

INTRODUCTION

1. Mr Milner played for the Canterbury Bulls in the Bartercard Cup final in Auckland on 18 September 2006. Drug Free Sport collected a sample from Mr Milner after that match and on 25 October 2006, issued a determination that Mr Milner had committed a doping infraction and the prohibited substance was cannabis.
2. 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 NZ Rugby League.
3. Mr Milner does not challenge the determination of Drug Free Sport and, consequently, he has committed a doping infraction. A telephone conference held on 23 November 2006 was, with the agreement of both parties, made the hearing for determination of the sanction to be imposed on Mr Milner. Under NZ Rugby League's anti-doping bylaw, this Tribunal has jurisdiction to impose the sanction which must be in accordance with the WADA Code.

MR MILNER'S POSITION

4. This is the first season in which Mr Milner has played in the Bartercard Cup. His evidence is that he smoked cannabis approximately three weeks before the final and at a time when he had been dropped from the Canterbury Bulls and did not expect to be reselected for the season. He affirmed to the Tribunal that he did not smoke the cannabis to enhance his rugby league performance. He also stated that he had occasionally taken cannabis recreationally and has now taken steps towards stopping that habit as cannabis had impacted on his career as a rugby league player.
5. The Canterbury Bulls have commenced training for the next season but, because of this violation, Mr Milner has not been able to practice as he has been temporarily suspended by NZ Rugby League. He also plays social touch rugby.

NZ RUGBY LEAGUE'S POSITION

6. NZ Rugby League requires every player participating in the Bartercard Cup to sign a declaration acknowledging the code's anti-doping policy. A copy of this declaration is given to the player.

THE WADA CODE

7. The prescribed sanction under the WADA Code for a first doping offence involving the presence of a prohibited substance in an athlete's specimen is a period of two years' ineligibility. There is, however, an exception relating to Specified Substances. Cannabis is such a substance. If an athlete can establish on the balance of probabilities that the use of cannabis was not intended to enhance sports performance, the minimum sanction is a warning and reprimand and no period of ineligibility and the maximum sanction is a period of one year's ineligibility.
8. In this case, the Tribunal is satisfied that Mr Milner did not smoke cannabis to enhance his sports performance in the Bartercard Cup final.

THE TRIBUNAL'S POLICY

9. The Tribunal has stated its policy on more than one occasion. In *Touch New Zealand v. Koro*, SDT 04/05 it stated that if cannabis was not taken for the purposes of enhancing the athlete's performance, represents no danger to other competitors, officials or members of the public, and there are no aggravating circumstances, a reprimand and warning is likely to be the appropriate penalty. In subsequent cases, "aggravating circumstances" have been taken to include the signing of a participation agreement acknowledging the drug policy.
10. In view of overseas precedent and the widespread publicity there has been about cannabis violations, the Tribunal has recently reviewed its policy. This will shortly be made available to national sports organisations. However, as it has not yet been made available, the Tribunal has resolved to apply the principle stated in *Koro* and subsequent cases to this case.

DISCUSSION

11. Because of the declaration which Mr Milner signed, he was aware of the policy of NZ Rugby League. That was an aggravating circumstance. Although Mr Milner may not have expected to have played again that season, because he had been dropped from the Canterbury Bulls, he was still part of the squad and there must have always been a possibility that he would be required in the final. It is the Tribunal's view that Mr Milner's dropping from the team is a factor to be taken into account in determining the sanction, as is his statement that he has taken steps to

stop the habit of smoking cannabis. However, these are not sufficient to avoid the imposition of a period of ineligibility in this case but are relevant to the length of that period of ineligibility.

12. A complicating factor in this case is that the rugby league season has terminated and, apart from training which has already commenced, Mr Milner will not be required to play again before some time in 2007. If the period of ineligibility is to affect his playing days, it will have to be for a period which covers the early part of next season.
13. In the circumstances, the Tribunal has determined that the period of ineligibility will be for two months and will commence from the date of this decision. While this will not prevent Mr Milner from playing in the early part of next season, it does have practical implications. It does mean that for the next two months he can not train with the Canterbury Bulls and it will also prevent him from playing touch rugby. Because of the circumstances referred to above, the Tribunal considers this an appropriate penalty.
14. Mr Milner is advised that, under the WADA Code, if he were to infringe again, the minimum period of ineligibility would be two years.

DECISION

15. Mr Milner, having committed a doping infraction by smoking cannabis, is ineligible to participate in rugby league for a period of two months from the date of this decision. Under Article 10.9 of the WADA Code, he may not participate in any capacity in any sport which is governed by the WADA Code. This includes acting as an official or coach or participating in training. This period of ineligibility therefore applies to matches under the jurisdiction of Touch New Zealand. Touch New Zealand will be so advised



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Hon B J Paterson QC
Chairman of Sports Disputes Tribunal
24 November 2006