

**BETWEEN            DRUG FREE SPORT NEW ZEALAND**

**Applicant**

**AND                 ROCKY MASOE**

**Respondent**

**AND                 NEW ZEALAND RUGBY LEAGUE**

**Interested Party**

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**DECISION  
DATED 20 DECEMBER 2013**

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**Hearing**            19 December 2013 by telephone conference

**Tribunal**            Sir Bruce Robertson (Chair)  
Anna Richards  
Ron Cheatley

**Present**             Rocky Masoe, athlete  
Paul David, counsel for Drug Free Sport New Zealand  
Graeme Steel, Drug Free Sport New Zealand  
Jude Ellis, Drug Free Sport New Zealand  
Jason Hemson, General Manager, Wellington Rugby League  
Peter Rikiriki, Club Coach, Porirua Vikings

**Registrar**          Brent Ellis

1. On 7 October 2013, Rocky Masoe played in a Pirtek National Rugby League match for the Wellington Orcas at Mount Smart Stadium in Auckland.
2. After the match, he was requested by Doping Control Officials to provide a urine sample for testing.
3. Although initially cooperating with the officials, he failed to comply and left the Doping Control Station.
4. On 6 November 2013, Drug Free Sport New Zealand (DFS) filed an application with the Tribunal for his provisional suspension as well as an application for anti-doping rule violation proceedings.
5. On 18 November, DFS advised the Tribunal that the documents had been served on Mr Masoe on 12 November.
6. In its application for anti-doping rule violation proceedings, DFS allege that Mr Masoe committed an anti-doping violation as follows:

*DFSNZ alleges that on 7 October 2013, the Athlete failed to submit to sample collection after notification under Sports Anti-Doping Rule 3.3...Refusing, or failing without compelling justification, to submit to Sample collection after notification under the Rules or any applicable International Standard or WADA guideline or otherwise evading Sample collection.*

*The Athlete was notified following a Pirtek National Rugby league Premiership match at Mt Smart Stadium in Auckland. After initially cooperating with the request, the Athlete decided he did not want to comply and left the Doping Control Station. The Doping Control Officials followed him and attempted to reason with him, outlining the potential consequences of his failing to comply, without success. DFSNZ notified the athlete of its intention to bring anti-doping proceedings against him. In his response, the athlete has admitted that he failed to comply.*

7. A provisional suspension hearing was scheduled for 26 November. However, the hearing was adjourned until 2 December due to bereavement in Mr Masoe's family.
8. On 29 November, Mr Masoe advised in a letter to the Registrar that he would accept a provisional suspension, accepted the charge and wished to "explain and mitigate" what occurred. His letter is set out below:

*I have read your email sent today and accept the provisional suspension effective immediately and understand that this suspension relates to all sports including rugby league.*

*I wish to advise that I do not dispute the offence but do intend to explain and mitigate what occurred.*

*Thank you for your understanding of my personal circumstances this week.*

*I look forward to hearing from you.*

9. On 2 December 2013, the Tribunal provisionally suspended him from that date.
10. The substantive hearing was scheduled for 19 December and Mr Masoe was asked to advise the Tribunal of the issues he intended to raise in explanation and mitigation by 9 December.
11. On 9 December, Mr Masoe provided a letter to the Tribunal in these terms:

*Dear Sir*

*On Monday the 7th of October the Wellington Orcas played the Northern Swords at Mt Smart stadium in Auckland, I played in what was to be our final game of the representative season.*

*Immediately after the final whistle ending the game I was approached by an official who explained that I was randomly selected to do a drug test I asked what was involved and it was*

*explained to me, I then told the official that I wouldn't be able to urinate straight away and was told to drink plenty of fluid and "Go" when I was able.*

*I went back to the changing room accompanied by the official sat and talked to team mates mainly about the game and also drank water for 10-15 minutes then left for the testing room, I was told to sit and wait my turn as there were other players getting tested as well, after a while (10-15 minutes) I was asked to fill in the forms I had just completed the first page when I was asked to stop so that someone else could fill their forms first which I did.*

*In the time I was there (40-45 minutes) people were coming and going managers, coaches, match officials, testing officials, other players, with all the waiting, people coming in and out of the room, and the fact that I wasn't able to urinate I got anxious and frustrated I felt tired, cold and hungry and just wanted a hot shower, join my team mates and have something to eat, it was at this point that I left and went and had a shower.*

*I am available for the hearing by teleconference at 9am Thursday the 19th of December.*

12. Rule 14.3.1 of the Sports Anti-Doping Rules 2013 (SADR) provides:

*For Violations of Rule 3.3 (Refusing or Failing to Submit to Sample Collection)... the Ineligibility period shall be two (2) years unless the conditions provided in Rule 14.5, or the conditions provided in Rule 14.6, are met.*

13. Therefore the mandatory sanction for this violation is a suspension for two years. It is only possible to reduce this period if Mr Masoe can establish that he had no "fault or negligence" or "no significant fault or negligence" (as set out in Rules 14.5.1 and 14.5.2 respectively). Rule 14.6 deals with the possibility of an increased sanction when there are aggravating circumstances and is not relevant in this case.

14. Rule 14.5.1 and 14.5.2 provide:

***14.5 Elimination or Reduction of Period of Ineligibility Based on Exceptional Circumstances***

*14.5.1 No Fault or Negligence*

*If the Athlete establishes in an individual case that he or she bears No Fault or Negligence, the otherwise applicable period of Ineligibility shall be eliminated. When a Prohibited Substance or its Markers or its Metabolites is detected in an Athlete's Sample in Violation of Rule 3.1 (Presence of Prohibited Substance), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated.*

*In the event that this Rule is applied and the period of Ineligibility otherwise applicable is eliminated, the Anti-Doping Rule Violation shall not be considered a Violation for the limited purpose of determining the period of Ineligibility for multiple Violations under Rules 14.7.*

*14.5.2 No Significant Fault or Negligence*

*If an Athlete or other Person establishes in an individual case involving such Violations that he or she bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Rule may be no less than eight [8] years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in Violation of Rule 3.1 (Presence of Prohibited Substance or its Metabolites or Markers), the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.*

15. The SADR also sets out the following comment in relation to Rules 14.5.1 and 14.5.2:

*[Comment to Rules 14.5.1 and 14.5.2: The Code provides for the possible reduction or elimination of the period of Ineligibility in the unique circumstance where the Athlete can establish that he or she had No Fault or Negligence, or No Significant Fault or Negligence, in connection with the Violation. This approach is consistent with basic principles of human rights and provides a balance between those Anti-Doping Organisations that argue for a much narrower exception, or none at all, and those that would reduce a two-year suspension based on a range of other factors even when the Athlete was admittedly at fault. These Rules apply only to the imposition of sanctions; they are not applicable to the determination of whether an Anti-Doping Rule Violation has occurred. Rule 14.5.2 may be applied to any Anti-Doping Rule Violation even though it will be especially difficult to meet the criteria for a reduction for those Anti-Doping Rule Violations where knowledge is an element of the Violation.*

*Rules 14.5.1 and 14.5.2 are meant to have an impact only in cases where the circumstances are truly exceptional and not in the vast majority of cases.*

*To illustrate the operation of Rule 14.5.1, an example where No Fault or Negligence would result in the total elimination of a sanction is where an Athlete could prove that, despite all due care, he or she was sabotaged by a competitor. Conversely, a sanction could not be completely eliminated on the basis of No Fault or Negligence in the following circumstances: (a) a positive test resulting from a mislabelled or contaminated vitamin or nutritional supplement (Athletes are responsible for what they ingest (Rule 3.1.1) and have been warned against the possibility of supplement contamination); (b) the administration of a Prohibited Substance by the Athlete's personal physician or trainer without disclosure to the Athlete (Athletes are responsible for their choice of medical*

*personnel and for advising medical personnel that they cannot be given any Prohibited Substance); and (c) sabotage of the Athlete's food or drink by a spouse, coach or other Person within the Athlete's circle of associates (Athletes are responsible for what they ingest and for the conduct of those Persons to whom they entrust access to their food and drink). However, depending on the unique facts of a particular case, any of the referenced illustrations could result in a reduced sanction based on No Significant Fault or Negligence. (For example, reduction may well be appropriate in illustration (a) if the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.) For purposes of assessing the Athlete's or other Person's fault under Rules 14.5.1 and 14.5.2, the evidence considered must be specific and relevant to explain the Athlete's or other Person's departure from the expected standard of behaviour. Thus, for example, the fact that an Athlete would lose the opportunity to earn large sums of money during a period of Ineligibility or the fact that the Athlete only has a short time left in his or her career or the timing of the sporting calendar would not be relevant factors to be considered in reducing the period of Ineligibility under this Rule. While Minors are not given special treatment per se in determining the applicable sanction, certainly youth and lack of experience are relevant factors to be assessed in determining the Athlete's or other Person's fault under Rule 14.5.2, as well as Rules 14.3.3, 14.4 and 14.5.1. Rule 14.5.2 should not be applied in cases where Rule 14.3.3 or 14.4 apply, as those Rules already take into consideration the Athlete's or other Person's degree of fault for purposes of establishing the applicable period of Ineligibility.]*

16. When Mr Masoe's letter was received, the Tribunal inquired as to whether there would be any other information that would be tendered.

17. On 18 December, Mr David on behalf of DFS provided a memorandum which reiterated the applicable standards under the Rules, particularly in relation to Rule 14.5.2. DFS submitted:

*Mr Masoe made a conscious decision to break off the sample collection procedure and leave the chaperone and DCO and not provide a sample. Where there is no justification for such an intentional decision by the athlete not to submit to sample collection, there is no room for defence under SADR 14.5.2 to operate. Mr Masoe has to receive the standard period of ineligibility of 2 years under SADR 14.3.1.*

18. The Tribunal in *Drug Free Sport New Zealand v Kyle Reuben* (ST 20/10, Decision 1 December 2010) reviewed the approach that must apply in cases such as this. There is a substantial threshold to be met by any athlete seeking to avoid a two year suspension. This case demonstrates the continuing need for National Sports Organisations and all athletes to be fully informed of their relevant obligations. As discussed in *Cycling New Zealand v Stephen Collins* (SDT 07/04, decision 17 August 2004) there are serious consequences which must follow a breach except in very limited circumstances. The facts in this case come nowhere near meeting that hurdle and a two year suspension must be imposed.

## **Decision**

19. Mr Masoe is suspended for two years. As the Tribunal is required by Rule 14.9 of the SADR to credit any period of provisional suspension against the total period of ineligibility, the two years' ineligibility will apply as from the date of provisional suspension which was 2 December 2013. Therefore, Mr Masoe is suspended until 2 December 2015.
20. The Tribunal advises Mr Masoe that under Rule 14.10 of the SADR, he may not during the period of suspension participate in any capacity in a competition or activity authorised or organised by New Zealand Rugby League or a rugby league club or other member organisation. He also cannot participate in any similar activities in any other sport, which is a signatory to the WADA Code, while he is suspended.



21. As the Tribunal noted in *Drug Free Sport New Zealand v Jared Noho* (ST 01/13, Decision 16 April 2013) the phrase “participating in any capacity” in Rule 14.10 is wide ranging and prevents a suspended athlete taking part in a number of activities, not just “playing” sport. This means a suspended athlete will not be permitted to play or compete (whether in a competition, a “friendly” game between clubs or a pre-season trial), train with a team, coach others or otherwise participate in most sports (not just their own sport) during the time they are suspended.

Dated 20 December 2013



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**Sir Bruce Robertson (Chair)**