

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

SDT/04/05

BETWEEN **Touch New Zealand**

Applicant

A N D **Jade Koro**

Respondent

Tribunal: Hon Barry Paterson QC (Chairman)
Ron Cheatley
Carol Quirk

DECISION OF TRIBUNAL

26 May 2005

INTRODUCTION

1. The New Zealand Sports Drug Agency by letter of 2 March 2005 advised Touch NZ that Mr Koro had committed a doping infraction in accordance with ss 16B and 18(1) NZ Sports Drug Agency Act 1994. A sample was collected from Mr Koro at the Central Regional Touch Tournament held in Palmerston North on 29 January 2005. The sample contained a metabolite of cannabis which is banned by the World Anti-Doping Code 2005 Prohibited List International Standard under s 8 – cannabinoids.
2. Mr Koro did not appeal the determination of the NZ Sports Drug Agency and consequently was guilty of a doping infraction. In accordance with Touch NZ's anti-doping policy, the matter comes before the Tribunal for determination of an appropriate penalty.
3. Mr Koro in a statement of defence admitted the violation and accepted the Tribunal's jurisdiction to impose the appropriate penalty. In his statement of defence he said:

"Touch has been a part of my life for 10 years and this is my first offence. I am very disappointed with myself and would like to apologise to my team, my sponsors and Touch NZ for any harm I have caused with my actions. I did not intend in using cannabis to enhance my performance. I have used it in the past and now in doing the drug test and receiving the results, has opened my eyes and have decided to 'clean up'. For the good of myself, Touch NZ/Wanganui and for my family. I am very disappointed I missed the 2005 Nationals and for letting my coach and team down. I hope I will be able to make it up for them in the future."

4. A telephonic pre-hearing conference was arranged for 16 May 2005. Mr Koro appeared for himself and Mr Battrick, the National Development Manager of Touch, represented Touch NZ. By agreement with both Mr Koro and Mr Battrick, the pre-hearing conference became the hearing for determining the appropriate penalty.

Position of Touch NZ

5. Touch NZ has a detailed anti-doping policy which was approved by its Board on 9 October 2004. The purposes of the policy include the protection of the athletes' "fundamental right to participate in doping-free sport and thus promote health, fairness and equality of athletes". A further purpose is to give effect to the World Anti-Doping Code 2003 ("the WADA Code"). As already noted cannabis is on the 2005 Prohibited List issued under the WADA Code. It was introduced onto the Prohibited List in 2004.

6. Under the policy a person who has committed an anti-doping rule violation is liable for the imposition of sanctions in accordance with Article 10 of the WADA Code. Article 10 requires that a 2 year period of ineligibility be imposed. However, there are certain specified substances, of which cannabis is one, where if the athlete can establish that the use of the substance was not intended to enhance sports performance, the sanctions are less severe. For a first violation the minimum sanction is a warning and reprimand and no period of ineligibility from future events and the maximum is one year's ineligibility.
7. Mr Battrick advised that it was Touch NZ's policy that a player participation agreement be signed before a player was allowed to participate in Touch NZ tournaments. However, there appears to have been some difficulties in establishing that all players sign such an agreement and Touch NZ does not have evidence that Mr Koro signed such an agreement. Touch NZ believes that a clear message needs to be sent to all Touch players regarding the use of drugs whether it be performance enhancing or non-performance enhancing.

Mr Koro's Position

8. Mr Koro set out his position in his statement of defence. He advised the Tribunal that he smoked cannabis at a party some time in the middle of January. At that time he was not aware that cannabis was a prohibited substance. Nor was he aware that cannabis remains in the bloodstream for some time after it is smoked. He did not take cannabis with a view to enhancing his performance at the Touch tournament.

The Appropriate Sanction

9. In the last twelve months this Tribunal constituted in different ways has considered doping violations involving the use of cannabis on several occasions. The last such case was *Boxing New Zealand Inc. v Mene* SDT/13/04 of 7 March 2005. That Tribunal reviewed the practice in Australia, the United Kingdom and Canada. This Tribunal has also considered the practice in the United States of America, where the general practice is to issue a reprimand and warning for a first offence. The practice varies between the various countries. For a first violation the practice in some countries is merely a warning and a reprimand. In others periods of ineligibility have been imposed. In *Mene* the Tribunal stated:

"Against this background we consider that, where the cannabis use is unrelated to the sporting activity, it is not taken for the purpose of enhancing the athlete's performance, represents no danger to other competitors, officials

or members of the public, and there are no aggravating circumstances, a reprimand and warning is likely to be the appropriate penalty."

10. The Tribunal understands that to be included on the Prohibited List of the WADA Code as a prohibited substance, the use of the substance must satisfy two out of three criteria. In summary those criteria are that the substance has the potential to enhance or enhances sports performance, the use of the substance represents an actual or potential health risk, and WADA determines that the use of the substance violates the spirit of sport. We doubt whether cannabis is usually performance enhancing. In this case we are satisfied Mr Koro did not smoke cannabis expecting to enhance his performance at the Touch tournament.
11. In this case there is no suggestion that the cannabis was smoked at the tournament. Applying the *Mene* criteria, it was not taken with the intention or for the purposes of enhancing Mr Koro's performance and he represented no danger to other competitors. The only issue is whether there are aggravating circumstances.
12. We have sympathy for the request from Touch NZ to send a clear message to other participants in the sport. We accept that widespread smoking of cannabis at a tournament or by Touch players may have a detrimental effect on the sport. However, in the circumstances of this case we do not find that there are aggravating circumstances. Mr Koro is a first offender who smoked cannabis recreationally prior to the tournament and who appears to have been unaware that cannabis was a prohibited substance. He may not have signed the usual participation agreement. Once it becomes universally known amongst Touch players that cannabis is a prohibited substance and a player signs a participation agreement, there may well be aggravating circumstances. Cannabis has been on the prohibited list since 2004 and we expect that the publication of details of this case will make it more difficult for a player to claim that he or she did not know that cannabis was a prohibited substance. We also note that if in this case we had determined that there were aggravating circumstances, we would have taken into account and given Mr Koro credit for the fact that within a few days of receipt of the advice from the New Zealand Sports Drug Agency, Touch NZ suspended Mr Koro. Consequently he was ineligible to play in the national tournament in which he would have otherwise played.
13. Mr Koro, if he offends again in a similar manner, faces a mandatory 2 year period of ineligibility. There is no discretion under the WADA Code to do anything else. Thus if Mr Koro wishes to continue playing Touch, as he indicated to us that he does, and

he commits a further violation of a similar nature, he will be suspended for a period of 2 years.

Penalty

14. In the circumstances the penalty imposed is a reprimand and a warning. Each party will bear their own costs.
15. Touch NZ is requested to give wide publicity of this decision. It should be stressed that not only is testing positive for cannabis a violation under the WADA Code, but also that a person may test positive for cannabis even if the cannabis has been smoked some weeks before.

Dated this 26th day of May 2005

A handwritten signature in blue ink, appearing to read 'Barry Paterson', is written over a light blue rectangular background.

Barry Paterson QC
Chairman of Tribunal