

**BEFORE THE SPORTS DISPUTES TRIBUNAL
OF NEW ZEALAND**

SDT 18/06

APPEAL

BETWEEN **Basketball New Zealand**

Applicant

AND **Mark Dickel**

Respondent

**DECISION OF TRIBUNAL
14 AUGUST 2006**

Tribunal: Nicholas Davidson QC (Deputy Chairperson)
Adrienne Greenwood
Ron Cheatley

Registrar: Brent Ellis

Appearances: Mark Dickel (Athlete)
Terry Sissons (Counsel for Mr Dickel)
Rachel Cardoza (Counsel for Mr Dickel)
Barry Wilson (Basketball New Zealand)
John Morrison (Counsel for Basketball New Zealand)

Introduction

1. Mark Dickel, "*the athlete*" is a New Zealand basketball player who was a member of the NZ Tall Blacks team competing against Australia at Napier on 12 July 2006.
2. During the competition he was selected for random drug testing, which resulted in a Determination issued by the New Zealand Drug Agency ("*The Agency*") dated 11 August 2006, recording a doping infraction by his testing positive to cannabis. Cannabis is a prohibited substance banned by the World Anti-Doping Code (the WADA Code) Prohibited List 2006, and under the Anti-Doping Code adopted by Basketball New Zealand ("*BBNZ*").
3. BBNZ made an application to this Tribunal alleging an anti doping rule violation, and advised that Mr Dickel had been stood down from two games for the Tall Blacks against Qatar on Friday 11 August, and Sunday 13 August 2006.

The athlete's immediate response

4. Prior to the Agency's Determination, on 10 August Mr Dickel advised the Agency that he did not intend to contest the testing procedures, which had resulted in a positive test to the "A" sample.
5. BBNZ made application to the Tribunal on 10 August 2006, having received notice of the positive test. It appeared that the athlete was prepared to admit the anti-doping violation even without the second sample testing positive, but events have overtaken that, with the Determination now made.

Basketball New Zealand Anti-Doping Rules

6. In common with most sports BBNZ has adopted a policy condemning the use of performance enhancing drugs and doping practices in the sport. BBNZ may make application to this Tribunal alleging a violation and BBNZ Rule 6.1 provides for a wide range of sanctions.
7. The Tribunal notes that it is directed by Rule 6.1 as follows "... *the New Zealand Sports Disputes Tribunal will apply one or more of the following sanctions; ...*".
8. The BBNZ Rules record that it supports the initiatives of SPARC, FIBA, the IOC and WADA to stop doping in sport.

9. The players' contract contains a clause whereby the player agrees not to use any substance prohibited by the Rules of BBNZ, FIBA, or WADA.
10. While BBNZ Rules do not expressly adopt the WADA Code, there is nothing to preclude this Tribunal considering this violation pursuant to previous Decisions regarding cannabis use. There is no mandatory period of suspension for a first violation for cannabis use, and the WADA Code, like the BBNZ Code provides for a range of penalties from suspension to reprimand.

The process

11. A request was made for a prompt hearing, and the Tribunal was available to convene on 14 August 2006. This Tribunal is directed by its own rules to "*secure the just, speedy, and inexpensive determination of any proceeding*". Speed is not always achievable, particularly where there is difficulty in assembling all interested parties, and particularly where evidence is to be given.
12. This case proceeded promptly with the immediate admission by Mr Dickel, and the availability of Tribunal members. The WADA Code encourages a prompt and fair resolution.

Mr Dickel's explanation

13. An athlete has the onus of satisfying the Tribunal on the balance of probabilities that use of the substance was not intended to enhance performance.
14. Mr Dickel provided the Tribunal with an affidavit. He explained that his contract with the Locomotive Rustov Club expired on 1 June 2006. He returned to his home in Las Vegas about 5/6 June to remain for the off season. He returned to New Zealand on 5 July and entered a new contract with BBNZ on 10 July, then joined the Tall Blacks squad.
15. The sample was taken on 12 July, and he was surprised to learn of the positive result because he had not used cannabis for at least five weeks before he joined the Tall Blacks, and thus prior to entering the contract with BBNZ.
16. As soon as he knew of the positive result from of the "A" sample he told BBNZ, and the Tall Blacks coach, admitting the circumstance of use.

17. He did not take cannabis to enhance performance. He deposed that he is not a regular user of cannabis and did not use it at any time while involved with the Tall Blacks or any other team. On this one occasion he used cannabis for recreational purposes, after his Russian contract concluded, and before he signed a new contract with BBNZ. He said, and BBNZ confirmed, that he was not under any contract at the time of use. He described the use of cannabis as a “*lapse of judgment and momentary weakness*” when with friends.
18. He described his international career over twelve years and random testing during that period, by his estimation over forty times.
19. Mr Sissons pointed out that the cannabis level was low, which supported his submission as to the circumstances and date of use.

Discussion

20. The Tribunal’s approach is exemplified by a number of recent decisions, e.g. **Karaitiana**, SDT/12/06, **Ames** SDT/10/06, **Abbot** SDT/11/06. That approach has been recorded as follows:

(a) In the case of a first anti-doping violation, if the athlete can satisfy the Tribunal that there was no intention to enhance sporting performance, the Tribunal will be likely to issue a reprimand and warning, without imposing any period of ineligibility, if it is also satisfied that -

(i) the use of cannabis was unrelated to the sport;

(ii) the cannabis use by the athlete did not represent any danger to other competitors, officials or members of the public; and

(iii) there were no other circumstances (described in the cases as “aggravating circumstances”) which would indicate that a reprimand and a warning would not be a sufficient remedy.

(b) The Tribunal would be likely to consider aggravating circumstances to exist, and to impose a period of ineligibility, if the athlete’s attention had been drawn specifically to the need to adhere to the sport’s anti-doping policy and the WADA Code and the athlete had defied such a caution by offending nevertheless. Such a warning may have been contained in an agreement entered into in respect of a particular competition, or may have

been specifically drawn to the athlete's attention by his or her sport by other means.

21. This was a first offence. The Tribunal finds that Mr Dickel did not use cannabis for performance enhancing purposes, and its use was unrelated to his sport without danger to other competitors, officials or spectators.
22. It has identified no "*aggravating factors*" as that term is described in the **Karaitiana** decision. Mr Dickel was not under contract at the time of use, but he was at the time of breach. The stand down imposed by BBNZ involved a financial penalty of approximately \$1,000.00, a mitigating circumstance. He has suffered significant and adverse publicity. He has been open, and expressed considerable regret for his actions, conscious of the image of his sport, and his obligations as a high profile athlete.
23. While the player's contract records an obligation to abide by the anti-doping policies within sport, such is the norm, and there are no features of drug use within BBNZ to direct particular scrutiny of this sport.

Final Decision and sanction

24. Mark Dickel committed an anti-doping infraction under BBNZ Rules, and as the Determination records.
25. He is warned against the use of cannabis and reprimanded for its use.
26. The Tribunal notes that for a second offence under the WADA Code a 2 year period of suspension applies.



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Nicholas Davidson, QC
Deputy Chairperson (for the Tribunal)

14 August 2006