BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND **ST 09/23**

BETWEEN	**DRUG FREE SPORT NEW ZEALAND**
	Applicant
AND	**ROBERT KNIGHT**
	Respondent

DECISION OF THE TRIBUNAL
5 April 2024

Hearing	**At the agreement of the parties this decision was made on the papers.**
Parties	Hayden Tapper, Drug Free Sport New Zealand Adam McDonald, counsel for Applicant Robert Knight, Respondent Chris Patterson, counsel for Respondent
Interested Party:	Cushla Matheson**,** Archery New Zealand
Tribunal	John Macdonald, (Chair) Warwick Smith, (Deputy Chair) Pippa Hayward, (Member)
Registrar	Helen Gould

1. Robert Knight (Mr Knight) is a New Zealand amateur archer and is registered with Archery New Zealand. Archery New Zealand has adopted the 2023 Sports Anti-Doping Rules (SADR) promulgated by Drug Free Sport New Zealand (DFSNZ) as its anti-doping policy.

2. Mr Knight participated in the North Island Senior Target Champs in April 2023 and underwent a drug test. His sample showed the presence of metoprolol and its metabolite a-hydroxy-metoprolol which is a specified substance prohibited at all times for Archery Athletes under class P1 - Beta Blockers on the 2023 Prohibited List.

3. Mr Knight accepted provisional suspension which was ordered by the Tribunal on 10 November 2023 (the PSO).

4. Mr Knight pursued an application for a retroactive Therapeutic Use Exemption (TUE) and so proceedings were adjourned pending the outcome of that application.

5. Mr Knight's retroactive TUE application was declined and he chose not to appeal against that decision.

6. On 26 January 2024 DFSNZ brought proceedings alleging breaches of Rule 2.1 (Presence of a Prohibited Substance or its Metabolites or Markers) and Rule 2.2 Use or Attempted Use.

7. Mr Knight admits the anti-doping rule violations but maintains he did not intentionally take the substance to enhance his performance.

Intention

8. In his affidavit dated 1 March 2024, Mr Knight says that he had been prescribed metoprolol by his doctor to treat an ongoing condition. He says that his doctor was aware that he was a competitive archer but did not alert him to the fact that his medication might be a prohibited substance. He also says that if he had known he never would have taken the substance.

9. In a joint memorandum of counsel dated 19 March 2024, DFSNZ accepted that Mr Knight's conduct was not intentional.

10. The Tribunal accepts that the presence of the prohibited substance in Mr Knight's system was unintentional.

Appropriate sanction

11. The sanction for breaches of Rules 2.1 and 2.2 is a period of ineligibility of two years unless proven by DFSNZ to be intentional pursuant to Rule 10.2.

12. The joint memorandum of counsel submitted that it would be open to, and appropriate for, the Tribunal to impose a period of ineligibility of two years, backdated to the date of the Provisional Suspension Order.

13. The Tribunal notes that pursuant to Rule 9, Mr Knight's results in the North Island Senior Target Championships shall be disqualified.

No significant Fault or Negligence

14. Following an enquiry from the Tribunal Chair as to whether the parties had turned their minds to the issue of no significant fault or negligence, as provided for by Rule 10.6.1.1, Counsel for Mr Knight filed submissions addressing the issue.

15. The submissions accepted that a period of ineligibility of two-years should be imposed on Mr Knight as he did not intentionally take the prohibited substance but argued that reductions pursuant to Rule 10.6.1.1 should be applied, and that a reprimand was all that was required.

16. Counsel for Mr Knight relied on his assertions that the prescribing doctor knew that he was a competitive athlete before metoprolol was prescribed to him. He submitted that it was reasonable for Mr. Knight to rely on the medical advice he received. Counsel's submissions at [4.2] stated that it was unclear why Mr. Knight's doctor chose to prescribe metoprolol rather than another medication, and that Mr. Knight had been taking metoprolol for several years.

17. Mr Knight's submissions also relied on the Sports Tribunal case of *DFSNZ v Mills*[1], to support the contention that he bore no significant fault or negligence and should therefore be entitled to a reduction in the level of sanction.

18. In *Mills*[2], the athlete received a 12-month reduction in sanction. In that case, the athlete had been using prescribed asthma medication for 25 years. The athlete was unaware that his prescribed medication contained a prohibited substance. He made assertions

[1] *DFSNZ v Mills ST 06/17*
[2] As at n 1.

that he had reasonably relied on the medical advice of his doctor, who was aware that he was a competitive athlete, had been advised that he was subject to anti-doping rules, and who had previously navigated him through a TUE application for an eczema condition. He further asserted that other athletes used asthma medication, and so he did not think his inhaler would be banned, that he did not have a team doctor to consult, that the anti-doping education he had received did not mention asthma, and that he had been tested twice before (presumably while using the inhaler) and had not returned positive tests.

19. DFSNZ filed submissions in response, in which it sought to distinguish Mr Knight's case from *Mills* on the basis that the 'totality of the evidence' in *Mills* went beyond that provided by Mr Knight, and that the decision was said to be finely balanced in Mr Mills' favour.

20. DFSNZ also pointed out that Mr Knight's submissions did not reference controlling CAS jurisprudence on the matter of no significant fault or negligence. In contrast, DFSNZ's submissions invoked several CAS authorities to demonstrate the high level of personal responsibility a competitive athlete must take when taking medication or other substances.

21. Citing *Sharapova v ITF* CAS 2016/A/4643 at [84], DFSNZ submits that a deviation from exercising the 'utmost caution' can only be justified in truly exceptional cases and not it in the vast majority of cases.

22. DFSNZ cited the *Bellchambers*[3] case, in which the panel referred with approval to *Fernandez*[4] which at [154] says:

> *It is not open to an athlete simply to say 'I took what I was given by my doctor who I trusted'. At the very least, an athlete who has been given medicines by a doctor should specifically ask to be informed of what are the contents of those medicines. He should ask whether the medicines contain any prohibited substances…..*

23. Further in reliance on *Bellchambers*, DFSNZ submitted that an assessment of fault should be made against (i) the objective elements which include such things as checking ingredients and labels, doing an internet search and consulting experts

[3] *WADA v Bellchambers* CAS 2015/A/4059
[4] *UCI* v *Fernandez*, CAS 2005/A/872.

whom they have instructed diligently, and (ii) the subjective elements, which could include things such as youth, level of doping education received, language barriers or other personal impairments.

24. DFSNZ submitted that Mr Knight did not satisfy the objective elements and did not provide evidence to the Tribunal as to what the medical advice he actually received was, or whether his GP was an expert or had experience in sports medicine.

The Tribunal's Assessment of No Significant Fault

25. The Tribunal would have expected to receive some evidence from Mr Knight or his doctor to the effect that they had at least discussed the issue of prohibited substances. There was no such evidence, nor any evidence establishing that the doctor was an expert in sports medicine and that that was the basis on which he relied on her medical advice.

26. The *Mills* case can be distinguished from Mr Knight's case on its facts. Mr Mills said that he had discussed the anti-doping rules with his doctor in 2010, and that his doctor had experience with prohibited substances as he had previously navigated him through a TUE application. It was far more reasonable for Mr Mills to rely on the medical advice in those circumstances than it was for Mr Knight to rely on the fact that his GP prescribed the relevant medication (at least on the basis of the very limited information he has provided to the Tribunal).

27. In the *Mills* case, the deciding panel commented that Mr Mills' testimony was unchallenged. That is not the case here. DFSNZ submits Mr Knight did not make every enquiry that he should have made to satisfy himself that he had not taken a prohibited substance. In the absence of evidence to the contrary, the Tribunal accepts that Mr Knight did not do all that he could have done to ensure that he was not taking a prohibited substance.

28. Unlike the *Mills* case, Mr Knight has not submitted any evidence about the level of anti-doping education he has received, or on any other factors that might point to him having a lower standard of care than other athletes.

29. In summary, the Tribunal has seen no evidence that could exculpate Mr Knight or make his circumstances exceptional.

Conclusion

30. The Tribunal concludes that Mr Knight should not be entitled to any reductions to his sanction based on no significant fault or negligence.

31. Pursuant to the original joint memorandum, which by consent submits the period of ineligibility should be two years, the Tribunal concludes that is the appropriate sanction.

Orders

The Tribunal **orders** as follows:

(i) A period of ineligibility from participation in any capacity in a competition or activity organised, sanctioned, or authorised by any sporting organisation that is a signatory to the SADR, of two years, is imposed on Mr Knight under Rule 10.2, backdated to commence from 10 November 2023. That means he is ineligible to participate in competitive sports until 10 November 2025.

(ii) Mr Knight's results in the North Island Senior Target Championships are disqualified.

(iii) Costs are not ordered, as none are sought, but they are reserved should DFSNZ wish to apply.

(iv) This determination should be the final determination by the Tribunal in this matter, and it may be published in the usual way.

Dated: 5 April 2024

John Macdonald
Chair

Warwick Smith
Deputy Chair

Pippa Hayward
Member