

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

**SDT/13/04**

**BETWEEN**

**BOXING NEW ZEALAND INC**

Applicant

**AND**

**ALEX MENE**

Respondent

Tribunal:           The Rt Hon E W Thomas (Chairperson)  
                          Adrienne Greenwood  
                          Carol Quirk

Attending:         Brent Ellis, Registrar, Sports Disputes Tribunal

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**DECISION OF TRIBUNAL**

**7 March 2005**

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## **Introduction**

1. Having admitted the doping infraction in issue, Mr Mene appeared before the Tribunal for the determination of an appropriate penalty. He represented himself, and waived any right to counsel.
2. Ms Rogers, the Executive Officer of Boxing New Zealand, appeared for that organisation.
3. By consent, the hearing was conducted by way of telephone link up.
4. No question of jurisdiction arose. Both parties accepted that the Tribunal has jurisdiction.

## **The infraction**

5. Mr Mene is an amateur boxer. He fights in the super-heavyweight division. On 25 September 2004 he won the New Zealand Boxing Championships in that division.
6. Following the event, officers of the New Zealand Sports Drug Agency tested Mr Mene under the New Zealand Sports Drug Agency Act 1994. On the basis of the sample which was obtained the Agency determined that he had committed a doping infraction. The sample contained the drug cannabis which is banned by the World Anti-Doping Agency Prohibited List 2004, section 3, relating to cannabinoids.

## **The facts**

7. Mr Mene used the cannabis at a party held some two weeks before the Championships. He states that he is not a regular user of cannabis and only used it on this

occasion for 'recreational' purposes. He was not aware that it was a banned substance, and certainly did not take the drug for the purpose of enhancing his performance at the Championships. Indeed, to the contrary, Mr Mene told us he thought that, if cannabis were used near to the time of his bouts, it could have an adverse effect on his reaction time and reflex actions.

8. We accept without reservation that Mr Mene's use of the cannabis was unrelated to his sport or to his performance of that sport.

9. Mr Mene's ignorance of the fact that cannabis is a banned substance is understandable, even though it is not excusable. He is adamant that he does not use any performance enhancing drugs. Consequently, when he received the information package relating to doping infractions from Boxing New Zealand, he assumed that it would not have any relevance to him. As he did not take performance enhancing drugs he did not imagine, or pause to imagine, that cannabis might be a banned substance.

10. Ms Rogers advised us that Mr Mene had not been a member of boxing's elite or development squads, the groups of boxers chosen for special attention who invariably receive considerable information relating to the anti-doping regime. Indeed, to some extent Mr Mene's success at the Championships was unexpected. We understand that, had Mr Mene been a member of the elite or development squads, it is much less likely that he would have been unaware that cannabis is a banned substance.

11. Mr Mene is 26 years of age. He is a family man with a partner and two children. At present he is employed at casual work. He wishes to pursue his boxing career and plans to become a professional boxer.

12. Mr Mene has proffered a full apology for the misadventure which has occurred. He sincerely regrets the embarrassment that he has caused Boxing New Zealand and the detrimental impact which this incident may have upon his chosen sport. He is also aware that the charge and any publicity arising from it will damage his own sporting reputation.

It is evident, particularly from the well written statement which he provided the Tribunal, that Mr Mene takes real pride in his sport and the ability that he has recently demonstrated in the ring. He wants to see an end to this matter.

### **Boxing New Zealand**

13. In the earlier written statement (which he frankly acknowledged he had been assisted to write), Mr Mene outlined what he perceived to be deficiencies in the way Boxing New Zealand had discharged its obligation to educate its members and provide them with information and materials relating to the anti-doping regime.

14. We are satisfied, however, that Boxing New Zealand has taken all reasonable steps to inform and educate its members. We consider that Boxing New Zealand is fully conscious of its responsibilities and that it has adopted a positive policy towards anti-doping violations. Article 10 of Annex F of its Rules evidences that policy. (We understand that the further sanctions referred to in Article 10.3 are not applicable and, in any event, certainly do not see the need for any further penalty than that imposed in this decision). Ms Rogers appreciates, without it being spelt out, that a boxer who is not a member of an elite or development squad must still be educated about the anti-doping campaign. She is equally alert to the need to liaise with the New Zealand Boxing Coaches Association Inc, and to ensure that coaches throughout the country are adopting a positive approach to informing and educating those in their charge of all aspects of the drug regime.

15. While we can therefore understand Mr Mene's concern at finding himself in the predicament he is in, we are not at all minded to be critical of Boxing New Zealand. We consider that it has diligently carried out the steps required of it with a genuine sense of its responsibility.

## **The penalty**

16. This is the fourth case to come before the Tribunal in a relatively short space of time in which the banned substance has been cannabis. In the three cases which have been heard, the use of the cannabis has been unrelated to the sporting activity and has not been taken with the intention of enhancing the athlete's performance. More cases of this kind may be expected to occur until it is more widely appreciated that the 'recreational' use of cannabis can lead to a doping infraction.

17. The penalties imposed will necessarily vary to fit the circumstances of the particular case. Each case must turn on its own facts. Different factual situations were discussed by the Tribunal in *New Zealand Olympic Wrestling Union v Stewart* (SDT/11/04, decision 21 October 2004) and *New Zealand Rugby League Inc v Whare* (SDT/14/04, decision 17 February 2005). For the reasons given in those decisions, the Tribunal considered that it was appropriate to impose a fine of \$250.00 and costs of \$250.00 in each case.

18. Reference to overseas jurisdictions suggests that the range of penalties for cannabis related offending range from a reprimand and warning to suspension for six months. In Australia in the past two years sanctions of three months would seem to be the norm with one sanction reaching six months. Different procedures apply in the United Kingdom, but in the past two years the Disciplinary Commission has frequently deferred a decision for six to ten months when the player is to reappear, presumably to be discharged if no further positive tests have occurred. Target testing is utilised in the interval. Some lengthy suspensions have also been employed, no doubt reflecting more serious offending. These bare statistics do not, of course, indicate whether the drug abuse has occurred in conjunction with a sporting event or for a perceived benefit to the athlete.

19. The most consistent penalties have been imposed in Canada, apparently in respect of cases where the use of the cannabis was 'recreational'. From October to December 2004 doping control testing resulted in eight positive tests for cannabinoids. All cases were dealt with by way of a reprimand and warning with no period of ineligibility. The

Canadian Centre for Ethics in Sport has recorded that, depending on the strength of the substance taken, the route of administration and the frequency of use, the presence of cannabis may be detected in an athlete's urine for several weeks when used heavily and frequently, and for ten or more days after a single exposure. The Centre has succinctly advised that athletes should not risk their sporting careers through cannabis use. We endorse this warning. Under the present terms of the WADA Code the use of cannabis may lead to a doping infraction when used for 'recreational' purposes only, and this could have adverse, and possibly serious consequences, for the athlete's reputation and career and reflect negatively on the sport and the sporting organisation of which he or she is a member.

20. Against this background we consider that, where the cannabis use is unrelated to the sporting activity, 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. This case falls squarely within that description. We would add that we do not consider that the reprimand and warning we propose to impose should be regarded as 'lenient'. Rather, in all the circumstances of the case, we regard a reprimand and warning as the appropriate penalty. We also bear in mind that Mr Mene has apologised and is genuinely concerned at the damage which he may have done to his sport. He has also suffered the disruption inherent in facing a charge of this kind and the damage to his reputation which it is likely to entail.

21. We would reiterate that much will depend on the circumstances of the particular case. The Tribunal, for example, can be expected to take a quite different approach in determining the appropriate penalty where cannabis has been taken for the purpose of enhancing the athlete's performance, including in that phrase any perceived benefit in relation to the athlete's sporting capabilities. Nor would the Tribunal be prepared to countenance the use of the drug at a time when it could impair the athlete's faculties and place other competitors or officials or members of the public in any danger. Other aspects

will no doubt arise in future which will render a warning and reprimand without any other sanction inappropriate.

**Formal orders**

22. Mr Mene is reprimanded and given a warning. Any future offending is likely to result in a severe penalty.

23. We would ask that Boxing New Zealand ensure that this decision highlighting the implications of cannabis use for sportspersons subject to testing under the New Zealand Sports Drug Agency Act 1994 be given the widest possible circulation among its members.

24. Each party will bear their own costs.