

INTRODUCTION

1. By a decision of the respondent's (MNZ) Board dated 16 May 2008, Mr Curr was suspended for two periods totalling 18 months and ordered to pay costs of \$1,500. He has filed a notice of appeal against this decision.
2. The decision of the MNZ Board was couriered to Mr Curr on 20 May 2008. He says he did not get it until he returned from work after 5pm.
3. Mr Curr has raised the possibility that he was not a member of MNZ on 16 May 2008 because he had been previously suspended by MNZ. This Tribunal shortened the term of suspension until 5 March 2008 but did not reinstate Mr Curr as a steward. See *Noel Curr v Motorcycling New Zealand* (ST 19/07, decision 11 April 2008). An issue has arisen which has been determined by another panel of the Tribunal as to whether Mr Curr was entitled to be reinstated as a steward, as his membership was obtained under the stewardship category.
4. The notice of appeal was sent to the Tribunal by fax and received at 1.58pm on 12 June 2008. A copy was also faxed to MNZ on the same date. Under the rules of the Tribunal, filing by facsimile is acceptable. I accept that the notice was filed on 12 June 2008, notwithstanding that the original copy of the notice of appeal and filing fee was not received until the next day.
5. MNZ applies to strike out the appeal on the grounds of Rule 7-4-3 of the MNZ Manual of Motorcycle Sport which requires appeals to be filed to the Sports Tribunal within 15 working days of the date of the MNZ decision. The Tribunal notes that this rule actually specifies "5 working days". However, the Tribunal has been informed by MNZ that this is a typographical error and the correct period is "15 working days". Both parties have accepted before the Tribunal that 15 working days is the correct time period in which to lodge an appeal to the Tribunal.

MNZ'S POSITION

6. The position of MNZ is that the filing of the notice of appeal on 12 June was outside the 15 working days allowed by MNZ's Rule 7-4-3 and, consequently, the Tribunal has no jurisdiction. It submits that the first day of the 15 day period was 21 May 2008.
7. In respect to the alternative submission made by Mr Curr, the position of MNZ is that, if he was not a member of MNZ at the relevant time, he has no right of appeal as the MNZ rules do not apply to him.

MR CURR'S POSITION

8. Mr Curr's position is that he is within the 15 day period, as the first day of that period was 22 May 2008. Further, he says he tried to fax the notice of appeal to the Tribunal on 11 June but could not get the fax through and was asked by the Registrar of the Tribunal to send the fax through to another fax number, which he did.
9. Alternatively, Mr Curr says that if he was not a member of MNZ, then the Tribunal rules apply and he has a right of appeal. Rule 39(a) of the Tribunal's Rules provide that notices of appeal are to be filed within the time limit set out in the applicable constitution or other rules of the national sports organisation (NSO) and, in the absence of such time limits, within 28 days of the appellant being notified of the decision against which the appeal is made. Mr Curr's point is that the 28 day period applies because he was not bound by the MNZ constitution or rules.

DISCUSSION

10. Under s38(c) of the Sports Anti-Doping Act 2006, this Tribunal can only consider appeals against a decision of an NSO if the constitution, rules, or regulations of that NSO specifically provide for an appeal to the Tribunal in relation to that matter. The jurisdiction of the Tribunal in relation to such appeals is essentially contractual. In this case it does not have jurisdiction unless given it by the provisions of MNZ's

constitution or other rules. If Mr Curr was not a member on 16 May 2008 and the provisions of MNZ's constitution or other rules do not apply, this Tribunal has no jurisdiction. The time limit under Rule 39(a) of the Tribunal's Rules would have no application.

11. While I accept that there is a possibility that Mr Curr may not have a right of appeal, because he was not a member of MNZ, it is possible to resolve this matter without determining this point.
12. MNZ does not take the point that the 15 day period runs from the date of its decision, which appears to be what the rule says. It is prepared to accept that the decision was given on 20 May 2008 (i.e. the date it was couriered to Mr Curr). In my view, the period must then commence and include 21 May 2008. The fact that Mr Curr may not have seen the decision until after 5pm on 20 May is, in my view, irrelevant. The period starts from the day of the decision and there is no provision in MNZ's constitution or otherwise which requires notification of that decision before 5pm. For the purposes of calculation, the day of the decision is not taken into account.
13. I calculate that the 15 working days allowed by the constitution expired on 11 June 2008. Under the Tribunal's rules, it was necessary to have the notice of appeal filed by 5pm on that date. The 15 working days are calculated as follows:

21 – 23 May	3 days
26 – 30 May	5 days
3 – 6 June	4 days
9 – 11 June	<u>3 days</u>
Total	15 days

14. Mr Curr raised the issue of trying to send the notice of appeal on 11 June. In his notice of service, he said that he served a copy on MNZ on that date. MNZ's position is that the copy was served by fax on 12 June. The Tribunal has no record of an attempt to send the notice of

appeal by fax on 11 June. The Tribunal's fax machine was able to receive faxes on that date but there was a problem with the printer. If a fax had been sent, it would have been received. There is no record of receipt. A print-out of the Tribunal's fax log for 11 June 2008 has been obtained. It shows no activity whatsoever (whether sending or receiving) reported on 11 June 2008.

15. It is relevant to note that at 11.22am on 12 June 2008, the Registrar of the Tribunal sent an e-mail to the Chairman and a Deputy Chairman of the Tribunal which said:

"I have heard from Noel Curr and he is going to be sending through a new appeal against decision of MNZ today."

In the circumstances, I can only accept that the notice of appeal was filed on 12 June at 1.58pm.

16. As the rules of MNZ require the notice of appeal to be filed by 11 June, this Tribunal does not have jurisdiction to consider the appeal. While the Tribunal has certain rights to extend times, it does not have the discretion or right to extend the time for filing an appeal if the constitution of the NSO does not give it such a right (see Rule 17(c) of the Tribunal's Rules).

DECISION

17. As a consequence of the above findings, the appeal is struck out.

Dated 30th October 2008



.....
Hon Barry Paterson QC
Chairman of the Tribunal