

**BETWEEN            DRUG FREE SPORT NEW ZEALAND**

**Applicant**

**AND                 DANIEL MILNE**

**Respondent**

**AND                 OLYMPIC WEIGHTLIFTING NEW ZEALAND**

**Interested Party**

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**DECISION OF TRIBUNAL  
DATED 28 NOVEMBER 2014**

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**Hearing**            25 November 2014

**Tribunal**            Sir Bruce Robertson (Chair)  
Chantal Brunner  
Georgina Earl

**Present**            Paul David QC and Shaun Maloney, counsel for Drug Free  
Sport New Zealand  
Graeme Steel, Drug Free Sport New Zealand  
Jude Ellis, Drug Free Sport New Zealand  
Daniel Milne, Respondent  
Jonathan Milne, in support of the Respondent

**Registrar**           Brent Ellis

## Proceedings

1. Drug Free Sport New Zealand (DFS) brought anti-doping proceedings against Daniel Milne.
2. Mr Milne faced, and admitted to, two violations of attempted trafficking and possession. The Sports Anti-Doping Rules 2014 ("SADR") provide:

- Rule 3.7 provides that the following constitutes an Anti-Doping Rule violation:

*"Trafficking or Attempted Trafficking in any Prohibited Substance or Prohibited Method."*

- The SADR definition of "Trafficking" is:

**"Trafficking:** Selling, giving, transporting, sending, delivering or distributing a *Prohibited Substance or Prohibited Method* (either physically or by any electronic or other means) by an *Athlete, Athlete Support Personnel* or any other *Person* subject to the jurisdiction of an *Anti-Doping Organisation* to any third party; provided, however, this definition shall not include the actions of "*bona fide*" medical personnel involving a *Prohibited Substance* used for genuine and legal therapeutic purposes or other acceptable justification, and shall not include actions involving *Prohibited Substances* which are not prohibited in *Out-of-Competition Testing* unless the circumstances as a whole demonstrate such *Prohibited Substances* are not intended for genuine and legal therapeutic purposes."

- The SADR definition of "Attempt" is:

**"Attempt:** Purposely engaging in conduct that constitutes a substantial step in a course of conduct planned to culminate in the commission of an *Anti-Doping Rule Violation*. Provided, however, there shall be no *Anti-Doping Rule Violation* based solely on an *Attempt* to commit a *Violation* if the *Person* renounces the *Attempt* prior to it being discovered by a third party not involved in the *Attempt*."

- Rule 3.6.2 provides that the following constitutes an Anti-Doping Rule violation:

*"Possession by an Athlete Support Personnel In-Competition of any Prohibited Method or any Prohibited Substance, or Possession by an Athlete Support Personnel Out-of-Competition of any Prohibited Method or any Prohibited Substance which is prohibited Out-of-Competition in connection with an Athlete, Competition or training, unless the Athlete Support Personnel establishes that the Possession is pursuant to a TUE granted to an Athlete in accordance with Rule 5.5 – 5.6 (TUEs) or other acceptable justification.*

*[Comment to Rule 3.6.1 and 3.6.2: Acceptable justification would not include, for example, buying or Possessing a Prohibited Substance for purposes of giving it to a friend or relative, except under justifiable medical circumstances where that Person had a physician's prescription, e.g., buying Insulin for a diabetic child.]*

*[Comment to Rule 3.6.2: Acceptable justification would include, for example, a team doctor carrying Prohibited Substances for dealing with acute and emergency situations.]"*

- The SADR definition of "Possession" includes:

*"The actual, physical Possession or the constructive Possession (which shall be found only if the Person has exclusive control over the Prohibited Substance or Prohibited Method or the premises in which a Prohibited Substance or Prohibited Method exists)..."*

3. DFS agreed that these violations should be treated as a single incident with a penalty reflecting the more serious aspect of attempted trafficking.

## **Facts**

4. The facts can be succinctly summarised as by Mr David in his submissions at the hearing:

*"The two violations occurred on the same day in December 2012 when Mr Milne offered prohibited substances to a young weightlifter...[who*

*the Tribunal shall refer to as "X"]...The substances involved were not specified substances.*

*Mr Milne was registered with Olympic Weightlifting New Zealand as a weightlifting coach and coached X from around July 2012 until December 2012.*

*During training at Gillies Ave Gym around early to mid-December 2012, Mr Milne asked X how serious he was about weightlifting and said that if X wanted to start breaking some under 21 grade New Zealand records, he could get him some products or "juice" to achieve this. At this stage X had recently turned nineteen years old.*

*Approximately one week later, Mr Milne invited X to a party at Mr Milne's house. At this gathering Mr Milne again raised the possibility of X taking products that Mr Milne referred to as "juice" in order to improve X's performance. "Juice" is a term used by weightlifters to describe performance enhancing drugs or steroids. Mr Milne also offered to source the products and show X how to use them.*

*Mr Milne then took X into a bedroom, where he produced a bottle which contained steroids and a needle. The bottle was around 2 - 2.5 inches tall with a white cap, a white label and with its medical description in black writing. Mr Milne also showed X a similar bottle, containing what Mr Milne described as testosterone tablets.*

*Mr Milne told X how the steroids worked and how to avoid detection in major competitions. He also demonstrated where to inject the product. Mr Milne explained that he could get the "juice" cheap and that the testosterone tablets were about \$120 for a decent sized bottle. X was shocked and asked Mr Milne to let him think about it. He then left Mr Milne's house immediately.*

*About two weeks later, during training at Gillies Ave gym, Mr Milne asked X if he had considered his offer. X said that he was not interested."*

5. Eventually X told another coach what had happened with Mr Milne and from April 2013 there were ongoing investigations by DFS.
6. An attempt was made to interview Mr Milne in September 2013 but he declined to speak with the investigator.
7. The Application to the Sports Tribunal was filed on 6 October 2014, and served on Mr Milne, by DFS on 9 October.
8. There was an initial response by Mr Milne but early in November he advised that he would be assisted by his father in this matter and accepted that the alleged violations had occurred and he wished to be heard only in respect of sanction.

### **Sanctions for attempted trafficking**

9. As noted above, the two violations are treated as one with the sanction being imposed in respect of the more serious violation of attempted trafficking.
10. The relevant part of the rule relating to sanction for attempting trafficking is as follows:

“14.3.2 For *Violations* of Rule 3.7 (*Trafficking or Attempted Trafficking*)... the period of *Ineligibility* imposed shall be a minimum of four (4) years up to lifetime *Ineligibility* unless the conditions provided in Rule 14.5 are met...”  
[We note the conditions provided for in Rule 14.5 are not relevant to this case].
11. There are no examples in New Zealand of similar violations, which is not surprising as the detection of such behaviour is difficult.
12. DFS referred the Tribunal to five cases in other countries where sanctions between 4 years’ suspension and life bans have been imposed:
  - *UK Anti-Doping v Tinklin*, SR/180201
  - *UK Anti-Doping v Colcough*, SR/120105
  - *United States Anti-Doping Agency v Stewart*, 77190 110 10 JENF

- *Canadian Centre for Ethics in Sport v Gariepy*, SDRCC DT 11-0162, 19 January 2012
- *Rugby Football Union v Peters*, Rugby Football Union Appeal Panel, 27 May 2014

13. They demonstrate how fact and circumstance specific this exercise must be.

### **Discussion**

14. The fact that attempted trafficking violations are viewed as particularly serious offending is emphasised by the existence of a mandatory minimum suspension of 4 years for a first offence.

#### *Aggravating factors*

15. Here there are aggravating factors.

16. The violations occurred within an athlete and coach relationship and represented a fundamental departure from proper and essential standards.

17. Although X was not a minor, he was a young man who should have been receiving mentoring and support and never encouraged to undermine the tenets of true sportsmanship.

18. Material available to the Tribunal demonstrates that at the time Mr Milne's attitude to the use of prohibited substances was unacceptable and the specific incident with X was part of that environment. This was not a one-off spontaneous mistake but a more sustained deviation from required behaviour.

19. Although we note that there was no actual supply it has to be said that reflects more upon the response and attitude of X and does not lessen Mr Milne's culpability.

20. In our view, without considering any mitigating factors, a starting point of 7 to 8 years' suspension would have to apply here.

*Mitigating factors*

21. The fact that Mr Milne eventually accepted his culpability and shouldered responsibility for what occurred meant that X did not need to give evidence before the Tribunal, nor did other witnesses need to be called about the background. He is contrite and ashamed of letting down himself, his family and others around him.
22. We do not overlook the years of positive and constructive effort made by Mr Milne in the sport. He gave of himself with enthusiasm and vigour but regrettably a period occurred where he lost focus and sound judgment which resulted in the offending. Mr Milne is himself a relatively young man with some personal difficulties which require ongoing attention but still with clear potential.
23. We are satisfied that the frame of mind in which this occurred is now history but the fundamental attack on the integrity of all sporting contests demands that the breach is not minimised.

**Decision**

24. Allowing for all consideration which can be given to Mr Milne's personal circumstances we conclude that an operative penalty of 6 years' suspension must apply.
25. The incident occurred almost two years ago. After the authorities learnt of it, there was the need for careful and detailed investigation. However, we are concerned that there has been more delay than should have occurred and under SADR 14.9.1 we accordingly order that the suspension will operate from 1 January 2014.
26. Mr Milne is suspended for 6 years commencing from 1 January 2014.
27. The Tribunal advises Mr Milne that under SADR 14.10, he may not during the period of suspension participate in any capacity in a competition or activity authorised or organised by Olympic Weightlifting New Zealand or a weightlifting club or other member organisation. Nor during this time

can he participate in any capacity in competitions authorised or organised by any professional league or any international or national level event organisation. He also cannot participate in any similar activities in any other sport, which is a signatory to the WADA Code, while he is suspended.

Dated 28 November 2014



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**Sir Bruce Robertson (Chair)**