


1. The applicant (**DFSNZ**) has brought anti-doping violation proceedings under the Sports Anti-Doping Rules against the respondent Mr Kuka. He has admitted the violations.
2. The parties have waived their right to a hearing and in a joint memorandum of counsel have made submissions on the appropriate sanction.
3. The original application was based on the purchase by Mr Kuka of two 10 ml vials of Trenbolone Enanthate, a Prohibited Substance under the Prohibited List relevant under the Sports Anti-Doping Rules 2014 (**SADR 2014**). In a letter dated 18 April 2018, DFSNZ advised Mr Kuka that it proposed bringing this application in respect of this purchase in December 2014. It filed an application on the basis of this purchase alleging breaches of:
 - (a) Rule 3.2 of SADR 2014 – Use or Attempted Use of a Prohibited Substance.
 - (b) Rule 3.6 of SADR 2014 – Possession of a Prohibited Substance.
4. Mr Kuka replied to DFSNZ's letter of 18 April in an email which the application, witness statements in support, and counsel's submission state is dated 1 March 2018. This is obviously a mistake as the email is clearly a reply to the 18 April letter and probably was dated 1 May 2018.
5. In his email Mr Kuka acknowledged the purchase of the Prohibited Substance in December 2014 and also acknowledged that he had purchased a further two vials of Trenbolone Enanthate of 10 ml each in April 2015.
6. As a result of the admission in Mr Kuka's email, DFSNZ filed an amended application dated 19 September 2018 alleging the following two additional violations:
 - (a) Breach of Rule 2.2 of the Sports Anti-Doping Rules 2015 (**SADR 2015**) – Use or Attempted Use of a Prohibited Substance; and
 - (b) Breach of Rule 2.6 of SADR 2105 – Possession of a Prohibited Substance.

Sanction

7. The joint memorandum of counsel indicates that the parties have agreed, based on other sanctions and the provisions of the relevant SADR, that an appropriate sanction is a period of 3 years Ineligibility commencing from 1 December 2017.
8. Under the provisions of Rule 10.7.4 of SADR 2015, the four violations alleged and admitted to are treated as one single violation with the sanction being that for the violation carrying the most severe sanction. The most severe sanction applies under SADR 2015 to the two violations under that SADR and is a period of 4 years Ineligibility. The starting point is a Period of Ineligibility of four years.
9. DFSNZ accepts that the provisions of Rule 10.6.2 of the SADR 2015 apply. Under this provision if an athlete voluntarily admits the commission of an anti-doping rule violation before receiving notice of the allegation and that admission is the only reliable evidence of the violation at the time of admission, the Period of Ineligibility may be reduced but not below one-half of the Period of Ineligibility otherwise applicable. The note to the rule states that “the amount by which Ineligibility is reduced should be based on the likelihood that the athlete would have been caught had he or she not come forward voluntarily”.
10. The Committee sought further submissions on the exercise of its discretion under Rule 10.6.2. Having considered these submissions it determines that the circumstances of this case warrant a reduction of one year and that the sanction should be a Period of Ineligibility of three years. Factors taken into account include the experience as a player of Mr Kuka, and relativity with other provisions of SADR 2015. If Rule 10.11.2 SADR 2015 had applied, which it cannot because of its terms, and Mr Kuka had made a timely admission after DFSNZ had alleged the 2015 violations Mr Kuka would have been entitled to a backdating of the Period of Ineligibility of possibly six months. An admission under rule 10.6.2 would arguably lead to greater relief than this. Further Mr Kuka has been advised by Counsel who after considering the facts agrees that a period of three years is appropriate.

11. The Period of Ineligibility commences from the date of the Provisional Suspension order, which in this case was 1 June 2018, unless there can be a backdating under the provisions of any of the other rules of SADR 2015. One of those rules is Rule 10.11.1 which allows for backdating if there had been delays not attributable to the athlete. For reasons which have been well publicised in respect of the purchase of Prohibited Substances from NZ Clenbuterol in cases which have recently been determined by the Sports Tribunal of New Zealand or this Committee, it is accepted that the delays have been considerable and have not been attributable to the athlete. In accordance with the current practice of this Committee there will be a backdating from the date of commencement of the Period of Ineligibility of six months.
12. The sanction imposed on Mr Kuka is a Period of Ineligibility of 3 years commencing from 1 December 2017.
13. During the Period of Ineligibility, Mr Kuka is prohibited from participating in any capacity in a *Competition* or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by any *Signatory* or *Signatory's* member organisation, or other member organisation of a *Signatory's* member organisation, or in *Competition* authorised or organised by any professional league or any *International* or *National-level Event Organisation* or any elite or national-level sporting activity funded by a governmental agency.
14. Under the provisions of Rule 5.2.3 of the New Zealand Rugby Union Anti-Doping Regulations (26 July 2012), Mr Kuka is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 19 December 2018


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Barry Paterson QC
Chairman, Judicial Committee