this case nor that of Robinson, but are referred to because the Tribunal will need to understand the relevance of high level samples in the future.

Further, the submission that the sanction should reduce given the effect of suspension by financial penalty for professional athletes, finds little favour with the Tribunal. A two-tier system is hard to administer fairly. Athletes must know their obligations and consequences. A professional athlete has all the more reason to comply with the Code. All athletes must know their obligations and consequences. Rule 3.1.1. of the Sports Anti-Doping Rules (2007) states "*it is the athlete's personal duty to ensure that no prohibited substance enters his or her body. Athlete's are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily specimens*".

Formal decision

Connell was suspended from participation in any sport which is a signatory to the World Anti-Doping Code (WADA Code), up to and including Sunday 1 June 2008, with Cross-Code effect. He is advised that if he further infringes the minimum period of ineligibility is 2 years.

Dated this 11th day of June 2008



Nicholas Davidson QC
Deputy Chairperson (for the Tribunal)