

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND GREIG DEAN

Respondent

**REASONS FOR DECISION OF TRIBUNAL
Dated 14 December 2009**

Hearing Date: 8 December 2009

Tribunal: Alan Galbraith QC, Deputy Chairman
 Dr Lynne Coleman
 Adrienne Greenwood

Registrar: Brent Ellis

Counsel: Paul David for Applicant

In Attendance: Greig Dean, Respondent
 Witness for Respondent
 Jayne Kernohan for Applicant
 Kevin Bailey for New Zealand Rugby League

Introduction

1. The decision of the Tribunal made on Tuesday 8 December 2009 was that Greig Dean was suspended and therefore ineligible from participation in any sport which is a signatory to the World Anti-Doping Code (WADA Code) up to and including 29 January 2010.
2. That decision was the consequence of an application for an anti-doping violation determination by Drug Free Sport New Zealand after the respondent underwent an in-competition drug test after playing for Wellington against Auckland at a rugby league game on 13 September 2009.
3. A breach of Rule 3.1 of the Sports Anti-Doping Rules (2009) was alleged based on the presence of a prohibited substance, cannabis, in his system.
4. Both the A and B samples were tested at an accredited sports drug testing laboratory and both returned an adverse analytical finding for the prohibited substance, cannabis.

Plea

5. Mr Dean admitted the violation.

Hearing

6. The hearing proceeded on the basis of a violation being admitted for the presence of cannabis at a level of approximately 25 nanograms.
7. Mr Dean told the Tribunal that he had been active in rugby league for the past six years or so and had been in the Wellington squad on three occasions. He said that at a celebration on 22 August 2009 following the end of the Wellington club season, when his club, the Porirua Vikings, had been successful, he together with a number of other players had passed around a cannabis joint. At that date the Wellington squad for the current season had not been selected and accordingly this could have been the end of his rugby league playing season. Mr Dean's corroborating witness confirmed the circumstances in which she observed Mr Dean smoking the joint and also that seven or eight other players were involved.

8. In the circumstances we are satisfied that the prohibited substance was not imbibed for the purpose of improving any athletic performance. Accordingly, the lesser sanctions under Rule 14.4 of the Sports Anti-Doping Rules (2009) are available in principle. Mr Dean went on to say that he was aware that cannabis can take up to one month to clear the system and when he was being tested he indicated to the testers that he had smoked a joint within the previous three weeks or so. He also said that the testers indicated that cannabis was not of particular concern and it was “big” drugs that the testers were pursuing. There is no written confirmation on the form which relates to his test of Mr Dean so advising the testers. That does not mean that we do not accept Mr Dean’s evidence as to what he said.
9. However, what this evidence does indicate is that Mr Dean was conscious of the fact that imbibing cannabis was potentially of concern. In this context Mr Bailey confirmed that Mr Dean had earlier in the season signed a participatory consent form which confirmed Mr Dean’s acceptance of the drug free obligations of participation. Mr Dean also confirmed that he had attended an educational session where the drug free obligations were explained, although this took place after his selection in the Wellington squad and therefore after he had imbibed the cannabis. What was not clear from the evidence was whether he had been involved in any similar educational programme in the previous seasons when he had been selected for the Wellington squad. We are not in a position to make a finding in that respect absent evidence. However, our view of the evidence is that Mr Dean did have a consciousness that cannabis was prohibited in any competition context.

Provisional Suspension

10. This case has had a rather chequered history. New Zealand Rugby League applied on 15 October 2009 for provisional suspension of Mr Dean. For reasons set out in our decision on that application the hearing originally initiated on Friday 23 October 2009 had to be adjourned to Wednesday 28 October 2009. It then proceeded in Mr Dean’s absence. A provisional suspension order was made on that latter date.
11. Pending a proposed rule change, there is uncertainty as to the effect of a provisional suspension. Clearly it applies to the particular sport but it is not clear whether it applies to all signatory sports. Mr Dean confirmed that since the date of the provisional suspension he has not participated in rugby league,

because the season is at an end, but has participated in indoor netball, touch rugby and flag. The first two sports are signatory sports.

12. Accordingly although the provisional suspension has been in place for approximately six weeks, Mr Dean has not suffered any interference in respect of his participation in sport during that time.

Period of Suspension

13. For a period of time after the Tribunal was first established, penalties for cannabis violations tended to be warnings in the first instance. It became apparent to the Tribunal that warnings were not an effective deterrent and the Tribunal moved to the imposition of modest suspension penalties in place of warnings in those cases where the breach was not for the purpose of enhancing performance. The Tribunal's decision in *New Zealand Rugby League Inc v Broughton* (ST 14/07, decision 20 December 2007) referred to a period of ineligibility of between one and two months being appropriate for a cannabis violation. In several recent decisions divisions of the Tribunal have expressed concern that, particularly in some sports, it appears that even these penalties are not having a sufficient deterrent effect and that more will have to be done to get the message through that sports participation is to be drug free.
14. It is appropriate for this division of the Tribunal to express that same concern and indicate the likelihood that the period of suspension imposed for such offences will increase. However, the Tribunal has decided that it is not appropriate for this division to single out Mr Dean's case to make that point.
15. However, the Tribunal has been concerned in Mr Dean's case to ensure that the period of suspension imposed is appropriate to the particular circumstances and is effective. By this latter comment we mean that the provisional suspension, the term of which must be taken into account under Rule 14.9, does not appear to have had any actual effect on Mr Dean's participation in the sports in which he is interested.
16. Mr Dean is a 28 year old who participates in a number of sports. He has been a Wellington representative in rugby league on three occasions. In our view Mr Dean was conscious of the fact that cannabis was a banned substance in sport.

17. Senior players, such as Mr Dean, have to take responsibility for their actions. Signing the participatory drug-free statement does mean something. That is the basis on which the Anti-Doping Rules operate. It is not good enough to say as Mr Dean and others before him have said that their season was over and they did not know they were to be selected for representative honours. That selection is part of the reason they have been playing the game.
18. We do have a concern that Mr Dean's evidence was that his testers downplayed the significance of cannabis as a prohibited substance. Certainly there are other drugs which are more pernicious and directly aimed at performance enhancement but use of cannabis is prohibited and contrary to the philosophy of a drug free sport policy.
19. In determining the period of suspension we have taken into account the absence of any mitigating factors, the period of the provisional suspension, its actual impact on Mr Dean's sporting participation, the fact that any period of suspension will take in the Christmas holiday period and the guidelines contained in earlier decisions of the Tribunal. We determine that a period of suspension up to and including 29 January 2010 was in all the circumstances appropriate.
20. The Tribunal's decision is to have cross-sport effect. The Tribunal is aware that Mr Dean is presently actively involved in playing indoor netball and touch rugby and this decision will prevent him from doing so until the end of January.
21. The Tribunal further advises Mr Dean that if he infringes the anti-doping code in any other sports in which he participates, by using cannabis, the minimum period of ineligibility for him, under the WADA Code and the Sports Anti-Doping Rules 2009 will be a minimum of one year's suspension and may be as high as a maximum four years' suspension.

Dated this 14th day of December

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by a long, horizontal, slightly wavy line.

Alan Galbraith QC, Deputy Chairperson (for the Tribunal)

Dr Lynne Coleman

Adrienne Greenwood