BEFORE THE SPORTS TRIBUNAL OF NEW ZEALAND

ST 13/07

Anti-Doping Rule violation proceedings

BETWEEN	**NEW ZEALAND RUGBY LEAGUE INCORPORATED**
	Applicant
A N D	**JACOB CROOT**
	Defendant
TRIBUNAL	Tim Castle (Presiding Member) Adrienne Greenwood Carol Quirk
Hearing:	14 September 2007 at Wellington
In Attendance:	Kevin Bailey on behalf of New Zealand Rugby League Inc Jacob Croot; and David Croot Counsel: Gary Turkington representing the defendant
Registrar:	Brent Ellis
Date of Decision:	14 September 2007

REASONS FOR DECISION OF TRIBUNAL
Dated: 25 September 2007

Introduction

1. Following an urgent hearing the Tribunal determined on 14 September 2007 that Jacob Croot having committed an Anti-Doping Rule violation in relation to cannabis on 30 June 2007 should be ineligible to play rugby league (or for that matter participate in other sport committed to the Anti-Doping Code of the World Anti-Doping Agency (WADA)) for a period of 31 days to run from 28 August 2007 up to and including 27 September 2007. That period of ineligibility extended to Jacob Croot acting as an official or coach or

participating in training, indeed participating in any way or capacity in any sport which is governed by the WADA Code.

2. In the decision of the Tribunal dated 14 September 2007 the Tribunal recorded that it would provide full reasons for the decision as soon as possible. These are those reasons.

3. On 10 September 2007, the Tribunal received an application under its Rules from the New Zealand Rugby League Incorporated (NZRL) alleging that the Board of Drug Free Sport New Zealand (DFS) had determined that on 30 June 2007, the defendant returned a urine sample which tested positive for cannabis, a banned substance under the Anti-Doping Rules of NZRL.

4. The notice of determination of Drug Free Sport New Zealand (DFS) under s.16B and 18(1) of the New Zealand Sports Drug Agency Act 1994 is dated 23 August 2007 and records the determination by the Board of DFS that a doping infraction had been committed by Jacob Croot described as an infraction of name and class, cannabinoids – Class S8 cannabinoids. Because the alleged violation in this case occurred prior to 1 July 2007, the application requires to be dealt with under the May 2003 Rules of the Tribunal.

5. The defendant is a member of the Central Falcons rugby league team which played against the Auckland Lions at the Mt Smart Stadium in Auckland on 30 June 2007 – the day the defendant provided the sample. On 3 September 2007, the defendant was notified of the determination of DFS and, under the Rules of NZRL, was notified that he was provisionally suspended from 28 August 2007 until this Tribunal made its determination in respect of the application.

6. The defendant sought that the Tribunal urgently determine the application by NZRL in the hope that he may have the opportunity to play for the Central Zone Under 18 rugby league representative team against the Northern Zone in Taupo on Sunday, 16 September 2007. It was said that that match will form a basis for trialling for the New Zealand Under 18 rugby league team.

7. Mr Kevin Bailey, for NZRL, the defendant and his father, David Croot, together with Mr Gary Turkington, counsel representing the defendant, participated in a pre-hearing telephone conference on 14 September 2007.

After hearing from the parties, and in particular acknowledging the defendant's request that the Tribunal proceed to deal with the substantive application under urgency, the Tribunal invited the parties to agree to dispense with the formalities under the Tribunal's Rules and consider agreeing that the matter be heard immediately. All parties agreed that the application could proceed to be substantively determined at the hearing by teleconference.

8. At the hearing (as indeed in preliminary documentation filed by the defendant), he admitted the determination that he had committed a doping infraction; that the prohibited substance was cannabis; and that cannabis is a prohibited substance by the World Anti-Doping Code (WADA). The defendant accepted the jurisdiction of the Tribunal to determine penalty.

A preliminary matter

9. A preliminary matter arose in this case which was the subject of a Minute of the Presiding Member dated 14 September 2007 – issued earlier in the morning of the day of the proposed pre-hearing teleconference which was then set to commence at 1pm (when it did commence). The Minute of the Presiding Member is here set out in full:

> "1. This is an application against the defendant, a young rugby league player, which is to be considered at a preliminary teleconference hearing at 1pm today. The matter is the subject of a request from the defendant that the substantive application be heard urgently.
>
> 2. The urine sample was collected from the athlete by Drug Free Sport on 30 June 2007. Drug Free Sport issued its determination on 23 August 2007 that the defendant had committed a doping infraction and that the prohibited substance was cannabis.
>
> 3. The defendant accepts that cannabis is a prohibited substance by the World Anti-Doping Code (WADA). The defendant does not challenge the determination but wishes to be heard on penalty.
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> 4. In submissions received yesterday from Mr Gary Turkington, counsel for the defendant, it is contended that the unknowing and innocent ingestion by the defendant of a marijuana or cannabis cake two weeks before the test is responsible for the presence of cannaboids detected in the defendant's urine sample. The defendant's counsel's submissions state at para.13:

> *"On Friday 15 June Mr Croot and a group of friends were drinking at his ex-girlfriend's house in Palmerston North and left to go to another party around the corner in the same city. The address is unknown. ... During the course of the party he was offered a piece of cake and it was not until later that he realised the cake was laced with cannabis. He had no grounds to suspect the cake was laced. Nobody mentioned it. Nor did he regard that type of food as anything other than what might be eaten as a nibble during the course of the evening. He felt the effects a short time later. There were no witnesses despite enquiry. It is a fact that cannabis despite the infraction not being detected until just over a fortnight later, may remain in the blood for at least that period even though the side effects diminish within hours. See Web4Health attached 1.*

5. The downloaded and printed article – Web4Health – referred to by counsel for the defendant states, inter alia:

> *"The cannabis plant contains more than 400 chemical substances ... These substances are called cannabinoids. The substance that is most responsible for the physical and psychic effects of cannabis is THC, the abbreviation for delta-9-hydrocannabinol ... The body absorbs 10-25% of the THC when it is inhaled and only 6% when it is eaten. ... It takes about 4-6 weeks before THC is undetectable in the blood. On the other hand, the psychoactive effects are gone after a couple of hours. THC or decomposition products can be detected in urine for a couple of days after the last use. In the urine of chronic users it can even be detected for a couple of weeks after the last use."*

6. It is important to record that the sample tested in this case was a urine sample, not a blood sample. The statement in the material provided by counsel for the defendant which has attracted attention is:

> *"In the urine of chronic users it can even be detected for a couple of weeks after the last use."*

7. In the interests of the defendant, this statement requires further examination.

8. The Rules (promulgated May 2003) of the Tribunal (Rule 9.1.2(c)), applying to this case, allow it to undertake investigations of its own. Inquiry has been made of Drug Free Sport about the circumstances of the test and the findings in this case. The Tribunal has been advised that the Sydney IOC-accredited laboratory which undertook the test analysis in this case has reported as follows:

- The level of carboxy THC detected in the sample was 'approximately 320 ng/ml'. (Note that the reporting threshold for the laboratory is 15 ng/ml.)

- The laboratory does not accept that 'such a high level could have arisen from a cake eaten two weeks ago'.

- The laboratory states that "The level indicates relatively recent use (a few days at most for even a chronic user)."

9. A representative of Drug Free Sport is available to record this information at this afternoon's teleconference. I have determined that the parties should be made aware of this information now, ahead of the teleconference.

10. The defendant particularly may wish further time to address the issue of for how long cannabinoids may be detectable after ingestion rather than to proceed with the urgency requested when the Tribunal would be required to have regard to the information received through Drug Free Sport in circumstances where the defendant may not have sufficient time to assess such information. If the defendant seeks further time, he or his counsel can request that at the commencement of the scheduled teleconference."

The hearing

10. Immediately upon the commencement of the pre-hearing teleconference at 1pm 14 December 2007, Mr Turkington, for the defendant, advised the Tribunal:

(i) That the defendant did not propose to challenge the opinion evidence which had been obtained from DFS in the circumstances outlined in the Minute of the Presiding Member set out in the preceding paragraphs. The Tribunal notes this was a reference to the report from DFS of its inquiry of the accredited laboratory in Sydney, Australia where the test analysis for Jacob Croot's urine sample had been undertaken, which suggested that for Mr Croot's position, that the presence of the cannabinoids came about because of his ingestion of a marijuana or cannabis cake some two weeks prior to the test was not credible. The information from the Sydney laboratory conveyed by DFS in the circumstances outlined was consistent with information which had been provided by the defendant in submissions from his counsel;

(ii) That there may have been some cannabis consumed or used by the defendant closer to the date of the test;

(iii) That in the circumstances the defendant could not and would not rely on the WADA Anti-Doping Code provision which provides an opportunity to an athlete to satisfy the Tribunal, if they can, that there has been no significant fault or negligence on the part of the athlete in relation to the presence of a banned substance; and which, if the Tribunal is so satisfied, enables the Tribunal, in its discretion, to substantially reduce or even eliminate any period of ineligibility as a penalty for the infraction;

(iv) That the defendant did not require further time to consider and assess the evidence identified in the Presiding Member's Minute of that day; or require further time to prepare and present his defence.

11. Mr Turkington and the defendant Mr Jacob Croot confirmed that they wished to proceed to have the Tribunal consider the matter immediately and agreed that the pre-hearing teleconference should proceed as the hearing accordingly.

Submissions for the athlete and his personal circumstances

12. Jacob Croot is aged 17 years and is clearly a very talented athlete.

13. The defendant was selected for the Central Zone Under 18s rugby league representative team in August 2007. That team draws from players in Manawatu/Taranaki/Hawkes Bay. He has played representative rugby union for the Horowhenua Under 11s, Wellington Under 13s, the Manawatu Under 14s and the Horowhenua Under 16s before turning to rugby league. The defendant was hoping to advance his career this year by trialling for the New Zealand Under 18s team and, if successful, obtaining a place in the 2007 Junior Kiwis rugby league team.

14. In addition to his talent and success in rugby league, the defendant has abilities and talent in athletics, particularly field events, including discus, shotput and hammer. His success in his age group in both regional North Island games this year and in the New Zealand National Championships in January 2007 attest to this talent. He has represented New Zealand in the

Oceania Games when, in December 2006, he was second in the discus event. He was selected as an Oceania representative in discus and hammer throwing travelling to Australia to compete earlier in 2007.

15. The defendant asserted ignorance as to the presence of cannabis in the cake he ingested some two weeks before the test. At first sight, that may have been entirely reasonable, but faced with the information obtained by the Tribunal and notified to the defendant through his counsel, the defendant conceded before the Tribunal through his counsel that he may have consumed cannabis at a time closer to the time of the test than the occasion of the asserted innocent ingestion of a cannabis cake two weeks prior to the test. It was no longer open really for the defendant to strongly assert his innocent use. Nevertheless, the Tribunal was satisfied with the defendant's evidence that he did not use or ingest cannabis for the purposes of enhancing his performance.

New Zealand Rugby League position

16. In a helpful submission from Kevin Bailey, Operations Manager for NZRL, it was confirmed that the defendant was a member of the Central Falcons 2007 Bartercard Cup team having played in 12 of the 18 possible matches and being also, at the age of 16 years, the youngest player registered in the competition. Jacob Croot's ability in the sport is certainly recognised by NZRL.

17. Mr Bailey told the Tribunal that prior to the commencement of the competition, each team in the Bartercard Cup competition was issued with registration forms, copies of the NZRL Banned Substances Policy and a Drug Information Kit as supplied by DFS. Approximately three weeks into the competition, the NZRL agreed to a proposal from DFS that the Agency present doping information lectures to each Bartercard Cup team.

18. The Tribunal was told that unfortunately for the Central Falcons team (and obviously for the defendant), this doping information lecture did not take place despite a number of attempts by DFS to organise it with the manager of the Central Falcons team. The NZRL was not informed of either the problem or the situation until the latter part of the 2007 season. The NZRL submitted to the Tribunal that, given the impressionable age of the defendant, it was

most unfortunate that he had been denied an information lecture on banned substances and the testing procedure.

19. The Tribunal members questioned the defendant during the hearing on this point. The defendant confirmed that "as far as he knew" he was not given information drawing to his attention the NZRL Banned Substances Policy; nor, he said, was a Drug Information Kit as supplied by DFS given to him. The Tribunal members questioned both Mr Bailey and the defendant about the team official registration form presented to the Tribunal dated 10 April 2007, signed by the defendant in which, by way of declaration, the defendant declared:

> *"I acknowledge that I have read and understand the NZRL Bartercard Cup national club competition Code of Behaviour, Banned Substances Policy, Concussion Policy and Smokefree Charter, and agreed to abide by and educate the Club's players of the rules and regulations of the competition."*

20. It appeared on the evidence that this registration form was in the main completed by the team manager and when given to the defendant for signature was not accompanied by an Information Kit or an Athletes DFS Wallet Kit or any of the written material referred to in the declaration. This failure on the part of team management to make this information available to the defendant was not challenged by Mr Bailey for NZRL. Whilst the NZRL did not concede that it had not been furnished, Mr Bailey made it clear that he was not in a position to resist what Mr Croot had told the Tribunal.

Discussion

21. Not surprisingly, counsel for Mr Croot urged upon the Tribunal that this was an exceptional case. That young Jacob Croot is an impressionable young man could not be doubted. He said he was not aware of the information on anti-doping or the consequences of a breach of the applicable policy. Notwithstanding his signing of the registration form, and the declaration, the terms of which have already been set out, this young man had clearly not had the pitfalls and prohibitions adequately explained or provided to him. It was submitted – and we accept – that this positive test and everything which accompanies it, including the suspension and appearance before the Tribunal, was a very salutary experience for the defendant.

22. The defendant was candid in his answers to the Tribunal. To his credit, he did not seek to put responsibility for his own error onto NZRL and instead accepted his share of the responsibility whilst pointing out that he did not at any time have or see the information or the documentation referred to by NZRL during the hearing or identified in the declaration he had signed in the registration form. The defendant accepted that under the WADA Code it is clear that athletes are primarily responsible for ensuring that they comply with the anti-doping rules; that they are responsible for what is in their system.

23. Information provided by the athlete and by the NZRL Operations Manager is all of assistance to the Tribunal in considering the appropriate penalty to impose on the defendant for his anti-doping infraction.

24. We comment that in December 2006 the Tribunal released a Minute which was addressed to and subsequently sent to national sport organisations throughout New Zealand explaining that the Tribunal intended to take what might be said to be a firmer line with regard to the imposition of sanctions for cannabis violations. That Minute was, at least in part, a response to indications to the Tribunal in the numbers of cases coming before it, that athletes did not appear to be heeding the warnings and reprimands which the Tribunal imposed in other cases with regard to cannabis violations. The Minute also recorded the fact that in many other jurisdictions, the sanctions imposed for cannabis violations included periods of suspension.

25. It seems apparent that Mr Croot was not aware of the existence of this Minute. It does not appear to be amongst the information provided to athletes, at least so far as reference to such material is made in the declaration accompanying the registration forms, at least for the Bartercard Cup competition, to be signed by the athletes, including Mr Croot.

26. The absence, however, of Jacob Croot's knowledge of this Minute is not of itself determinative as to whether a suspension is or is not an appropriate sanction in this case. In the case of *NZRL v. Milner* (SDT 20/06 delivered 24 November 2006), the Tribunal referred to an earlier decision in *Touch New Zealand v. Koro* (SDT 04/05), in which the Tribunal said that if no danger to other competitors, officials or members of the public existed and there were no aggravating circumstances, a reprimand and warning was likely to be the appropriate penalty. The Tribunal, however, went on to note that in cases

decided after *Koro* "aggravating circumstances" were taken into account for the purposes of considering periods of suspension. In the *Milner* case, the Tribunal declared the athlete ineligible to participate in rugby league and other sports for a period of two months from the date of the decision. In that case, Mr Milner had signed a participation agreement acknowledging the drug policy. That is a little different from the declaration contained in the registration form for the Bartercard Cup signed, in this case, by Jacob Croot, particularly when the unchallenged evidence is that he did not actually receive the accompanying material to which the declaration refers, including the banned substances policy documentation.

27. Since the *Milner* case, the Tribunal has delivered a decision in *NZRL v. Cavanagh* and *Vaifale* (ST 11/07; ST 12/07), 8 September 2007 (Reasons: 17 September 2007) in which two senior Bartercard Cup rugby league players had periods of six weeks ineligibility imposed on each of them for their anti-doping violations involving cannabis. Those two athletes, like Mr Milner, had signed a "participation agreement" referred to above. The Tribunal said in its Reasons that it was of course taking into account the personal circumstances of the players – as we have done in this case for Jacob Croot. We have considered all the circumstances in this case, including what was said in the *Milner* and the *Cavanagh* and *Vaifale* cases.

28. In this case, an aggravating circumstance is that, at least initially, the defendant was prepared to present to the Tribunal a proposition that he had ingested, innocently, marijuana cake two weeks before the test and that this was responsible for the positive test. Counsel for the defendant at the hearing submitted that there may be "some issue about the date of the cake ingestion". Faced with evidence to the contrary, the defendant did not press his initial explanation any further and indeed conceded through his counsel that he may have consumed cannabis or "other cannabis" closer to the time of the test.

29. The Tribunal is most unimpressed by attempts by athletes to present to it assertions or evidence which, if accepted at face value, would mitigate a potential penalty in favour of the athlete when an athlete must know at the time the information is being presented, that it is contrived or false. The Tribunal will not be manipulated by any party in this way just because they

think they can "get away with it". Whilst the defendant in this case was ultimately more candid in his assertions before the Tribunal when confronted with evidence to the contrary of his initially stated position, it has to be said that given the obvious discrepancy between what the athlete was presenting to the Tribunal on the one hand, and, on the other, what was contained in publicly available material, including that which was presented to the Tribunal on his behalf, it would not be surprising that the Tribunal would very carefully scrutinise the material so presented. In this case, the athlete obviously felt compelled to resile from the position he had originally taken. That does not reflect well on him. At the hearing, it appeared to be an error which he recognised and for which he took responsibility. That is a mitigating circumstance to a limited extent (as is the defendant's young age).

30. We hesitate to make a finding that the defendant attempted to "pull the wool over the eyes" of the Tribunal with his assertion that the presence of cannabinoids in his urine sample could be traced back two weeks to an innocent ingestion of marijuana or cannabis cake. It was said on his behalf that the cake that he was offered was at a party in Palmerston North at an unknown address. He says he was offered a piece of cake and it was not until later that he realised that the cake was laced with cannabis. He says he had no grounds to suspect that the cake was laced; nobody mentioned it. It is said on his behalf that there were "no witnesses despite inquiry".

31. It is argued for the defendant that if he could establish on the balance of probabilities that the substance was not intended to enhance sporting performance, that a first violation should result in a warning and reprimand and no period of ineligibility from future events, beyond the suspension he had already suffered by decision of NZRL when the positive test result was notified. Despite our finding that the substance was not intended to enhance sporting performance, we must observe that the defendant would have had us believe, initially, that the presence of cannabis was innocent. At the hearing he could not maintain that pretence. The degree of innocence in the defendant's consumption or use of cannabis is not as innocent as he initially asserted. The Tribunal considers the defendant made a deliberate decision to contend in his statement of defence a no-fault proposition which was less than honest.

32. The Tribunal is of the view that to contemplate that there be no period of suspension or ineligibility for the defendant would be quite wrong and would not take proper account of the aggravating circumstance(s) as have been outlined.

33. A continuing period of suspension or ineligibility beyond 14 September 2007 – the day of the hearing – would preclude the defendant from participating in a regional Central Zone versus Northern Zone Under 18 rugby league representative match in Taupo on Sunday, 16 September. Furthermore, any continuing period of ineligibility will put at risk:

- His opportunity to play in a New Zealand residents team versus an Australian residents team;
- A chance to play in a final trial for the New Zealand Under 18s;
- A chance to participate in a training camp for selected representative players which we were told was scheduled between 23 and 29 September 2007; and
- Potentially, a chance of selection for two Tests between Australia and New Zealand Under 18 sides on 29 September and 6 October 2007.

34. So where should the line be drawn? That is the issue which has troubled the Tribunal. Any continuing suspension will penalise the defendant.

35. Taking all the circumstances into consideration, the Tribunal considered that a period of ineligibility must be imposed. The Tribunal has regard to the fact that the defendant has been suspended since 28 August. The Tribunal determined that the appropriate period of suspension should be 31 days up to and including 27 September 2007, thereby denying the defendant the opportunity to participate in representative and trial matches in the lead up to the Australia v. New Zealand Under 18s rugby league tests on 29 September and 6 October whilst remaining eligible for selection for them as a matter of actual timing.

36. The Tribunal notes that a second positive test by the defendant will automatically see him ineligible for a period of two calendar years. It is to be

hoped that that prospect will weigh with the defendant and influence him against running the risk of any future breach of the Anti-Doping Code. In the end it is the defendant's age which weighs strongly in his favour with the Tribunal in determining the period of ineligibility. The defendant is a young man and made a series of serious misjudgments in this matter. Should he come before the Tribunal again he cannot expect leniency. To make mistakes is only human; to ignore a lesson to be learned from such mistakes and to not commit to not making the same mistake again will put the defendant's sporting career in jeopardy.

37. The defendant has the support of his father and recognition within the sport of New Zealand rugby league that he has talent. The Tribunal was encouraged to learn that New Zealand Rugby League is currently contemplating putting in place a mentoring programme for young rugby league players. Both New Zealand Rugby League and the defendant responded positively to the proposition put to the defendant during the course of the hearing that he would benefit from support from his seniors, particularly from a mentor who would help him ensure that the judgements he makes in the future are the right ones. The Tribunal formally recommends that New Zealand Rugby League institute a formal mentoring programme for young players such as Jacob Croot, so that they may be assisted in their professional and personal development given their exposure at a very young age to the pressures and seductions of professional sport.

38. For the reasons set out herein, the Tribunal imposed its 31 day period of ineligibility from 28 August 2007 up to and including 27 September 2007.

DATED at Wellington this 25th day of September 2007.

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T J Castle
Presiding Member
New Zealand Sports Tribunal