

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 03/08

BETWEEN

DRUG FREE SPORT NEW ZEALAND

Applicant

AND

TED HUNIA

Respondent

**DECISION OF TRIBUNAL
DATED TUESDAY 21 MAY 2008**

**(Teleconference)
Hearing:**

Wednesday 14 May 2008

Present:

Ted Hunia (on own behalf)

Graeme Steel (for Drug Free Sport)

Peter Walters (for Touch New Zealand)

Tribunal Members:

Nicholas Davidson QC (Deputy Chairperson)

Ron Cheatley

Carol Quirk

Registrar:

Brent Ellis

Introduction

The Respondent Ted Hunia played in the Touch New Zealand National Championships at Wendy Park, Wanganui on 4 March 2008, and gave a specimen to Drug Free Sport which later advised him that analysis of an "A" sample returned an Adverse Analytical Finding for a Prohibited Substance, namely cannabis.

Mr Hunia waived his right to analysis of the "B" sample.

An application for an Anti-Doping Rule Violation in competition was made by Drug Free Sport, pursuant to Article 3.1 of the Sports Anti-Doping Rules 2007. The application sought that penalties be imposed in line with the Sports Anti-Doping Rules 2007, Articles 14.2 or Article 14.3.

No application was made for provisional suspension.

Plea

Mr Hunia admitted the violation.

Hearing

Mr Hunia appeared on his own behalf and advised the Tribunal he did not seek representation.

He explained that he is not a regular user of cannabis, but had taken it to relieve the pain from an injured back, the first time some four years past. A work related injury aggravated a pre-existing condition.

Some two weeks before the 2008 National Championships, he hurt his back again, and for about a week took cannabis about every second night, but not in the week before the Championships. The day before the finals he hurt his back, and he took it again, which resulted in the positive test.

He did not seek to minimise his conduct, except to emphasise that he used cannabis not for recreational purposes but to relieve pain, and in particular to allow him to sleep.

He said that he is ashamed of what occurred, and although he does not, as the result of a knee injury, expect to return to the National Championships, his involvement with Touch and netball is entrenched, both in participation and coaching and he hopes to continue playing, as his health dictates, and coaching.

He is conscious of the implications of this breach, both to his reputation, and his sports.

Mr Steel correctly raised the question that we are bound to consider, whether the explanation allows the Tribunal to take the more lenient course available for use of Specified Substances including cannabis, where the athlete can show that there was no intention to enhance performance. He pointed out that the therapeutic use exemption contains a distinction between use of a substance to enhance performance and alleviating an otherwise disabling condition.

Mr Hunia admitted he knew his obligations, having signed an agreement pledging drug free participation in Touch, and having been told squarely by his coach and manager of his obligations to comply with the World Anti-Doping Code (WADA Code) and their emphasis that they would not tolerate any use of cannabis "*in camp*".

Mr Walters for Touch New Zealand emphasised the disappointment felt by the Touch administration. Touch has experienced some infractions but for some two years now there has been an improved record. He described some firm measures taken to combat cannabis use, in particular in one province, but it did not apply to Auckland where Mr Hunia competes. A participation agreement is required of the athletes, and pamphlets have been made available through the provinces. Touch's intent is reflected in the express warnings given to Mr Hunia by his manager and coach. The Tribunal accepts that Touch has endeavoured at a number of levels to ensure compliance through education.

Discussion

The Tribunal accepts that Mr Hunia did not smoke cannabis for performance enhancing purposes and the lesser sanctions therefore provided for in Article 10.3 of the WADA Code are available in principle.

Recent decisions by the Tribunal, including that in **New Zealand Rugby League Inc v Timoti Broughton** (ST14/07, decision 20 December 2007), held that if the drug has not been taken to enhance performance, a period of ineligibility of between one month and two months applies.

Given his age and experience, the consumption of cannabis the night before the National Championships, his signing a participation agreement, and the express warnings given by his coach and manager, the Tribunal considers that the range of sanctions described in **Broughton** should be applied, in the first instance at the upper end of two months, but allowing some mitigation as the result of his

frankness, and his significant and intended contribution to sport, particularly with young people.

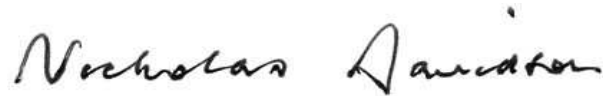
Formal Decision

Hunia is suspended from participation in any sport which is a signatory to the WADA Code for six weeks from 21 May up to and including 2 July 2008. He is reminded of the Cross Code effect under WADA. He is advised that if he further infringes the minimum period of ineligibility is two years.

Caution to Sport

At the date of this offence the Tribunal will remain within the range of sanctions indicated, except where there are proper grounds for departure, but it cautions that with this and other cannabis matters before the Tribunal, the position may be revisited.

Dated this 21st day of May 2008

A handwritten signature in black ink that reads "Nicholas Davidson". The signature is written in a cursive, slightly slanted style.

**Nicholas Davidson QC
Deputy Chairperson (for the Tribunal)**