

BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE

No. 12/18

BETWEEN

DRUG FREE SPORT NEW ZEALAND

Applicant

AND

CARLOS RIMENE

Respondent

DECISION OF THE COMMITTEE ON APPLICATION

Dated 25 February 2019

Judicial Committee:

Barry Paterson QC, Chair
Dr Ian Murphy
Ben Castle

Present:

Harriett Bush counsel for Applicant
Carlos Rimene in person
Hayden Tapper employee of Applicant

Registrar:

Stuart Doig

1. The applicant (DFSNZ) has instituted anti-doping violation proceedings against Mr Rimene under the provisions of the Sports Anti-Doping Rules 2014 (SADR 2014).
2. An allegation, which Mr Rimene admits, is that in July 2014 he purchased 10 millilitres of Clenbuterol from an online supplier, namely NZ Clenbuterol. The alleged violations are:
 - (a) Use or Attempted Use of a Prohibited Substance – Rule 3.2 of SADR 2014.
 - (b) Possession of a Prohibited Substance – Rule 3.6 of SADR 2014.

Clenbuterol is a Prohibited Substance.

3. A hearing took place by conference call on 21 February 2019. Prior to that hearing, Mr Rimene had submitted a statement in which he admitted purchasing the Clenbuterol but said it was never his intention to use it. He acknowledged that he purchased the Clenbuterol after viewing the web page of NZ Clenbuterol and that he assumed it was legitimate and manufactured for purchase as the web page had remained open for a couple of days. He knew that other substances on the web page were steroids and were illegal.
4. In his statement he stated that he purchased the Clenbuterol because at the time he was a fan of the body builder Zyzz and just wanted to show off to his friends. He was aware of the dangers of taking Clenbuterol.
5. Prior to the hearing, counsel for DFSNZ submitted a memorandum which included:
 - (a) A submission that Mr Rimene is not entitled to any reduction of the period of the suspension under the provisions of Rule 14.5 of SADR 2014, namely that there was no fault or negligence or no significant fault or negligence. Mr Rimene did not challenge this submission.
 - (b) That in the circumstances it would be appropriate to backdate the Period of Ineligibility for 12 months being six months for delay and six months for the prompt admission.

6. At the hearing, Mr Rimene accepted that the standard Period of Ineligibility of 2 years if backdated as suggested by DFSNZ was an appropriate sanction in the circumstances.


Sanction

7. The Committee accepts that on the facts of this case, Mr Rimene is not entitled to any reduction under the provisions of Rule 14.5 (the no fault or negligence or no significant fault or negligence provision).
8. The sanction provided by SADR 2014 is a Period of 2 years Ineligibility whether or not this Committee determines that Mr Rimene used or attempted to use the Clenbuterol. Thus, Mr Rimene having admitted the possession violation, it is not necessary to determine whether or not he committed the further violation of use.
9. The Committee accepts the submission of DFSNZ that the Period of Ineligibility should be backdated by a period of 12 months. Under the provisions of Rule 14.9.1 SADR 2014 there is the discretion to backdate if there have been "substantial delays in the hearing process not attributable to the athlete". The practice of this Committee is to allow backdating of six months for those cases which arose from the NZ Clenbuterol inquiry.
10. Under Rule 14.11.2, there can be further backdating for a prompt admission when the athlete is confronted by DFSNZ alleging a violation. DFSNZ accepts that it is appropriate to backdate in this case and there will thus be a further backdating of six months giving a total backdating of 12 months.
11. The Period of Ineligibility would commence from 26 October 2018, when Mr Rimene was provisionally suspended, before taking into account backdating. The sanction imposed upon Mr Rimene is therefore a Period of Ineligibility of 2 years commencing on 26 October 2017.
12. During the Period of Ineligibility, Mr Rimene 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.

13. Under the provisions of Rule 5.2.3 of the New Zealand Rugby Union Anti-Doping Regulations (26 July 2012), Mr Rimene is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 25 February 2019


.....
Barry Paterson QC
Chairman, Judicial Committee