

BETWEEN DRUG FREE SPORT NEW ZEALAND

Applicant

AND MAHDI NAMDARI

Respondent

AND NEW ZEALAND OLYMPIC WRESTLING UNION

Interested Party

DECISION OF SPORTS TRIBUNAL

11 OCTOBER 2021

Tribunal Dr James Farmer QC
Nicholas Davidson QC

Parties Adam McDonald, counsel for Applicant
Hayden Tapper, Drug Free Sport New Zealand
Mahdi Namdari, Respondent
Matt Rhodes, counsel for Respondent

Registrar Neela Clinton

Introduction

1. Mahdi Namdari (the Respondent) is a member of New Zealand Olympic Wrestling Union (NZOWU) and was a member of the Tokyo Olympic Long List team.
2. Drug Free Sport New Zealand (DFSNZ) conducted an out of competition test on the Respondent on 20 March 2021, which returned a positive result. DFSNZ was advised of the result on 22 April 2021.

Anti-Doping Proceeding

3. On 6 May 2021 DFSNZ filed proceedings alleging a violation of Rules 2.1 and 2.2 of the Sports Anti-Doping Rules 2021 (SADR), evidenced by the presence of a prohibited substance in the sample collected on 20 March 2021.
4. Rule 2 SADR defines an anti-doping rule violation:
 - “2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample
 - 2.2 Use of Attempted Use by an Athlete of a Prohibited Substance or a Prohibited Method”
5. The analysis of the sample confirmed the presence of 16b-Hydroxystanozolol, 4b-Hydroxystanozolol and Stanozolol-1’N-Glucuronide (metabolites of Stanozolol). Stanozolol is a non-specified substance prohibited at all times under class S1-Anabolic Agents of the 2021 Prohibited List.
6. The Respondent was provisionally suspended by consent on 11 May 2021. He requested an analysis of the ‘B’ sample, which confirmed the presence of the prohibited substance found in the ‘A’ sample.
7. On 29 June 2021 DFSNZ filed substantive anti-doping rule violation proceedings and on 23 July 2021 the Respondent filed his Form 2 admission of the violation, and asked to be heard on the issue of sanction.

Sanction

8. The starting point for this violation is under SADR 10.2.1 which provides that the period of ineligibility shall be four years unless the athlete is able to prove that the violation was not intentional.
9. The Respondent advised he had never been prescribed with Stanozolol. He was suffering from a knee injury and met another gym member, an individual he recognized from previous visits, who offered him pills. He accepted the medication because he understood it would help him with his recovery. He has limited English and did not understand that he was taking a risk of violation, but accepts he should not have trusted the man at the gym.

10. On 25 August 2021 DFSNZ filed submissions to the effect that the Respondent had failed to establish unintentional conduct, and was therefore subject to a four-year period of ineligibility.

Rule 10.8.1 SADR and Early Admission

11. On 6 September 2021 the Respondent sought a preliminary determination by the Tribunal on the interpretation of r 10.8.1 of SADR relating to reduction for early admission. An athlete who faces an anti-doping rule violation that carries a period of ineligibility of four or more years may receive a one-year sanction reduction if they admit the violation and accept the asserted sanction within 20 days of notification of the alleged charge.
12. The procedural issue for the Tribunal was whether the Rule required DFSNZ to notify the athlete when charged with a rule violation to state the ineligibility period under the relevant rule. The Respondent said this would enable him to decide how to proceed, and whether a hearing would be required, because if he admitted the violation and accepted the asserted ineligibility period, he would be entitled to a one-year reduction.
13. This was a test case, and the 20-day time limit was paused. DFSNZ advised that it “would be grateful for the Tribunal’s guidance on this matter, as it may have an impact on operational procedure”.
14. The parties filed submissions and the Tribunal issued its Interim Decision on 29 September 2021. There were drafting infelicities, but the Tribunal ruled it should interpret the Rules to ensure they worked in a practical way and to conform with the object or spirit of the Rules. To this end the Tribunal held that DFSNZ should state from the beginning of the process the period of ineligibility that an athlete faces, to make clear the immediate right to obtain a one-year reduction by making a timely admission.
15. DFSNZ should have advised the Respondent of his rights under Rules 10.2.1 and 10.2.2, and the Tribunal gave him 2 weeks to elect whether he wished to admit the alleged breach of SADR and accept a one-year reduction of the mandatory period of ineligibility.
16. On 8 October 2021 counsel filed a joint memorandum in relation to sanction. The Respondent accepted his conduct was in breach of the SADR and he was subject to a four-year period of ineligibility. Having admitted the violations and accepted the sanction he is entitled to a one-year reduction. A copy of the joint memorandum is annexed.
17. The Tribunal is satisfied that it is able to accept the proposed sanction without the need for a hearing and makes orders as proposed under rule 10.8.1.

Orders

18. By his admission within the time allowed by this Tribunal, Mr Namdari qualifies for a one-year reduction of the four-year period of ineligibility.

19. His suspension will be for a period of three years backdated to commence from 11 May 2021, and means he is ineligible to participate in sport until 11 May 2024.

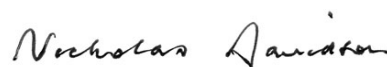
Footnote

20. The Tribunal will deal with similar case on the papers, and if satisfied that this decision is applicable will cite it.

11 October 2021



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Dr James Farmer QC
Deputy Chairman



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The Hon. Nicholas Davidson QC
Deputy Chairman

ANNEXURE

Sports Tribunal of New Zealand
ST 03/21

between
DRUG FREE SPORT NEW ZEALAND
Applicant
and
MAHDI NAMDARI
Respondent

JOINT MEMORANDUM AS TO SANCTION
8 October 2021

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JOINT MEMORANDUM AS TO SANCTION

MAY IT PLEASE THE TRIBUNAL

1. This memorandum is filed jointly by counsel for DFSNZ and counsel for Mr Namdari regarding the appropriate sanction to be imposed on Mr Namdari for breaching rr 2.1 and 2.2 of the Sports Anti-Doping Rules 2021 (**SADRs**).
2. Mr Namdari has accepted the violations and asserted period of ineligibility, and seeks to avail himself of the one-year reduction based on SADR 10.8.1. In light of the evidence filed in this proceeding and Mr Namdari's acceptance, the parties submit that it would be open to, and appropriate for, the Tribunal to impose a period of ineligibility of three years on Mr Namdari (including a one-year reduction under r 10.8.1) for his anti-doping rule violations, with credit given for the period of his provisional suspension.

Background

3. Mr Namdari is a member of the New Zealand Olympic Wrestling Union which has adopted the SADRs.
4. On 20 March 2021 DFSNZ undertook an out-of-competition test on Mr Namdari. His A sample returned an adverse analytical finding for the presence of metabolites of Stanozolol, a non-specified substance prohibited at all times under class S1 Anabolic Agents pursuant to the WADA Prohibited List 2021. Mr Namdari's B sample result confirmed the results of the A sample.
5. On 11 May 2021 Mr Namdari was provisionally suspended by consent.
6. DFSNZ filed substantive proceedings on 29 June 2021.
7. On 23 July 2021 Mr Namdari admitted the violations but confirmed that he wished to be heard in relation to sanction.
8. On 6 September 2021 Mr Namdari sought direction from the Tribunal on a preliminary issue regarding the interpretation of SADR 10.2.1, a new rule implemented in the SADRs pursuant to the 2020 WADA Code.
9. On 29 September 2021, the Tribunal issued an interim decision confirming that DFSNZ was required to notify Mr Namdari of the specific asserted sanction that his alleged violations carry under the SADRs at the outset (**Interim Decision**). As DFSNZ had not done so in express terms, the Tribunal extended the period by which Mr Namdari was able to invoke r 10.8.1 (to seek a one-year reduction of the applicable period of ineligibility).
10. On 7 October 2021 Mr Namdari admitted the violation and accepted the asserted period of ineligibility. He also stated he wished to seek a one-year reduction in the period of ineligibility pursuant to r 10.8.1.

Period of ineligibility

11. Under SADR 10.2 the period of ineligibility for breach of r 2.1 or r 2.2 is four years for a first violation where the violation involves a non-specified substance, unless proven by the Athlete to be unintentional.
12. Mr Namdari has admitted the violations and accepts the asserted period of ineligibility of four years. He seeks a one-year reduction on the period of ineligibility under r 10.8.1, having accepted the consequences within the time frame stipulated in the Tribunal's Interim Decision.
13. The parties submit that it would be open to, and appropriate for, the Tribunal to impose a period of ineligibility of three years on Mr Namdari for his anti-doping rule violations, with credit given for the period of his provisional suspension under r 10.13.2. This would result in Mr Namdari's period of ineligibility being three years from 11 May 2021.

Dated 8 October 2021



Adam McDonald
Counsel for DFSNZ



Tim McGuigan / Matt Rhodes
Counsel for the Respondent