

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND DARREN REIRI

Respondent

AND NEW ZEALAND RUGBY LEAGUE

Interested Party

**DECISION OF TRIBUNAL
5 DECEMBER 2014**

Hearing 7 pm on 4 December 2014 by telephone conference

Tribunal Sir Bruce Robertson (Chair)
Alan Galbraith QC (Deputy Chair)
Ron Cheatley

Present Paul David QC and Shaun Maloney, counsel for Drug Free Sport New Zealand
Jude Ellis, Drug Free Sport New Zealand
Darren Reiri, Respondent
Andrew McCormick, counsel for Respondent
Jesney Te Puke-Cowperthwaite, assisting Mr McCormick
Alex Hayton, New Zealand Rugby League
Teaukura Moetaua, Wakatipu Giants, witness

Registrar Brent Ellis

Proceedings

1. On 6 October 2014, Drug Free Sport New Zealand (DFS) filed an Application for Anti-Doping Rule Violation Proceedings against a New Zealand Rugby League (NZRL) member Darren Reiri, which was served on 10 October.
2. The operative part of the allegation was:

DFSNZ alleges that the Respondent ordered packages of a prohibited substance Anastrozole over the internet. The packages were dispatched to him but intercepted by Customs, who referred the interception to Medsafe. When interviewed, the Respondent admitted what he had done. DFSNZ alleges that:

(a) In about May 2013, the Respondent was in possession of a substance, Anastrozole, which was prohibited at all times in and out of competition under S4.1 of the Prohibited List 2013, in breach of SADR 3.6.

(b) Alternatively, in about May 2013, the Respondent attempted to use a prohibited substance, Anastrozole, which is prohibited at all times in and out of competition under s4.1 of the Prohibited List 2013, in breach of SDAR 3.2.

(c) In about June/July 2013, the Respondent was in possession of a substance, Anastrozole, which was prohibited at all times in and out of competition under S4.1 of the Prohibited List 2013, in breach of SADR 3.6.

(d) Alternatively, in about July 2013, the Respondent attempted to use a prohibited substance, Anastrozole, which was prohibited as all times in and out of competition

under S4.1 of the Prohibited List 2013 in breach of SADR 3.2.

3. Mr. Reiri was initially reticent in his response. A provisional suspension order was made on 29 October and thereafter Mr Reiri had legal representation.
4. He has now admitted two breaches of Rule 3.6 of the Sports Anti-Doping Rules 2013 (SADR) in respect of his actions. This is agreed to be on the basis that Mr Reiri ordered the substances intending to use them. It was common ground that the two violations were to be treated as one violation under SADR 14.7.4
5. Under SADR 14.2, the sanction is a period of ineligibility (suspension) of 2 years unless SADR 14.4 can be invoked.
6. The onus is on Mr Reiri to establish how the substance came into his possession and that there was the absence of any intention to enhance his sport performance. If those thresholds are met the Tribunal must assess the degree of fault involved.

Evidence of Darren Reiri

7. Mr Reiri's brief of evidence included the following:

In the 2012 and 2013 seasons I did not play... [rugby league]...often at all as my employment and family commitments were my priorities. I might have played one or two games each season when these commitments allowed.

In those years as I was playing less, I found myself spending more time in the gym just to keep fit. I have always prided myself on my fitness so it was natural for me to want to keep fit though I was not playing very often. I

would often train with a friend, mainly to have someone to work out with.

I decided I would like to get bigger and more muscular so I started taking protein supplements, such as I could buy from health or sports shops or the supermarket. This worked to a point and I was happy with the results I was getting in terms of my strength and appearance.

At one stage early in 2013, a friend told me of a product he was using with his gym training. He said it helped him get bigger, stronger and become more muscular.

My friend gave me details of the supplier's website which happened to be in India. I cannot recall the website's exact address.

I decided to try it out and ordered a packet of the tablets for NZ\$165.00 in April or May 2013. The package never arrived so I thought it must have gone missing. I then received a letter from New Zealand Customs telling me that the package had been intercepted.

I did not do anything about this and simply waited a few months and then decided to contact the supplier and asked for another package to be sent, given that I did not receive the first one. That package didn't arrive either, so I gave up. I was then contacted by Mr Jones on behalf of Drug Free Sport New Zealand in late November and then I met with him when he came to Queenstown on 6 December.

These are the only two occasions I have ever purchased a supplement other than protein powders in the way I have described. I did not know much about the supplement other than it was to be taken once each week. I did not

know the chemical make-up of the substance and I certainly did not think of checking the WADA prohibited substances list as I did not think anyone would be interested in me given I was simply trying to get bigger and stronger in the gym.

While I knew the substance was supposed to enhance athletic performance, I reiterate that I bought the substance to use in the gym, not to become a better rugby league player. My rugby league career is practically finished given my age, and in any event I only played rugby league for social contact in Queenstown in the first place.

My sole aim in ordering the supplement was to use it for cosmetic purposes. I wanted to get bigger and stronger. I did not give a second thought to whether any improvements I could make in the gym would benefit my rugby league abilities.

When I moved to Christchurch I did not intend to play at any sort of serious level next season. The Christchurch club competition is far superior and more serious than that in Southland and for me at age 35, I would not expect to play for a premier level club team in Christchurch anyway. If I was going to play, I would only be able to play at social team level.

Issues and submissions

8. The critical issues are advanced by Mr Reiri in his counsel's submission as:

Mr Reiri is 35 years of age. He has a partner and two children aged 1 and 3. Born and raised in Southland, Mr

Reiri relocated to Australia as a child and then returned to Queenstown in his early twenties, where he lived for 12 years before relocating to Christchurch this year for employment purposes.

While living in Sydney, Mr Reiri developed a passion for rugby league as his main winter sport. Although not rising to any significant level of achievement, Mr Reiri remained a keen and passionate player at the levels at which he did participate. On his relocation to Queenstown, Mr Reiri joined the local rugby league club that played in the Southland Rugby League Competition.

Rugby league is not a major sport in Southland or Otago so the standard of the club competition is not high. Players participate for a variety of reasons, most notably socially based as is the case with Mr Reiri.

In the 2012 and 2013 seasons, Mr Reiri did not play very often at all due to his burgeoning employment and family commitments. He estimates that he may have played one or two games each season when those commitments permitted. He did not play at all this season.

As a consequence of his lessening rugby league activities, Mr Reiri found himself spending more time training in a local gym simply to keep fit.

[In]...Mr Reiri's Brief of Evidence, he articulates the manner by which he came to learn of the existence of the prohibited substance in question; how he went about purchasing it in the first instance and then requested a replacement consignment when the first package did not arrive.

Mr Reiri maintains that these were the only two occasions that he either purchased or attempted to source a supplement other than regular protein powders readily obtainable in supermarkets and nutritional stores. Mr Reiri admits he knew little about the substance in question other than that a friend told him he should take one tablet once a week. Mr Reiri did not know the chemical makeup of the substance and given, as he admitted in his interview with Mr Jones, he has never been in a position to receive information or education regarding the use of such substances, nor did he think of checking the prohibited substance list to ascertain whether he would be in breach of the Code.

Furthermore, it is submitted to be significant that as Mr Reiri has never played rugby league, or any sport for that matter, to a level that would render him subject to Drug Free Sport New Zealand's testing and compliance regime, he has never been required to take a drug test in or out of competition, nor expected to comply with any requirements of the Code.

[In]...his Brief of Evidence, Mr Reiri emphasises that while he knew the substance in question was supposed to enhance his athletic performance, he reiterates that this was designed to assist him with his gym training for cosmetic purposes as opposed to improve his rugby league playing ability. It is submitted to be relevant that Mr Reiri's rugby league career was practically finished at the time he embarked on this enterprise and put simply, his was not a rugby league career that was played for any other purpose than social enjoyment in the first place.

This fact is amplified by Mr Reiri's evidence that as he now resides in Christchurch where the standard of rugby league

is immeasurably higher than in Southland, he was resigned to the fact that he would only be able to compete in the lower reaches of the Canterbury Rugby League club competition as opposed to at premier level, given his age and abilities.

9. Counsel agreed that the approach to be adopted was usefully summarised in *Foggo v NRL* (CAS A2/2011, 3 May 2011), an approach which we endorsed in *Drug Free Sport New Zealand v Wiremu Takerei* (ST 01/12, Decision 8 June 2012).
10. We have given careful consideration to the evidence filed which was supplemented and challenged before us, but we are not satisfied that the necessary thresholds are overcome by Mr Reiri.
11. DFS in our view correctly summarised the position in its written submissions:

The question of absence of intent to enhance performance involves an objective consideration of the circumstances and asking whether Mr Reiri took the substance to raise the level of his performance in sport. Any intent to cheat or absence of intent to cheat is irrelevant. The Tribunal should focus on the connection between the possession of the substance and performance in sport. In this case it is completely artificial to try and segregate performance improvement in body building from performance in rugby league where becoming bigger and stronger would improve performance in either activity. It is submitted that even if the requirement for corroboration can in some way be overcome, Mr Reiri falls a long way short of proving the absence of intent to enhance sport performance to the high standard of comfortable satisfaction.

12. Objectively viewed the explanations are not persuasive especially when Mr Reiri persisted with his attempted acquisition after his first try was foiled by Medsafe. His failure to seek advice or check his position is inexcusable. He appeared to be willing to rely on the say so of a friend who he did not want to identify but with regard to who Mr Reiri told the investigator the friend had told him "it was a good performance enhancing drug". Mr Reiri had a long involvement in the sport and a clear duty to be cautious. While because of his age and new priorities his degree of involvement in rugby league was lessening, the obligations remained even if it was for him more of a hobby than a sport.
13. It may be arguable that there was an absence of the required sort of corroboration but that phase is not reached in the factual circumstances.

Decision

14. There is no basis for considering anything other than a 2 year period of suspension.
15. The only other issue for determination is the applicability of SADR 14.9.1 which allows for the start date of a period of ineligibility to be back dated where there have been substantial delays in the process not attributable to the athlete. DFS accepts this could have application but submits it should be to a start date not earlier than 1 June 2014 whereas Mr McCormick argues it should be to 1 December 2013. Counsel each referred to decisions of other bodies - *USADA v Mark Block* (AAA No 77 190 00154 10, 17 March 2011) and *WADA v Anthony West & Fédération Internationale de Motocyclisme* (CAS 2012/A/3029, 22 November 2013) - which vividly demonstrate how fact specific the exercise must be.

16. The violations occurred in the period May to July 2013. Medsafe advised DFS of the position at the beginning of September. There was no contact between the investigator and Mr Reiri until the end of November and he agreed to be interviewed a week later on 5 December and the transcript had been created by 8 December.
17. At that stage there was ample evidence available to commence proceedings and to have sought a provisional suspension order. We do not overlook the submission of DFS "that investigations of this nature inevitably take more time to consider, follow up conclude and bring forward to the Tribunal". However there had been two and a half months for that to have begun prior to the interview.
18. We conclude that thereafter there was substantial delay. Even allowing for the "kiwi summer close down" there is nothing to suggest why a provisional suspension was not sought before the end of January.
19. Accordingly the 2 year required suspension will be operative from 1 February 2014.
20. The Tribunal advises Mr Reiri that under SADR 14.10, he may not during the period of suspension participate in any capacity in a competition or activity authorised or organised by NZRL or a rugby league club or other member organisation. Nor during this time can he participate in any capacity in competitions authorised or organised by any professional league or any international or national level event 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.

Dated 5 December 2014

A handwritten signature in black ink, appearing to read 'Bruce Robertson', written in a cursive style.

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Sir Bruce Robertson
Chairperson