

Introduction

1. Mr Mete is a power lifter and is a member of the Applicant, New Zealand Power Lifting Federation Inc ("**NZPF**").
2. After competing in the 2005 New Zealand Bench Press Championships in Wellington on 17 September 2005, he was tested by Drug Free Sport. He returned a positive test for the drug ephedrine which is a Class 6 stimulant under the 2005 Prohibited List issued by the World Anti-Doping Agency ("**WADA**"). Drug Free Sport issued a determination on 1 November 2005.
3. NZPF at its annual meeting in 2004 resolved to change its constitution, such change to include the adoption of the WADA Code and the appointment of this Tribunal as the Tribunal to determine sanctions once Drug Free Sport had made a determination.
4. Doubts arose as to the status of the amendment to the constitution and in particular whether this Tribunal had jurisdiction to determine the sanction. The parties agreed in writing that the matter would be referred to this Tribunal for determination in accordance with Rule 11 of the Tribunal's Rules.
5. A hearing was heard in Auckland on 22 May 2006. At the conclusion of the hearing the Tribunal indicated to Mr Mete that it intended to suspend him for a period of 3 months from 22 May 2006 and to annul his results in the competition on 1 November 2005. It indicated that it would give its decision in writing within a few days and now does so.

Mr Mete's Position

6. Mr Mete in a letter, which he confirmed to be true under oath at the hearing, confirmed that as a result of the test on 17 September 2005, he tested positive for the drug ephedrine. His explanation was that he suffered from asthma and to treat this illness, took a range of medications prescribed by his doctor. Those medications have for some time included inhalers for which he applied for and was granted a Therapeutic Use Exemption. However, more recently his doctor had prescribed ephedrine to assist further in managing his condition.
7. Mr Mete's evidence was that he found that the tablets which were prescribed would help him breathe more easily so he started taking them on days when he would carry out cardio-type exercises. This would be at least 2 to 3 days a week. He acknowledged that the ephedrine tables helped him complete cardio sessions but

said "I found it had little or no effect on my ability to lift weights". Mr Mete expressed regret at taking the tablets and apologised for taking the tablets prior to the event. He had taken ephedrine tablets before breakfast on 17 September 2005.

8. Mr Mete produced a certificate from his doctor to the effect that he had a long history of asthma and was required to take regular daily doses of inhaled steroid medications. These medications included ephedrine hydrochloride.
9. Before the Tribunal, Mr Mete admitted the violation. The issue before the Tribunal was whether the sanctions prescribed by the International Power Lifting Federation ("**IPF**") Anti-Doping Rules applied or whether the NZPF Anti-Doping Code (August 2003) (the NZPF Code) applied. There were the following differences:
 - (a) The maximum ban under the NZPF Code in the case of a first offence involving ephedrine was 3 months. Under the IPF Code, such an offence carried a mandatory 2 year ban.
 - (b) In order for an athlete to take advantage of a reduced ban under the IPF Code, he or she must demonstrate that the substance was not taken with the intention of enhancing sporting performance. There was no such requirement under the relevant provision of the NZPF Code.
 - (c) The IPF Code was in effect the universal WADA Code which NZPF at an Annual General Meeting on 20 August 2004 agreed to adopt.
10. Mr Smyth for Mr Mete submitted that the NZPF Code applied rather than the IPF Code because:
 - (a) Mr Mete is governed by the rules of NZPF which do not incorporate the IPF Code; and
 - (b) There was no contract between Mr Mete and NZPF which allowed NZPF to rely upon the sanctions prescribed by the IPF Code.

The Position of NZPF

11. Mr Lousich, the President of NZPF, submitted that the IPF Anti-Doping Rules (which are in effect the WADA Code) applied. This was because NZPF adopted the WADA Code at its Annual General Meeting in 2004. As an affiliate member of Sport & Recreation New Zealand ("**SPARC**"), NZPF was required along with all national

sporting organisations to adopt the WADA Code otherwise it would be in breach of its agreement with SPARC.

12. Mr Lousich submitted that although it had been difficult to update the paper work in respect of the new constitution and new Doping Policy, it nevertheless applied. The terms of the new constitution and Anti-Doping Policy have been agreed and were produced to the Tribunal. However, these will not be formally adopted until the next Annual General Meeting.
13. Mr Lousich produced to the meeting the minutes of the Annual General Meeting held on 20 August 1994. He confirmed that because of administrative difficulties, these minutes had only been typed a day or two before the Tribunal hearing. Under the heading "REMITTS", there appeared the following two remits amongst others:

"REMITTS:

- 1. To adopt SPARC's recommendations to changes to the NZPF Constitution to come into line with SPARC funding and administration criteria.**

After considerable discussion about the practical, financial and emotional implications (these were the third changes made to the NZPF constitution over the past few years under the requirements of SPARC, and the Hillary Commission before that)

Proposed by the NZPF NEC, seconded by Central Districts; passed unanimous

- 2. To adopt World Anti Doping Agency Code in the place of the International Olympic Committee Sports Drug Regulations.**

Proposed by the NZPF NEC, seconded by Otago; passed unanimous"

14. Mr Lousich also produced unsigned statements from various people who had been at the meeting in 2004 which confirmed that the resolutions had been unanimously passed. Mr Lousich gave evidence before the Tribunal and stated that he moved Remit No 2 above and that it was passed unanimously. He had signed the minutes produced to the Tribunal as a true and correct record of the meeting. The Tribunal accepts Mr Lousich's evidence and that the two resolutions as noted above were passed unanimously at the Annual General Meeting in 2004. It also accepts that a notice of the proposal was sent to members before the Annual General Meeting in 2004 but that the WADA Code was not sent to delegates prior to the meeting. It was however available on the WADA website.

Discussion

15. It appears from evidence given by Mr Lousich that there have been past administrative problems within NZPF. These problems led to NZPF, which had previously been an incorporated society, being struck off the Register of Incorporated Societies. Mr Lousich became President in 2003. He applied to have NZPF reincorporated under the Incorporated Societies Act 1908 but it took him some time to obtain the signatures of sufficient members to apply for incorporation. His discussions with SPARC made him realise that the WADA Code had to be incorporated in a new constitution.
16. The position on 20 August 2004, the date of the annual meeting of NZPF, was that even though the minutes state that it was incorporated, it in effect was not incorporated at that date. While the Tribunal was not advised of the precise date of incorporation, the statutory declarations supporting the application to incorporate as a society was declared on 26 September 2004, approximately 5 weeks after the annual meeting.
17. The constitution with which NZPF was incorporated was not the constitution envisaged in Remit No 1 passed unanimously at the meeting on 20 August 2004. Because of various factors which included cost, NZPF was in effect incorporated with a constitution which had been prepared before the discussion with SPARC. That constitution has remained unaltered and as Mr Lousich said, it is intended to adopt the new constitution, which will adopt the WADA Code and give this Tribunal jurisdiction in drug matters, at the Annual General Meeting later this year.
18. The constitution which was adopted included the following:

Drug Policy

30 The "NZPF Drug Policy" is at Annex B.

19. Annex B is in effect the NZPF Code and was annexed to the constitution and is part of the documentation at the office of the Registrar of Incorporated Societies. It is not the WADA Code although it did state that NZPF will support the initiatives of various people including SPARC and WADA to stop doping in sport. It is common ground between the parties that Mr Mete's violation is a violation under either the NZPF Code or the WADA Code. A relevant portion of the NZPF Code provides that where the doping offence involves ephedrine, the sanction for the first doping offence will be

3 months or less. Although not expressly stated in the NZPF Code the "3 months or less" obviously applies to suspension or a period of ineligibility.

20. The position on 17 September 2005, when Mr Mete committed the violation was that the constitution of NZPF expressly adopted a doping code which provided for a maximum 3 month period of suspension for ephedrine. That constitution is still the constitution of NZPF.
21. In the circumstances, the Tribunal accepts as correct the submissions made on behalf of Mr Mete. The relationship between NZPF and Mr Mete is a contractual one and Mr Mete is bound by the terms of the constitution. He has no direct contractual link with IPF. The contractual provision which governed him on 17 September 2005 was the NZPF Code as annexed to the constitution and filed with the Registrar of Incorporated Societies.
22. This position is confirmed by the drug testing consent form signed by Mr Mete. Under this form he acknowledged that he understood that the constitution and/or rules of NZPF prohibited doping and required members to abide by the IPF and NZPF Rules pertaining to doping control. A particular provision of the form stated:

"I understand that a positive test result and/or a failure to comply in full with the drug testing regulations of the NZPF may lead to penalties being imposed on me under the NZPF **Anti-Doping Code**."

There is no reference to the WADA Code or even the IPF Code. By its own forms NZPF agree that its own Anti-Doping Code would apply. Members of NZPF, apart from those at the annual general meeting in 2004, have never been advised that the WADA Code applied. It is the Tribunal's view that that the NZPF Anti-Doping Code referred to in the correct form is the NZPF Code.

23. In coming to this conclusion, the Tribunal has not overlooked the two remits passed at the meeting of 20 August 2004 or that clause 37 of the NZPF constitution states:

"The Association shall follow the rules of the sport of power lifting as adopted by the IPF and ratified by the NEC."

Remit 2 passed at the meeting of 20 August 2004 was not an adoption from that date of the WADA Code. It was certainly agreement in principle to adopt the WADA Code but in the Tribunal's view steps were then required to formally implement that adoption.

24. Apart from the fact that there was no dissemination to the wider membership of NZPF of the "adoption" of the WADA Code, the constitution of NZPF, as an incorporated society, remains in force until altered in accordance with s 21 Incorporated Societies Act 1908. There are certain formalities provided for in that section for the registration of an alteration to the Rules or a new constitution which is proposed in this case. The Registrar is required to be satisfied that the alteration has been duly made and that the rules as so altered conform in all respects to the Act. On being so satisfied, the Registrar registers the alteration "and the said alteration shall thereupon take effect according to the tenor thereof" (s 21(3)). This section in effect provides that until the new constitution is registered under the Act, the provisions of the old constitution apply.
25. Clause 37 of the existing constitution does not in the Tribunal's view advance the matter in favour of NZPF. Mr Smyth submitted that this clause could not apply, firstly, because it is referring to the rules of the sport and not anti-doping rules, and secondly, because the NEC (National Executive Committee) cannot ratify a change to the constitution. That is what is required in this case. The Tribunal does not determine whether "the rules of the sport of power lifting" include the anti-doping rules. It is however satisfied that a general provision in these terms cannot in effect alter the clear wording of the constitution which states that the NZPF drug policy is at Annex B which is itself part of the constitution. Once NZPF registered its constitution with its NZPF Code, it could only be altered by amending that constitution.
26. The Tribunal recognises the work and efforts of Mr Lousich in restoring sound administration to NZPF, which is a relatively small sporting organisation with limited funds. However, the intention of Mr Lousich and other members who attended the annual meeting to adopt the WADA Code has not been properly carried into effect and until it is carried into effect, the NZPF Code continues to apply.

The Sanction

27. Mr Smyth indicated to the Tribunal that if it accepted the submission that the maximum penalty which could be imposed was 3 months' suspension, Mr Mete accepted that this was an appropriate sanction to be applied in his case. The Tribunal agrees. There is no provision in the NZPF Code to consider sanctions for specified substances as there is in the WADA Code. Ephedrine is a stimulant but, in the circumstances, it is unnecessary for the Tribunal to consider whether or not the drug was intended to enhance sports performance in this case.

28. In accordance with another provision of the NZPF Code, it is appropriate that Mr Mete's result in the competition of 17 September 2004 be "withdrawn".

Decision

29. Mr Mete is ineligible to compete in any competitions organised by NZPF for a period of 3 months from 22 May 2006.

30. Mr Mete is disqualified from the events in which he competed on 17 September 2005.

Dated 25 May 2006

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

.....
Hon Barry Paterson QC
Chairman