

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

ST 19/07

BETWEEN **MOTORCYCLING NEW ZEALAND (“MNZ”)**

Respondent

AND **NOEL CURR**

Appellant

MINUTE OF TRIBUNAL

Dated 19 November 2007

Tribunal: Nicholas Davidson QC (Deputy Chairperson)
Tim Castle
Ron Cheatley

Registrar: Brent Ellis

Appearances: Noel Curr (Appellant)
Mr Kevin Bond (Counsel for Motorcycling New Zealand)

Introduction

1. This Minute is issued following a teleconference held on Friday 16 November 2007. Those attending were Mr Curr as appellant, Mr Kevin Bond for Motorcycling New Zealand, and members of the Tribunal, Nicholas Davidson QC, Timothy Castle, Ron Cheatley, with the Registrar Mr Ellis.
2. This appeal is of real consequence to Mr Curr and to the sport. Mr Curr is suspended from the sport. It involves allegations of serious procedural defect. The Tribunal perceives that it should be dealt with urgently. It arises in the context of possible constitutional reform and debate, which this Tribunal cannot dictate or influence. There is a need to avoid this dispute escalating further and the Tribunal makes comment below.

Rehearing

3. Mr Curr alleges breach of natural justice in the MNZ process. This Tribunal can deal with such matters by way of rehearing, which allows alleged procedural defects to be recognized but cured in the appeal process.

The need for Reasons

4. While the Tribunal has some papers, it has limited material as to the reasons for the decision of the Board and the suspension imposed on Mr Curr.
5. For that reason Mr Bond (in Ms McDonald's absence) was asked to provide a full statement of the reasons for the decision of the board, within 14 days of the teleconference i.e. by Monday 3 December 2007. If that cannot be achieved then an application should be made to this Tribunal for an extension of time. The Tribunal hopes that this matter can be dealt with even earlier, as it is urgent.

Statement of Issues

6. Once MNZ has provided the reasons for the Board's decision, Mr Curr and his advisors will be able to identify the matters he wishes to advance by way of appeal. It seems inevitable that there will be factual challenges, and challenge to the reasoning of MNZ. Until this Tribunal knows the scope of the challenge, it is not

possible to direct further process. However the parties should be able to identify the factual issues, and other matters in dispute, and set them out by way of an agreed Statement of Issues. The Tribunal will assist with that if necessary, but we expect the parties to cooperate in this regard.

Evidence

7. Such Statement of Issues should be prepared immediately following provision of the reasons for the decision by MNZ.
8. The Statement of Issues will create the setting for the evidence and submissions before this Tribunal. Mr Curr and MNZ should cooperate with regard to the evidence to be led, and counsel should be able to agree a process. For example, once the issues are identified Mr Curr and MNZ may wish to call evidence on a particular matter.
9. The MNZ process is disciplinary, and it should point to the evidence on which it relies for its reasons. Mr Curr can then respond. In this way a list of witnesses (which the Tribunal hopes is not lengthy) can be settled.
10. There should then be an exchange of evidence.

Fixture

11. The Tribunal can sit on Monday 17 and Tuesday 18 December 2007. All members are available. The members of this Tribunal are not full-time and must meet other professional obligations at a busy time of the year. If this does not suit the parties another date can be discussed through Mr Ellis who will liaise with the Chairperson.

Special General Meeting - MNZ

12. The Tribunal thought Mr Curr's concerns about his suspension affecting the conduct of an SGM in early December might be resolved by the parties. There were several tenable options explored. The Tribunal cannot dictate the resolution but urged the parties to find a practical answer. It has been advised that MNZ will not lift the suspension. Other options were discussed including observer status.

Formal Directions

13. The formal directions are as follows:
- (a) MNZ to provide a statement of the reasons for the Board's decision, by no later than 3 December 2007. If an extension of time is sought, any extension should be sought through Mr Ellis who will liaise with the Chairperson. (Of this Tribunal.)
 - (b) Upon provision of reasons the parties should settle the issues between them, again liaising with the Chairperson if there is difficulty.
 - (c) Based on an agreed or ordered Statement of Issues the parties will discuss the evidence to be led, beginning with MNZ, and by Mr Curr in response. They should then agree an exchange of evidence, again liaising with Mr Ellis if there is difficulty.
 - (d) The parties will agree on a common bundle of documents which will be paginated, and used at the hearing. The Tribunal is not concerned that this be prepared as a Court would require, but this will speed and ease the hearing process, to the benefit of all involved.
 - (e) On a **provisional** basis the fixture is set for 17 and 18 December 2007, probably in Wellington as that seems the most cost effective place.

Dated 19 November 2007



Nicholas Davidson, QC
Deputy Chairperson (for the Tribunal)

Ron Cheatley
Tim Castle