NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE ("the Committee")

No 5/17

BETWEEN	**DRUG FREE SPORT NEW ZEALAND ("DFSNZ")** **Applicant**
AND	**LIONEL SKIPWITH** **Respondent**

DECISION OF THE COMMITTEE ON ANTI-DOPING VIOLATIONS BY THE RESPONDENT

Hearing (at Wellington): 18 June 2018

Decision: 30 June 2018

The Committee: Nigel Hampton QC (Chair), Michael Heron QC and Ian Murphy

Counsel for the Applicant: Paul David QC and Sarah Wroe

Counsel for the Respondent: Paul Radich QC and Asher Emanuel

JURISDICTIONAL CHALLENGE

1. This decision must be read in conjunction with this Committee's decision in *Tukiterangi Raimona, No 8/17,* issued contemporaneously. The same issues as to jurisdiction were taken and argued in this case on behalf of the Respondent, as were taken in *Raimona.* The reasons given by this Committee in *Raimona* (paragraphs 25-48), rejecting the jurisdictional challenge, are applicable in this case and should, in effect, be read into this decision.
2. As with that other case, here this Respondent's challenge as to jurisdiction is rejected. The Committee reiterates its suggestion made in the other case, that NZR should make it clear to players that when they register as players they are becoming subject to the Sports Anti-Doping Rules ("SADR") for the whole season, i.e. both forward and backward.

SANCTIONING PROCESS

3. Against the Respondent, and as amended, four anti-doping violations were alleged, involving the attempted use of, the possession of and the use of clenbuterol, a prohibited substance. (The original alleged violations, 3 in number, were first brought in October 2017). The first allegation related to events in August 2014 (a late amendment to the allegations), the remaining three allegations to events in January and February 2015. Although the first allegation related to a breach of SADR 2014, the other three were in relation to breaches of SADR 2015. As a result of the provisions of SADR 2015, the four alleged violations were and are to be dealt with, for sanctioning purposes, under SADR 2015.
4. All four anti-doping violations (as amended) alleged against the Respondent were made out, to the satisfaction of the Judicial Committee. The two completed violations (both possession and use of the prohibited substance clenbuterol in January 2015) were admitted, as were the underlying facts.
5. The facts as to the two other alleged violations, being alleged attempts to use clenbuterol in August 2014 and February 2015, were also admitted by the Respondent. The Respondent suggested (faintly, it must be said) that his actions in writing (by email) to the supplier of the clenbuterol did not amount to attempts when he did not follow up, or through with, his initial contact with the supplier's website.
6. However, given the commonality of the wording used by the Respondent in all four of his email contacts with the supplier ("*Can I order some…", "Can I buy one…", "Can I please purchase…" and "Can I have one…"*) the Committee concluded that each of the email contacts made in the first and the last emails quoted immediately above were sufficient, in context and in and by themselves, to amount to an attempt, as defined in SADR (i.e. *"Purposely engaging in conduct that constitutes a substantial step in a course of conduct…"*).
7. This was conduct by the Respondent which was more than just "dipping his toe in" (as submitted orally by his counsel).

8. In reality the issue here was whether the Respondent could show, to the satisfaction of the Committee, that his violations were not intentional (refer SADR 10.2.1) which, if established, would reduce the entry point for sanction from a four year term of ineligibility to one of two years (SADR 10.2.2).
9. As per SADR 10.2.3 *"the term 'intentional' is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete…engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk".*
10. The Respondent deposed (and was closely cross-examined on his contentions) that he had never received any anti-doping education, that towards the end of 2014 he heard of clenbuterol through his gym acquaintances (including police officers) who were using it as a weight loss and fat burning agent and that he did not believe that he was doing anything wrong when he tried to place, then did place, orders for clenbuterol and briefly use it. He further said in evidence that he was not aware that clenbuterol was a banned anti-doping substance, and did not know that until contacted by DFSNZ almost 3 years later.
11. The Committee found the Respondent to be a straightforward and "uncomplicated" person, and found his account of events, particularly as to his state of knowledge of the substance (or rather his lack of knowledge thereof) to be credible in the circumstances and sufficient for him to establish that his violations were not intentional.
12. That finding by the Committee has the effect of reducing the period of ineligibility to a term of two (2) years.
13. Following the same process and reasoning as was followed in *Raimona* (at paragraphs 63-66 of that decision - and as already noted above, that case heard on the same day by the Committee and in which the same jurisdictional points were argued, in effect on behalf of the NZRPA) the Committee reached the same conclusion that the Respondent's period of ineligibility should be back-dated by six (6) months from the commencement of the date of his provisional suspension (26 March 2018). That process allowed a 4 month back-dating for delay (SADR 10.11.1) and a further, cumulative, back-dating for admissions (SADR 10.11.2).
14. Which results in the Respondent being sanctioned by having a period of two (2) years ineligibility imposed upon him, commencing on 26 September 2017.

FORMAL ORDERS

15. The Respondent, Lionel Skipwith, is hereby sanctioned by having imposed upon him a period of ineligibility of two (2) years, commencing on 26 September 2017.
16. In accordance with SADR 10.12.1 the Respondent may not, during his period of ineligibility, participate in any capacity in a Competition or activity (other than authorised anti-doping education or rehabilitation programmes) authorised or organised by any Signatory or Signatory's member organisation, or a club or other member organisation of a Signatory's

member organisation, or in Competitions 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.

17. The Respondent is advised that, under Regulation 5.2.3 of the NZRU's Anti-Doping Regulations 2012, he is entitled to have these findings and/or sanctions in this Decision referred to a Post-hearing review body.

Nigel Hampton QC

Chair of the Committee

30 June 2018