

BETWEEN **DRUG FREE SPORT OF NEW ZEALAND**

 Applicant

A N D **COREY WEBSTER**

 Respondent

A N D **BASKETBALL NEW ZEALAND**

 Interested Party

**DECISION OF TRIBUNAL
Dated 21 July 2010**

Hearing: By conference call on 20 July 2010

Tribunal: B J Paterson QC (Chairman), R Cheatley,
 A Richards

Counsel: P David for Applicant
 G Anderson for Respondent
 T Hamilton and S Layburn represented Basketball
 New Zealand

Registrar: Brent Ellis

Introduction

1. On 21 May 2010, Mr Webster played for the Harbour Heat against Bay Hawkes in the National Basketball League. At the conclusion of the match, he was required to give a sample for drug testing and that sample detected the presence of the metabolite of the prohibited substance cannabis in his system.
2. The B sample also tested positive on 24 June 2010.
3. On 22 June 2010, Basketball New Zealand made an application pursuant to r12.1 of the Sports Anti-Doping Rules 2010 (the rules) for provisional suspension of Mr Webster. This Tribunal, in a decision dated 23 June 2010, provisionally suspended Mr Webster. The provisional suspension was imposed hours before Mr Webster was due to play for the Harbour Heat in the semi-final of the National Basketball League.
4. Mr Webster admitted the presence of cannabis in his system but wished to participate in a hearing to make submissions on the sanction to be imposed.
5. Because Mr Webster wished to participate in the trial for the Tall Blacks commencing on 23 July 2010, the hearing to consider the sanction was conducted by telephone conference on 20 July 2010, by agreement of all parties.
6. Mr Webster has played for the Tall Blacks and wishes to participate in the trials on 23 – 25 July 2010. The Tall Black team selected from the trials will leave New Zealand on 26 July 2010 to play in warm-up matches before competing in the World Championships commencing on 28 August 2010.

Submissions on behalf of Mr Webster

7. Mr Webster and a friend who smoked the cannabis with him and who claimed ownership of the cannabis, gave evidence that this

was a one-off occasion, and was not intended to enhance his performance.

8. Mr Anderson, on behalf of Mr Webster, submitted that there were no aggravating factors; this is a first time infringement; Mr Webster was under enormous stress at the time of consumption as a result of unrelated matters; he had already suffered because of the provisional suspension and the relating publicity; that he has personally arranged attendance at a drug and alcohol rehabilitation programme; and that this is a significant time in Mr Webster's career with the Tall Black trials next weekend and the prospect that Mr Webster may be selected.
9. Mr Webster plays for the NZ Breakers. That club entered into an agreement with Mr Webster after it became aware of the positive test. That agreement places onerous restrictions on Mr Webster with the purpose of ensuring that he does not transgress again. Those restrictions include a requirement to deliver four community coaching sessions per month under guidance; completing 10 hours of community service with Starship Hospital each month under guidance; engaging in a youth mentoring workshop with the Foundation for Youth Development; attending a suitable drug education programme; and a provision that if he tests positive again for a prohibited drug, his contract will be immediately terminated. Mr Webster has enrolled in the Community Alcohol & Drug programme (CADS) based at Takapuna.

Submissions from Drug Free Sport

10. Mr David, on behalf of Drug Free Sport, accepted that the Tribunal would probably determine in accordance with r14.4 of the rules that the cannabis was not smoked with an intention to enhance Mr Webster's sports performance.

11. Mr David referred to the provisions of r14.4 which provide that the athlete's "degree of fault should be the criterion considered in assessing any reduction of the period of *Ineligibility*". It was his submission that the circumstances of this case are such that the degree of fault would not entitle Mr Webster to a reduction below the two month suspension period which is a common sanction imposed by this Tribunal in cannabis cases.
12. Relevant to the degree of fault was Mr Webster's knowledge of the anti-doping regime in place, both in this country and in basketball. Mr Webster accepted that he had attended an anti-doping presentation at the All NZ training camp held in December 2006; that he had the latest athlete education information, including the 2010 wallet pamphlet issued by Drug Free Sport; and that he had signed a Drug Free Pledge in December 2006.
13. Drug Free Sport accepted that the agreement with the NZ Breakers was laudable and the steps taken by Mr Webster commendable, but submitted that the criterion which this Tribunal is required to consider is the degree of fault, and that subsequent events are irrelevant. This pointed to a suspension of not less than two months.

Discussion

14. The Tribunal is satisfied on the evidence that Mr Webster did not smoke cannabis for performance-enhancing purposes. This conclusion is drawn from his evidence and that of his witness. He is entitled to have his period of ineligibility reduced in accordance with the provisions of r14.4 of the rules.
15. Rule 14.4 provides that the criterion to be considered in assessing any reduction of the period of ineligibility is the athlete's degree of fault. The athlete in this case was an international athlete well conversant with the anti-doping provisions and the desire of Basketball New Zealand to adhere to the anti-doping regime in

this country and to encourage its athletes to adhere to it. Mr Webster was well aware of the requirements of the anti-doping regime and has been educated in those requirements.

16. The fact that Mr Webster is an international athlete does not assist his cause. Although a period of ineligibility may operate more harshly on an international athlete, because of the publicity and the prospects of missing international games, arguably, there is a greater responsibility on an international athlete to comply with the anti-doping regulations.
17. The Tribunal places little weight on the submission that this was a one-off offence. Most athletes who come before the Tribunal in relation to cannabis make the same plea. The fact of the matter is that an athlete who has knowingly smoked cannabis while being well aware of the anti-doping rules, two days before a quarter final in a national league, must accept a reasonable degree of fault.
18. The steps taken by the NZ Breakers and Mr Webster are laudable. They are appropriate steps in the circumstances. However, they do not have a direct bearing on the athlete's fault.
19. The only matter which is relevant to fault is the question of stress which Mr Webster was under for various reasons. The Tribunal takes into account that stress but, in its view, it is not a major consideration.
20. The Tribunal has recently reviewed its starting point on cannabis matters but, as this has not yet been notified, it will not be applied in this case. Once notified, the starting point for such offences will be four months' suspension before taking into account aggravating and mitigating factors. The practice of the Tribunal, which will be applied in this case, has a starting point of between one and two months before considering aggravating and mitigating factors. In the circumstances of this case, the Tribunal

is of the view that, because of Mr Webster's knowledge of the requirements and Basketball New Zealand's commitment to Drug Free Sport's anti-doping policies, the smoking of cannabis two nights before an important match, albeit if there was stress present, means that the appropriate sanction is a period of two months' suspension.

Decision

21. Mr Webster is, in accordance with r14.4 of the rules, declared ineligible for a period of two months from the date of suspension, namely 23 June 2010.
22. This suspension has cross-sport effect. It will apply to any other sport which is bound by the rules.
23. If there is a further infringement, the rules provide that the minimum period of ineligibility will be one year and that it may be as high as four years.

Dated 21 July 2010



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B J Paterson QC
Chairman