

BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE

No. 7/18

BETWEEN **DRUG FREE SPORT NEW ZEALAND**

 Applicant

AND **SAM BARTON**

 Respondent

DECISION

Dated 22 November 2018

Judicial Committee: Barry Paterson QC (Chairman)
 Dr Ian Murphy
 Ben Castle

Counsel: Paul David QC for Applicant
 Chris Patterson for Respondent

Registrar: Stuart Doig

1. In late August 2018, the applicant (**DFSNZ**) filed an application alleging that the respondent, Mr Barton, being bound by the NZRU Anti-Doping Regulations 2012 committed anti-doping violations under the provisions of the Sports Anti-Doping Rules 2014 and 2015.
2. The allegations were that on three occasions from October 2014 to January 2015, Mr Barton purchased Clenbuterol which is a prohibited drug on the Prohibited List for both 2014 and 2015. These purchases constituted the following breaches of the provisions:
 - (a) The Use or Attempted Use of a Prohibited Substance on two occasions in 2014 contrary to rule 3.2 of the Sports Anti-Doping Rules 2014 (**SADR 2014**) and on one occasion in 2015 contrary to the provisions of rule 2.2 of the Sports Anti-Doping Rules 2015 (**SADR 2015**); and
 - (b) Possession of a Prohibited Substance on two occasions in 2014, in contravention of rule 3.6 of SADR 2014 and on one occasion in 2015 contrary to rule 2.6 of SADR 2015.
3. Mr Barton indicated that he opposed an order for Provisional Suspension. As a consequence a hearing was scheduled for 20 September 2018.
4. On 19 September 2018, Mr Barton filed two affidavits. One was sworn by him in Western Australia and the other by his brother, Ben Barton, sworn in England. These affidavits alleged that the actual purchaser of the Clenbuterol was Ben Barton who used the respondent's email without his knowledge and that the respondent was unaware that this had happened until DFSNZ representatives approached him earlier this year with the allegations which led to the present application.
5. After the hearing on 20 September 2018, this Committee issued a Provisional Decision in which it noted that it was obliged to impose a Provisional Suspension order "except where the athlete demonstrates that there is a real likelihood that no Period of Ineligibility will be imposed". It determined that the way forward was to have an expedited hearing for the substantive application and deferred the Provisional Suspension application in the meantime. It noted that that if the substantive hearing could not proceed on


15 October 2018, the Committee reserved the right to issue a Provisional Suspension order without further notice.

6. On 6 October 2018, DFSNZ filed a further statement from Mr Tapper, the investigation and intelligence manager at DFSNZ. After further investigation, Mr Tapper stated that the position was:
 - (a) At the time that one of the payments for the Clenbuterol was made, Ben Barton was in Fiji;
 - (b) The Clenbuterol was not sent to Ben Barton's address but was sent to the respondent's address;
 - (c) The payments for the Clenbuterol did not come from Ben Barton's bank account but came from the respondent's bank account.
7. At about the same time Mr Barton requested an adjournment of the proposed hearing on 15 October 2018 and that the matter be heard by videolink as both he and his brother were absent from New Zealand. The Committee agreed to Mr Barton's request but in view of the information before it, issued a Provisional Suspension order on 9 October 2018. It also fixed a date by which Mr Barton was to file any further witness statements he wished to file.
8. Counsel for the parties filed a joint memorandum dated 9 November 2018. In this memorandum, Mr Barton's counsel acknowledged that Mr Barton admitted the conduct and violations alleged in the application and that at the time of the purchases of Clenbuterol he was registered with the NZRU as a player for the North Shore Football Club and as such bound by both SADR 2014 and SADR 2015.
9. The memorandum stated that DFSNZ and Mr Barton had agreed that in the circumstances a sanction of four years ineligibility under SADR 2015 10.2.1 was appropriate. Further they acknowledged that this Committee had a discretion to backdate the starting date of the period of ineligibility for delay. They both suggested the backdating could be for a period of four months from the date on which the Provisional Suspension order was made.
10. The parties have waived their right to a hearing.

Decision

11. Mr Barton having admitted the violations, this Committee is of the view that the appropriate sanction is a period of four years ineligibility as provided for in rule 10.2.1 of SADR 2015. There are no grounds upon which the Committee can reduce that period under the provisions of SADR 2015.
12. The only basis on which the Period of Ineligibility can be backdated past the date of the Provisional Suspension order is under the provisions of rule 10.11.1 of SADR 2015, namely for delay. Recent decision of this Committee and the Sports Tribunal of New Zealand have given periods of between four to six months for this factor. The circumstances of this case are such that the Committee exercises its discretion by backdating the commencement date of the Period of Ineligibility by four months from the date of the Provisional Suspension.
13. The sanction imposed upon Mr Barton is a period of four years Ineligibility commencing on 9 June 2018.
14. During the Period of Ineligibility, Mr Barton 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.
15. Under the provisions of Rule 5.2.3 of the New Zealand Rugby Union Anti-Doping Regulations (26 July 2012), Mr Barton is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 22 November 2018



Barry Paterson QC
Chairman, Judicial Committee