

1. Jared Neho is charged by Drug Free Sport New Zealand (DFS) with a violation of Rule 14.10 of the Sports Anti-Doping Rules (SADR) as the result of his participation in a match between a Papanui rugby league team and a Riccarton rugby league team on 17 February 2013 during a 12 week period of ineligibility commencing from 25 January 2013.
2. The period of ineligibility was imposed by a decision of the Sports Tribunal dated 25 January 2013 as the result of a breach of the SADR.
3. In that decision Mr Neho was advised:

“... that under r 14.10 of the Rules, he may not during the period of ineligibility participate in any capacity in a competition or activity authorised or organised by New Zealand Rugby League or a rugby league club or in any similar activities in any other sport which is a signatory to the Rules.”
4. The game in which Mr Neho participated in on 17 February 2013 was a pre-season trial match organised by Papanui and Riccarton clubs. Accordingly that match falls under the ineligibility sanction imposed by the SADR.
5. The Tribunal has received correspondence from Mr Grenfell, CEO of the Riccarton Rugby League Club, enclosing an email from Mr Bentley, president of the Papanui Rugby League Club. In that email Mr Bentley confirms that as the match was not sanctioned by Canterbury Rugby League he believed it was all right for Mr Neho to participate and advised Mr Neho of that.
6. Under SADR 14.10.2 where an athlete has been declared ineligible and violates the prohibition against participation under SADR 14.10.1 the results of his participation are disqualified and the period of ineligibility originally imposed, starts over again as at the date of violation. The new period of ineligibility may be reduced under SADR 14.5.2 if the athlete establishes no significant fault or negligence for violating the prohibition against participation.
7. The approach to the operation of no significant fault in this context mirrors the approach in relation to the violation involving the presence of a prohibited substance (SADR 3.1). The nature of the obligation is expressed by statements such

as those made by in CAS 2005/C/976 986, CAS Advisory Opinion, paragraph 75, where the Court of Arbitration for Sport (CAS) panel states that it is only where:

“the departure of the athlete from the required conduct under the duty of utmost care was not significant, the sanctioning body may apply Article 10.5.2 of the WADC and depart from the standard sanction.”

8. The above extract was quoted in the CAS decision of *Andrei Plotniy v International Tennis Federation* CAS 2010/A/2245, decision 11 April 2011, which found that a tennis player who played in certain tournaments while under suspension had not established no significant fault. That tennis player claimed he believed he could play in those particular tournaments on the basis of mistaken advice he received from his agent.
9. The Tribunal accepts that Mr Neho genuinely made a mistake in believing he could participate in the game, reinforced by advice he received, and that he did not intend to breach the suspension. However, that does not necessarily mean he has “no significant fault” as required under the SADR to get a reduced penalty.
10. It will generally be very difficult for an athlete to establish the application of SADR 14.5.2 (the equivalent of Article 10.5.2 of the WADA Code) because of the high level of personal responsibility which the SADR imposes. Certainly receiving informal advice from a person in Mr Bentley’s position without directly checking the correctness of the advice would in normal circumstances not suffice to establish no significant fault. Mr Neho could, for example, have checked first with DFS whether his suspension prevented him from playing in this game.

Decision

11. In the circumstances the Tribunal concludes that Mr Neho cannot establish “no significant fault” for the breach and that there is no proper basis to reduce the period of further ineligibility. Accordingly the period of ineligibility which was set at 12 weeks commencing on 25 January 2013 now commences again as from 17 February 2013.

Comments on Ineligibility

12. As stated in the Tribunal's decision of 25 January 2013, under SADR 14.10.1, that ineligibility prevents Mr Neho participating in any capacity in a competition or activity authorised or organised by New Zealand Rugby League or a rugby league club or in any similar activities in any other sport which is a signatory to the Rules.
13. The Tribunal notes that the phrase "participating in any capacity" is wide ranging and prevents a suspended athlete taking part in a number of activities, not just "playing" sport. The Tribunal again notes that the prohibited activities are not just those organised or sanctioned by a national or regional sports body but include those activities organised by sports clubs.
14. The accompanying commentary to SADR 14.10.1 gives some examples of what an ineligible athlete is prevented from doing. It states: *"For example, an Ineligible Athlete cannot participate in a training camp, exhibition or practice organised by his or her National Federation or a club which is a member of that National Federation."* The commentary further notes that under the SADR sanctions in one sport will be recognised by other sports and notes that even in the case of non-signatory sports bodies, a suspended athlete is prevented from competing in certain leagues and events of those bodies.
15. This generally means that 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.
16. This was discussed with Mr Neho during the hearing when the question was raised whether he could train with his team while suspended. The answer to that is clearly "no" as any organised club training or training with his team falls within the activities a suspended athlete is not allowed to participate in. Of course, Mr Neho is not prevented from doing his own individual training or participating as a spectator.

Dated: 16 April 2013

A handwritten signature in blue ink, consisting of a large, stylized initial 'G' followed by a long, horizontal, slightly wavy line.

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A R Galbraith QC
(Deputy) Chairperson