

**BEFORE THE SPORTS DISPUTES TRIBUNAL
OF NEW ZEALAND**

SDT 11/06

BETWEEN SOFTBALL NEW ZEALAND

Applicant

AND LANCE ABBOT

Respondent

Date of Hearing: 4 May 2006

DECISION OF TRIBUNAL

Dated 8 May 2006

Appearances:

Lance Abbot in person
Dale Eagar for Applicant

Tribunal Members participating:

Kit Toogood QC (Deputy Chairperson)
Ron Cheatley
Carol Quirk

Registrar:

Brent Ellis

Introduction

1. Lance Abbot (“the player”) is a softball player who participated in the Men's Provincial Cup at Colquhoun Park, Palmerston North beginning on 7 January 2006. The competition was run under the jurisdiction of Softball New Zealand.
2. During the competition, on 10 January 2006, Mr Abbot was selected at random to provide a sample for drug testing. On 22 February 2006, the New Zealand Sports Drug Agency (the Agency) issued a determination under sections 16B and 18(1) of the New Zealand Sports Drug Agency Act 1994. It determined that he had committed a doping infraction by testing positive to cannabinoids. Cannabis is a prohibited substance banned by the World Anti-Doping Code (the WADA Code) Prohibited List 2006, and by the Anti-Doping Policy of Softball New Zealand.
3. Softball New Zealand made an application to the Tribunal alleging that the player had committed an anti-doping violation and seeking the imposition of a penalty pursuant to the Rules of the Tribunal and the Constitution and applicable Rules of Softball New Zealand.
4. At a telephone conference conducted by the Tribunal on 4 May 2006, the parties indicated that they did not require a formal hearing of evidence and submissions. Both Softball New Zealand and the player said they were content for the Tribunal to deal with the matter solely on the basis of the papers filed and the information confirmed during the telephone conference. We proceed to do so.

Mr Abbot’s Position

5. The player admitted that he had committed an anti-doping violation in relation to cannabis. In an email to the Registrar of the Tribunal dated 1 May 2006, he said:

“On Wednesday the 28th of December 2005 I had my stag night, during the course of the evening I had too much to drink and took part in the smoking of cannabis. I do not normally, nor have I ever smoked cannabis or any other drugs on a regular basis. Finding that I had tested positive was a huge shock as I have been tested on 4 other occasions which have all been negative. I realize that this was a huge mistake which I can’t take back but I can honestly say that it would never be my intention to use cannabis for any reason let alone for enhancing my performance in any way. I apologize for my actions on this night and would hate to think that one night of stupidity would impact in such a way that I may not be able to play softball, or any other sport for that matter, for up to two years.

I personally feel embarrassed that I have let a lot of people down, considering that I have represented NZ and other representative (sic) teams, but I take full responsibility for my actions. You have my sincerest apologies. I love playing softball and I hope that I will be able to take part in the next softball season.”

Softball New Zealand’s Position

6. This is one of three cannabis cases recently before the Tribunal for determination arising from random samples taken at the Men’s Provincial Cup softball competition held in Palmerston North in early January this year.
7. Mr Eagar did not advance any particular position on behalf of Softball New Zealand. It was accepted that the cannabis would not have been performance-enhancing in Mr Abbot’s case, and Mr Eagar did not suggest the presence of cannabis in the player’s system would have represented a danger to other competitors, officials or spectators. There was no evidence that Mr Abbot signed a player participation agreement before the competition in which he provided a positive sample.
8. It was also accepted by Softball New Zealand that this was the player’s first anti-doping violation.
9. In earlier cases, Mr Eagar has told the Tribunal that his sporting organisation was very concerned at the damage done to the sport by senior players being found to have breached the Anti-Doping Code through the use of cannabis. That is an understandable view and Mr Abbot’s submission to the Tribunal recognises it.

The WADA Code

10. Under the Softball New Zealand Constitution, one of the objects is “to provide an anti-doping policy”. This anti-doping policy provides that the “core aspects of the World Anti-Doping Code (the WADA Code)” apply. Once a determination has been received from the agency, Softball NZ forwards the matter to this Tribunal for a hearing and, if appropriate, the imposition of sanctions.
11. Under the WADA Code, the mandatory period of suspension for a first breach of the Code is a period of 2 years’ ineligibility. However, cannabis is a specified substance, namely one of the substances which are particularly susceptible to unintentional Anti-

Doping Rule violations because of their general availability in medicinal products or which are less likely to be successfully abused as doping agents.

12. Accordingly, the provisions of Article 10.3 of the Code apply. Under that article, if an athlete can establish that the use of a specified substance “was not intended to enhance sports performance”, the normal period of ineligibility of 2 years does not apply. On a first violation, as this is, where that condition is satisfied, the range of penalties available to the Tribunal are, at a minimum, “a warning and reprimand and no period of Ineligibility from future Events and at a maximum, one (1) year’s Ineligibility.”
13. The athlete has the onus of satisfying the Tribunal on a balance of probability that the use of the substance was not intended to enhance sports performance: Article 3.1 of the Code.

The Tribunal’s approach

14. The Tribunal’s approach to cannabis violations was summarised recently in the earlier case of *Karaitiana* SDT 12/06, 28 April 2006, which arose out of a sample taken at the same tournament.
15. In this case, the Tribunal applies the following key principles from that decision:
 - (a) In the case of a first anti-doping violation, if the athlete can satisfy the Tribunal that there was no intention to enhance sporting performance, the Tribunal will be likely to issue a reprimand and warning, without imposing any period of ineligibility, if it is also satisfied that -
 - (i) the use of cannabis was unrelated to the sport;
 - (ii) the cannabis use by the athlete did not represent any danger to other competitors, officials or members of the public; and
 - (iii) there were no other circumstances (described in the cases as “aggravating circumstances”) which would indicate that a reprimand and a warning would not be a sufficient remedy.

- (b) The Tribunal would be likely to consider aggravating circumstances to exist, and to impose a period of ineligibility, if the athlete's attention had been drawn specifically to the need to adhere to the sport's anti-doping policy and the WADA Code and the athlete had defied such a caution by offending nevertheless. Such a warning may have been contained in an agreement entered into in respect of a particular competition, or may have been specifically drawn to the athlete's attention by his or her sport by other means.

Discussion of the present case

- 16. The Tribunal is satisfied to the required standard that:
 - (a) This was a first offence.
 - (b) Mr Abbot did not smoke cannabis for performance-enhancing purposes.
 - (c) The use of cannabis was unrelated to the sport, and there was no danger to other competitors, officials or spectators.
- 17. We note that, in 2001, Mr Abbot played representative softball for New Zealand as a member of the Black Sox. He was well informed by Softball New Zealand of its adherence to an anti-doping policy. In 2001, however, cannabis was not on the Prohibited List and was added as a specified substance only as recently as 2004.
- 18. With considerable reservations, therefore, we are prepared to accept that the player in this case was not fully informed, in early 2006, that he was at serious risk of breaching the anti-doping policy by the use of cannabis in December 2005, and that there are no aggravating circumstances. We remind Mr Abbot – and others – that the duty to adhere to the requirements of the WADA Code is primarily that of the athlete and that liability is strict. It is no excuse to say that the athlete's sports organisation did not warn the athlete of his or her obligations to ensure that no breach of the sport's anti-doping policy occurs.
- 19. Having regard to the number of cannabis cases with which the Tribunal has had to deal in the past two years, and the publicity given to them, there may come a time – possibly sooner rather than later – when a New Zealand athlete will find it difficult to

satisfy the Tribunal that they were not well aware that the use of cannabis on any occasion gives rise to a serious risk of breach of the anti-doping rules.

20. We think it is appropriate to make a further observation. Mr Abbot displayed an almost cavalier disregard for the seriousness of his situation when notified of the Drug Free Sport NZ's determination in this case and the application to the Tribunal by Softball New Zealand for the imposition of a sanction. It was only through the persistent efforts of Mr Eagar, on behalf of Softball New Zealand, and the Registrar of the Tribunal, Brent Ellis, to encourage Mr Abbot to take part in the process that Mr Abbot filed his defence and explanation. To his credit, he has apologised to the Tribunal and his sport for not having done so much earlier in accordance with the Tribunal's Rules.
21. Without having engaged in the process in this way, Mr Abbot would have had no basis for satisfying the Tribunal that he did not intend to enhance his sporting performance through the use of cannabis and the Tribunal would have been obliged to impose a period of two years' ineligibility to participate in all competitive sport.

Decision and sanction

22. In the circumstances, the Tribunal finds that Lance Abbot committed an anti-doping infraction in that the presence of cannabinoids was found in a sample provided by him at the Men's Provincial Cup softball tournament at Colquhoun Park, Palmerston North on 10 January 2006.
23. Mr Abbot is warned against the use of cannabis and reprimanded for using it in December 2005.



Kit Toogood QC
Deputy Chairperson (for the Tribunal)

8 May 2006