

BEFORE THE NEW ZEALAND RUGBY UNION JUDICIAL COMMITTEE

No. 9/18

BETWEEN **DRUG FREE SPORT NEW ZEALAND**
Applicant

AND **TAUTINI HOPA**
Respondent

DECISION ON APPLICATION ALLEGING ANTI-DOPING VIOLATIONS

Dated 21 **March 2019**

Hearing: By conference call on 21 February 2019

Judicial Committee: Barry Paterson QC, Chair
Dr Ian Murphy
Ben Castle

Present: Harriet Bush counsel for Applicant
Tautini Hopa
Hayden Tapper employee of Applicant

Registrar: Stuart Doig

1. The applicant (DFSNZ) alleged that Mr Hopa committed anti-doping rule violations under the Sports Anti-Doping Rules 2015 (SADR 2015) by purchasing in January 2015 10 millilitres of testosterone enanthate from a website trading under the name "NZ Clenbuterol".
2. The allegation is that the purchase of the testosterone enanthate, which is a prohibited substance under the Prohibited List under the SADR 2015 infringed:
 - (a) Rule 2.2 SADR 2015 – Use or Attempted Use by an Athlete of a Prohibited Substance.
 - (b) Rule 2.6 SADR 2015 – Possession of a Prohibited Substance.
3. Mr Hopa was provisionally suspended on 26 October 2018. He was invited both by DFSNZ and the Registrar of this Committee to file written submissions advising his position in respect of the alleged violations. He did not do so but participated in the substantive hearing which took place by telephone conference call on 21 February 2019.
4. Mr Hopa acknowledged the purchase of the testosterone enanthate and that he had learnt of NZ Clenbuterol at a gymnasium which he was attending. He gave some reasons for his purchase and acknowledged taking a portion of the prohibited substance.
5. By a memorandum dated 22 February 2019, the Committee advised Mr Hopa of the provisions of Rule 10.2.1 of SADR 2015, which allows for a reduction of the period of ineligibility if the violations were not 'intentional'. It advised Mr Hopa that if he wished to do so he could produce a statement giving the reasons for the purchase and use of the substance. He was given a period of 14 days to provide such a statement and advised that if he wished to take up that opportunity, a further hearing would be convened at which he could be cross-examined, if required, by counsel for DFSNZ.
6. Mr Hopa has not provided a written statement and when the Registrar of this Committee, after the 14 day period had expired, asked Mr Hopa whether he intended to file a submission, he sent a text message saying, "no thanks I'll take the ban".


7. Apart from Mr Hopa's admissions at the hearing, the evidence produced by DFSNZ clearly establishes that Mr Hopa purchased the testosterone enanthate and that he received the same. The violation under SADR 2015 Rule 2.6 is clearly established on that evidence. In addition, an inference can be drawn that Mr Hopa used the product and he in fact confirmed at the hearing that he had used a portion of the product. Both violations have been established to the comfortable satisfaction of this Committee.

Sanction

8. Under Rule 10.2.1 SADR 2015, the sanction is a Period of Ineligibility of four years which in this case would normally commence from the date of Mr Hopa's provisional suspension on 26 October 2018. The only way in which this period can be reduced is if Mr Hopa had sought to establish under Rule 10.2.1 SADR 2015 that the violations were not intentional. As noted above Mr Hopa was given an opportunity to do this but has declined to do so. The Period of Ineligibility will therefore be four years.
9. DFSNZ accepts that there can be a backdating of the commencement of the Period of Ineligibility under the provisions of Rule 10.11.1 SADR 2015 because of substantial delays in bringing the application, such delays being not attributable to Mr Hopa. Consistent with previous decisions of this Committee, there will be a backdating of six months from the date of the Provisional Suspension.
10. The sanction imposed on Mr Hopa is therefore a period of four years ineligibility commencing on 26 April 2018.
11. During the Period of Ineligibility, Mr Hopa 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 Hopa is entitled to have the finding and/or sanction referred to a Post-Hearing Review Body.

Dated 21 March 2019


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Barry Paterson QC
Chairman, Judicial Committee