

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 04/09

BETWEEN

DRUG FREE SPORT NEW ZEALND

Applicant

AND

STEVEN MANSON

Respondent

FINAL DECISION OF TRIBUNAL

Dated 21 May 2009

Tribunal:

Nicholas Davidson QC (Chairperson)
Adrienne Greenwood
Anna Richards

Hearing:

**(Two) Teleconferences Wednesday 13 May
2009**

Present:

Graeme Steel, for applicant Drug Free Sport
New Zealand
Steven Manson in person
Megan Harlick for interested party Softball New
Zealand
In attendance, witness for Respondent (2nd
teleconference only)

Registrar:

Brent Ellis

DECISION

Introduction

1. Drug Free Sport New Zealand ("DFS") made application to the Tribunal alleging that the respondent Steven Manson committed an Anti-Doping Rule Violation in the Men's National Softball League finals on 28th February 2009, with the presence of the Prohibited Substance Cannabis in his system.
2. A teleconference to consider process was held on Wednesday 13 May 2009. Mr Manson had not understood the evidential onus on him in seeking a reduction in sanction, having admitted the violation, and the Tribunal convened for a second time on 13 May 2009 to address this crucial factual issue.
3. Mr Manson gave evidence and made submissions regarding sanction. A witness gave evidence directed to corroboration of Mr Manson's evidence that his use of cannabis was not intended to enhance his sporting performance.
4. Softball New Zealand had applied for a provisional suspension once the adverse analytical finding was advised and Mr Manson was provisionally suspended by the Tribunal on 30 March 2009.
5. Cannabis is a Prohibited Substance under the Sports Anti-Doping Rules 2009 ("the Rules") and under Rule 14.4 the sanction for a first violation is at a minimum a reprimand with no period of ineligibility for future events, up to a maximum of two years ineligibility provided that the athlete can establish how the specified substance entered his body and that such substance was not intended to enhance the athlete's sports performance.
6. The athlete is also required to produce corroborating evidence, in addition to his word, which establishes to the comfortable satisfaction of the Tribunal the absence of an intent to enhance sports performance.

Mr Manson's explanation

7. Mr Manson explained his use of cannabis. He said that he was at a family gathering two nights before the test was taken and in the company of his family. He used it in a social context. A witness called clarified that the party was at his home (that of the witness) the night before the tournament at which the test was taken.
8. Mr Manson acknowledged that in his social setting, and among softball players generally, cannabis is used, without identifying other users. The Tribunal did not ask this of him. In softball company he says he tends to stand alone and does not use cannabis just because others are doing so, but he will from time to time. In the family setting he says his use is more associated with relief from severe personal problems.
9. He is conscious of his obligations not to breach the Anti-Doping Rules, and has been playing up to an advanced level over some seven years. He has reached international status for Samoa. He acknowledges that he has had a great deal from softball, indeed it is central in his life, and his role has extended beyond participation to coaching and acting as an ambassador for the sport.
10. The Tribunal did not need to probe the extent of his knowledge or instruction regarding the use of Prohibited Substances, because he is well aware of his obligations, and in his own words "*fell off the wagon*" on this occasion.

The absence of intent to enhance sports performance

11. The Tribunal accepts the cannabis was in his system because of his use the previous day, in the social setting described.
12. Mr Manson thus denied any intent to enhance his sports performance and said that this use of cannabis was entirely unrelated to his softball activity. While he said that his playing in the tournament was a "*very minute possibility*", as a result of injury and an issue of eligibility, he was asked to "*suit up*" on the day, and played. The Tribunal makes nothing of this point because use of

cannabis cannot be measured against the likelihood of participation in sport.

13. While Mr Manson said that the tournament the next day was "*not in his mind then*", it was put to him by Mr Steel that with the personal pressures on him, he may have considered that smoking marijuana would put him in a better frame of mind to participate the following day. He emphasized it was simply "*not in his mind*", distinguishing between the social and sporting sides of his life.
14. For the required corroborating evidence of an absence of an intention to enhance his sports performance, he obtained a written statement from the witness who came before the Tribunal by teleconference. He gave evidence that on the 27th February 2009, the night before the tournament, there was a housewarming party at his address in Titahi Bay with family members and friends in attendance. He saw Mr Manson smoking marijuana with a group of others in front of the house, some three or four people amongst perhaps 30 or 40. He was aware of the possibility that he might play the next day.
15. Corroboration of this element, that there was an absence of intention to enhance sports performance is not without difficulty. The corroboration relates to a "*lack of intent*". Absent an unlikely discussion about the reason cannabis is being used, and that it is not associated with sporting performance in any way, or some conduct which goes to whether there is such a link, the Tribunal must examine all the circumstances and reach a judgment as to whether there is some adequate corroboration. In this case the setting and manner in which the cannabis was used, informs our conclusion that cannabis was consumed at a social occasion, and it was not associated with nor intended to enhance sports performance.
16. This evidence overall satisfied the Tribunal that the use of cannabis took place in a family setting, that there was nothing covert about that use, nor is there any reason to suggest it was to enhance sporting performance, and it so concludes.

Sanction

17. The evidence and corroboration in this case is very similar to that given in the case of **Softball New Zealand v Cameron ST 03/09** Decision dated 30 March 2009. The Tribunal may thus consider a lesser sanction under Rule 14.4.
18. In **Cameron** the Tribunal made reference to cases where ineligibility ranging between one or two months was imposed depending on aggravating and mitigating features. Some of the cases are also referred to in **DFS v Wineti ST 14/08** Decision 19 December 2008. The Tribunal in **Cameron** noted that the time may have arrived for it to reconsider sanctions being imposed and to increase the period of ineligibility. That observation is reinforced later in this decision.
19. As in **Cameron** there are no mitigating factors in this case. Mr Manson is an experienced athlete and knew he was in breach. That knowledge is an aggravating factor as is the consumption immediately before a tournament. That points to a sanction of two months.
20. Under Rule 14.9 the period of ineligibility is to start on the date of the hearing. However Rule 14.9 also provides:

"Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of ineligibility to be served."

Rule 14.9.5 provides:

"No credit against a period of ineligibility shall be given for any time period before the effective date of the Provisional Suspension or voluntary Provisional Suspension regardless of whether the Athlete elected not to compete or was suspended by his or her team."

The expression "*effective date*" is taken to mean the date the Provisional Suspension comes into effect.

On the face of it Mr Manson is thus entitled to a credit for his provisional suspension since 30th March 2009. In general the impact of any sanction has to be gauged to ensure it is neither too harsh, nor has too limited effect. In **Cameron** the Tribunal considered whether it was necessary to extend ineligibility because the New Zealand season had concluded so that the period of two months ineligibility would have no practical application. However the issue is expressly dealt with by the Rule in this case whether or not Mr Manson was intending to play after the National Tournament. This will need some thought when provisional suspensions are considered, as to whether they have impact.

21. However the impact of the positive test and the provisional suspension leading to inevitable further ineligibility has disturbed Mr Manson's plans to play either in Denmark or the United States. He has put his softball career on hold, for a year, so the impact of provisional suspension has already been felt. He played rugby league during the provisional suspension but the Rules, with particular reference to Rule 12.9, do not seem to prohibit that.

Formal disposition

22. The appropriate sanction, bearing in mind the Tribunal's reservation about the impact of provisional suspension, in this case is in total two months ineligibility with credit for the provisional suspension since 30 March 2009. Thus the period of ineligibility expires on 31 May 2009.
23. He is reminded of two matters as in **Cameron** (available on the Sports Tribunal website for reference) at paras 16(a) and (b):
 - (a) *During the period of ineligibility he may not participate in any capacity in any national sporting team, competition, event or activity whether local or national, organised, authorised or sanctioned by any signatory of the World Anti-Doping Code or signatory's member organisations, or a club or other member organisation of a signatory's member organisation or*

in competitions authorised or organised by any professional league or any international or national level organisation; and

(b) If (Mr Manson) were to offend again, the Rules require that the period of ineligibility is to be no less than one year and no more than four years."


Further comment

24. The Tribunal is satisfied that Mr Manson is sincere in stating that the incident was a turning point in his life and he is seeking help to address his several personal issues. He wants something positive to come out of the situation he is in, and if asked will convey the message to softballers that drug use in sport must be taken as a serious issue, with real consequences.
25. Ms Harlick for Softball New Zealand emphasised the attempt to alter the behaviour in softball. The frank comments made by Mr Manson regarding the use of cannabis throughout softball is of considerable concern to Softball New Zealand and to DFS and to this Tribunal. Softball New Zealand has made real efforts to promote awareness of the athlete's obligation. As in **Cameron**, the Tribunal is here troubled that those efforts, and sanctions imposed by this Tribunal, have not it seems stemmed further breaches and here by a violation on the eve of competition. How widely these decisions and warnings are read and digested is uncertain but if they are disseminated through softball, this effect appears to be limited. That does not qualify the observation of the Tribunal as to the efforts being made by Softball New Zealand.
26. The question for this Tribunal is whether the current sanctions serve any deterrent purpose and adequately reflect the repeated offending. In **DFS v Wineti ST 14/08** the Tribunal reviewed other New Zealand cases. The caution given in **Wineti** extends back to other cases including **DFS v Hunia ST 03/08** Decision 21 May 2008, that the Tribunal may have to revisit its position regarding

the range of sanctions. It repeated the observations in **DFS v Lambert ST 10/08** Decision 16 July 2008: ". . . *The time may be approaching for the Tribunal to take a tougher stance if the message is not having a positive effect . . .*" These comments were directed to the particular sporting code under scrutiny.

27. Rugby league was cautioned. So too is softball in **Cameron** and this case. The Tribunal records that it will consider the imposition of more stringent sanctions as a consequence of the cautions given, should other breaches come before the Tribunal from softball. This is not intended to create a two-tier system of sanction between different sports, only to reflect the fact that the Tribunal will not issue warnings ad infinitum, and athletes must be aware of this. Every case will be considered on its own facts, and the need for sanctions to have some meaning.

Dated this 21st day of May 2009



Nicholas Davidson QC
Chairperson (for the Tribunal)