

BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE

No. 11/18

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
Applicant

AND **NATHANIEL WALKER**
Respondent

DECISION ON ANTI-DOPTING RULE VIOLATION

Dated *26* **November 2018**

Hearing: By telephone conference on 15 November 2018

Committee: Barry Paterson QC, Chair
Dr Ian Murphy
Ben Castle (recused himself)

Present: Harriet Bush, counsel for Applicant
Nathaniel Walker in person
Hayden Tapper, officer of Applicant

Registrar: Stuart Doig

1. The applicant (**DFSNZ**) instituted anti-violation rule proceedings under the Sports Anti-Doping Rules 2014 (**SADR**) against Nathaniel Walker.
2. When advised of the application, Mr Walker promptly admitted the violations. The allegations admitted are:
 - (a) On or about 9 October 2014, and at various times thereafter, Mr Walker was in possession of Clenbuterol which is prohibited at all times under the Prohibited List 2014 (Rule 3.6 SADR) (Use or Attempted Use of a Prohibited Substance).
 - (b) On or about 9 October 2014, and various times thereafter, Mr Walker used or attempted to use Clenbuterol which is prohibited at all times under the Prohibited List 2014 in breach of Rule 3.2 SADR (Possession of a Prohibited Substance).
3. Mr Walker advised that he wished to be heard at the hearing. At the commencement of hearing on 15 November 2018, Mr Castle advised that he had a possible conflict in that many years prior to the violations he had played in the same rugby team as Mr Walker. Both DFSNZ and Mr Walker agreed that the hearing could continue with two members which is permitted under the New Zealand Rugby Union Anti-Doping Regulations 2012 subject to approval of the New Zealand Rugby Union. The New Zealand Rugby Union has approved of the hearing continuing with two members. Mr Castle recused himself from the hearing.
4. Prior to the hearing DFSNZ through its counsel had provided a written submission suggesting that the appropriate sanction was a period of twelve months Ineligibility commencing on 9 October 2018, being the date on which Mr Walker was provisionally suspended.
5. Mr Walker having properly admitted the violations when advised of them by DFSNZ did not oppose that suggestion and acknowledged the violations. He, however, wished to comment on two matters. The first was the delay in bringing the application which was brought nearly 4 years after the date of the first violation. Secondly, he raised the issue of whether it was appropriate for DFSNZ to pursue such an application against a 40 year old retired athlete. He thought that to be a waste of money.


6. The second issue raised by Mr Walker is not a matter for this Committee. It is required to consider applications brought before it and administer the provisions of the SADR. The first issue of timing is a matter which this Committee can and does take into account that goes to the length of a period of suspension and not to the jurisdiction to suspend.

Sanction

7. The starting point for the sanction in this case is a Period of Ineligibility of 2 years under the provisions of Rule 14.5 SADR. There were no reasons suggested under which this Committee is able to reduce that period. The only issue is the commencement date in view of the backdating provisions under the SADR.
8. DFSNZ accepts that Mr Walker is entitled to backdating for both his prompt admission of the violations (which were made within a week of receiving notice of the proposed application) and the issue of delay. Referring to earlier decisions of this Committee and the Sports Tribunal, it was submitted that the appropriate backdating was a period of twelve months because of the combination of a timely admission and delay.
9. The Committee accepts that the submission is appropriate and allows a period of backdating of six months under Rule 14.9.1 for delay and a further six months under Rule 14.11.2 for the prompt admission.
10. The sanction imposed is a Period of Ineligibility of 2 years commencing from 9 October 2017 (being twelve months before the date on which the Provisional Suspension order was made).
11. During the Period of Ineligibility, Mr Walker 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.

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

Dated 26 November 2018


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Barry Paterson QC
Chairman, Judicial Committee