

AFL Anti-Doping TRIBUNAL

TUESDAY, 31 MARCH 2015

DAY SEVENTEEN

(TRANSCRIPT-IN-CONFIDENCE)

CHAIRMAN: MR DAVID JONES
MR JOHN NIXON
MR WAYNE HENWOOD

COUNSEL ASSISTING: MR JUSTIN HOOPER

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MR J. GLEESON QC with MS R. ENBOM appeared on behalf of the
AFL.

MR M. HOLMES QC with MR P. KNOWLES appeared on behalf of the
CEO of ASADA.

MR D. GRACE QC with MR B. IHLE appeared on behalf of 32
players.

MR N. CLELLAND QC with MR D. HALLOWES appeared on behalf of
Mr [REDACTED] and Mr [REDACTED]

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1 CHAIRMAN: Good afternoon everyone. Can I just check,
2 first of all, that we have got the links in place?
3 There's a video link in place? Can you see and hear us
4 all right from that video link?

5 SPEAKER: They don't have audio back to us.

6 CHAIRMAN: Okay, they can wave. How many audio links have
7 we got? Can you hear us all right, guys?

8 SPEAKERS: Yes.

9 CHAIRMAN: This is a further hearing in relation to the
10 Anti-doping Tribunal matter concerning an alleged
11 violation against 34 players of the Essendon Football
12 Club. The decision of the tribunal is the tribunal is
13 not comfortably satisfied that any player violated
14 clause 11.2 of the AFL Anti-Doping Code. The tribunal
15 will formally hand down its decision and reasons for
16 that decision which will be now supplied to the
17 parties. Can I also advise that within a relatively
18 short period of time a copy will be emailed to all the
19 parties.

20 I'm not sure - it's a matter for the parties, in
21 particular I think ASADA, in terms of communication
22 with Mr Dank rather than us. Can I say that with
23 respect to Mr Dank and the alleged violations against
24 Mr Dank, the tribunal has not completed its compilation
25 of its reasons for the decision in relation to Mr Dank,
26 therefore, the decision and its reasons will be handed
27 down at a later date, to be advised, which certainly
28 won't be before Easter.

29 Can I say to counsel, I have prepared a statement
30 which I would propose to release but I would like you
31 to have a look at it and just let me know if there is

1 any concerns. I believe it's appropriate in the
2 circumstances but I would like to give you the
3 opportunity of considering it and let me know if
4 there's any issues about it.

5 MR GRACE: Yes, we are content with that, sir.

6 MR HALLOWES: Likewise.

7 MR KNOWLES: No problem.

8 CHAIRMAN: Mr Gleeson, is there any problem from the AFL's
9 point of view?

10 MR GLEESON: Can I just obtain some instructions, sir?

11 CHAIRMAN: Yes.

12 MR GLEESON: Mr Chairman, it's the position of the AFL it
13 would be preferable if the statement could say more as
14 to the reason why the tribunal was not comfortably
15 satisfied.

16 CHAIRMAN: The answer is no. There's 133 pages of reasons
17 in relation to a complicated case. I did raise with
18 the parties before we adjourned the possibility of the
19 tribunal preparing a summary of its reasons for
20 decision. There really wasn't any interest from the
21 Bar table in relation to that. I would have to say,
22 it's been hard enough to prepare these reasons for
23 decision without trying to contemplate trying to
24 summarise the reasons for decision and it's not an
25 option that the tribunal's prepared to follow and I'm
26 not prepared to provide any more detail.

27 MR GLEESON: If the chairman pleases. Obviously enough,
28 with the consent of the parties, other alternatives are
29 possible and I enquire through the chairman whether the
30 parties consent to the release of the reasons with the
31 players' names redacted?

1 CHAIRMAN: Mr Gleeson, the situation is this, and I think
2 it was reflected in the decision of his Honour in the
3 Supreme Court, effectively this is a private
4 arbitration. We have performed the function requested
5 of us by the AFL to hear and determine what is a
6 dispute between various parties in relation to the
7 application of the AFL Anti-Doping Code. We completed
8 this part of the task, there's still the part in
9 relation to Mr Dank but our function then, having
10 determined the matter, was to provide our decision and
11 our reasons to the parties. Where it goes from there
12 is a matter for the parties.

13 There are obviously provisions in the code and in
14 the ASADA legislation that have some bearing upon that.
15 There may be other factors when everyone reads the
16 reasons that will be taken into account. [REDACTED]

17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 I think, Mr Knowles, that when we are ready to
21 hand down the decision in relation to Mr Dank, we need
22 to reconvene again. So we will inform those
23 representing ASADA and the AFL of that and then we can
24 proceed from there.

25 MR KNOWLES: Purely as an administrative matter, if
26 possible I would ask the tribunal to give ASADA a
27 number of days notice of that because. Unlike dealing
28 with the representatives of the people on my right,
29 dealing with Mr Dank takes some time.

30 CHAIRMAN: I understand. Would at least 72 hours be all
31 right?

1 MR KNOWLES: Yes.

2 CHAIRMAN: We will give you at least 72 hours. Can I say,
3 just to assist you, the reasons are substantially
4 completed but because we felt we needed to give our
5 priority to completing this matter, we weren't able in
6 the time to complete the reasons with respect to
7 Mr Dank but we would expect it won't be too long after
8 Easter that we can hand down that decision and reasons.

9 MR KNOWLES: There's no difficulty with that from my
10 client's position.

11 CHAIRMAN: And we will give you at least 72 hours notice.

12 MR KNOWLES: If the tribunal pleases.

13 CHAIRMAN: The tribunal will now adjourn, thank you.

14 ADJOURNED SINE DIE