

BETWEEN

DRUG FREE SPORT NEW ZEALAND

Applicant

AND

STEVEN ROBINSON

Respondent

**REASONS FOR DECISION OF TRIBUNAL
DATED 11th JUNE 2008**

(Teleconference)

Hearing:

Tuesday 20 May 2008

Present:

Steven Robinson (Athlete)

Jahlal Ibrahim (Representative)

Dale Stephens (CEO Basketball New Zealand)

Graeme Steel (for Drug Free Sport)

Mark Rogers (for Otago Nuggets)

Tribunal Members:

Nicholas Davidson QC (Deputy Chairperson)

Ron Cheatley

Carol Quirk

Registrar:

Brent Ellis

Introduction

The respondent Steven Robinson was the subject of an application for an Anti-Doping violation proceeding by Drug Free Sport NZ, after testing at the NZ Basketball League match between the Otago Nuggets and the Taranaki Dynamos on 28 March 2008.

A breach of Sports Anti-Doping Rules (2007) Rule 3.1 was alleged based on the presence of a Prohibited Substance, cannabis, in his system.

The athlete did not contest the application, and he waived his right to analysis of the "B" sample.

He was the subject of a provisional suspension dated 24 April 2008 on the application of Basketball NZ (BBNZ), and at a hearing on Friday 16 May 2008 admitted the violation which resulted in a decision that he be suspended from all participation in basketball, with cross-code effect, up to and including Sunday 1 June 2008. The Advice of the Decision of the Tribunal was dated Tuesday 20 May 2008.

The Provisional Suspension

BBNZ sought provisional suspension referred to, pursuant to the provisions of Rule 12 of the Sports Anti-Doping Rules 2007. A teleconference was convened for this purpose, but the athlete chose not to attend. He had the right to apply to set aside the provisional suspension and such be given urgency, but in the event that was not sought, and the Tribunal proceeded to a hearing on Friday 16 May 2008.

Plea

Mr Robinson admitted the violation.

The Hearing

The hearing proceeded on the basis of a violation being admitted, for the presence of a metabolite of cannabis, at a level of 524 ng/mL +/- 52.4 ng/mL.

At this hearing, as with that involving **Drug Free Sport New Zealand v Nat Connell** ST 04/08, the Tribunal considered a letter from BBNZ, which described its commitment to the philosophies of Drug Free Sport NZ, and other transgressions within basketball, involving cannabis, including penalties in the cases of **Basketball New Zealand Inc v Kareem Johnson** (ST 16/07, decision

6 December 2007) and **Basketball New Zealand Inc v Clifton Bush Junior** (ST 15/07, decision 10 October 2007). These were given some publicity, with the comment "*that such did not seem to have had any positive effect on the wider basketball community with the same problem arising within 12 months of the most recent decision by the Sports Tribunal NZ*".

Essentially BBNZ sought that any sanction has "*positive educational and restorative influence on the athlete as well as being appropriately punitive*". It sought a "*clear indication*" to the basketball community that transgressions will not be tolerated.

Mr Stephens did not wish to take the matter further at the hearing.

The letter was referred to in the case of **Connell** STO4/08, and the Tribunal records the same response here. The explanation offered by Mr Robinson, and supported by succinct submissions from his representative Mr Ibrahim, was that BNZ was making too much of the previous transgressions, and referred to **Basketball New Zealand Inc v Mark Dickel** (SDT 18/06, decision released 14 August 2006), where a lesser sanction had been imposed, and sought "*consistency*" in the Decision in this case. In **Dickel** the International Federation imposed a suspension by an independent process.

Mr Rogers for the Otago Nuggets, said that the impact on the team was perhaps less than that in the case of Mr Connell, but the team was seriously undermanned and affected by the provisional suspension and would be by any further suspension. He acknowledged the need for role models, and to a degree supported the submission by Mr Ibrahim as to proportionality of penalty. He said that on his enquiries only 1.2% of tests were positive.

He said that Mr Robinson was a good ambassador for the game, and said that the formal letter from BBNZ was supported in principle, but the punishment, pursuant to the provisional suspension, was enough together with adverse publicity, plea, and loss of income. Suspension impacted harshly on the team.

Mr Steel for Drug Free Sport NZ said that the level of cannabis derived from the testing was very high in the experience of Drug Free Sport. Mr Robinson explained his consumption of cannabis, in the context of a close friend's farewell. He said this was a one off incident and he had been tested before without violation. As such he explained the consumption as for recreational use.

He was contrite and responsible and was able to articulate this very clearly to the Tribunal. He said he had let down his team, family, and himself, and had been

extremely affected by the publicity attending the violation, which had impacted on him at a personal level, and in his new business. He explained that he had to face up to customers and he had been the subject of extensive adverse media coverage, as had Mr Connell.

Discussion

The Tribunal has addressed this matter in the same way as applicable in **Connell**. The level of cannabis detected was higher than that of Mr Connell, but without some additional evidence which bears on the implications of that, the Tribunal cannot take this further. Nevertheless the Tribunal makes comment below.

The Tribunal accepts that Mr Robinson did not smoke cannabis for performance enhancing purposes and the lesser sanctions provided for in Rule 14.3 of the Sports Anti-Doping Rules (2007) are available in principle. For reasons discussed in **New Zealand Rugby League Inc v Timoti Broughton** (ST 14/07, decision 20 December 2007), a period of ineligibility between 1 and 2 months will usually apply.

The cases of **Johnson**, **Bush** and **Dickel** are not decisive. The Tribunal has since then, in **Broughton** and other cases, including **Drug Free Sport New Zealand v Ted Hunia** (ST 03/08, decision 21 May 2008), indicated an overall and guiding stance, applied here.

Mr Robinson is a professional athlete, although at a modest level of remuneration, who was fully aware of his obligations.

The consumption of cannabis came mid-season, shortly before a game, and in these circumstances, while allowing for the considerable contrition expressed and the impact of provisional suspension, the Tribunal imposed a suspension from all participation in basketball to take effect up to and including Sunday 1 June 2008, with the overall effect of a 6 week suspension. This has Cross-Code effect.

The athlete is reminded of the Code's provision for a two year suspension for a second violation.

Comment

In this case and that of **Connell**, the Tribunal has been informed of what were described as levels of cannabis well in excess of those which constitute a violation. Without further evidence as to what should be taken from these levels, the Tribunal has drawn no further inference. It is likely that the Tribunal will seek assistance from Drug Free Sport where there are high levels of Prohibited


Substances found, in particular cannabis, in order to test the explanation given as to the timing, degree, and impact of consumption. This may extend to issues of credibility, and may also bear on the extent to which the athlete is affected, if at all, by the consumption. These factors have had no bearing in this case nor that of Connell, but are referred to because the Tribunal will likely need to understand the relevance of high level samples in the future.

Further, the submission that the sanction should reduce given the effect of suspension, e.g. the greater financial penalty for professional athletes, finds little favour with the Tribunal. A two-tier system is hard to administer fairly. Athletes must know the obligations, and consequences. A professional athlete has all the more reason to comply with the Code. All athletes must know their obligations and consequences. Rule 3.1.1. of the Sports Anti-Doping Rules (2007) states "*it is the athlete's personal duty to ensure that no prohibited substance enters his or her body. Athlete's are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily specimens*".

Formal decision

Robinson was suspended from participation in any sport which is a signatory to the World Anti-Doping Code (WADA Code), up to and including Sunday 1 June 2008, with Cross-Code effect. He is advised that if he further infringes the minimum period of ineligibility is 2 years.

Dated this 11th day of June 2008



Nicholas Davidson QC
Deputy Chairperson (for the Tribunal)