

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA
(CRDSC)**

**N°: SDRCC DT 12-0184
(DOPING TRIBUNAL)**

**CANADIAN CENTRE FOR ETHICS IN SPORT
(CCES)**

FOOTBALL CANADA (FC)

AND

**ALEXANDER HUPE
(ATHLETE)**

AND

**GOVERNMENT OF CANADA
WORLD ANTI-DOPING AGENCY (WADA)
(OBSERVERS)**

DECISION ON DOPING DISPUTE

**BEFORE: HUGH FRASER
(Sole Arbitrator)**

Appearing:

For the Athlete: No one appeared

For the Canadian Centre for Ethics in Sport David Lech, Jeremy Luke

For Football Canada No one appeared

1.0 THE PARTIES

1.1 The Claimant, the Canadian Centre for Ethics in Sport (“CCES”) is an independent non-profit organization responsible for maintaining and carrying out the Canadian Anti-Doping Program (“CADP”), including providing anti-doping services to national sports organizations and their members. CCES is signatory to the World Anti-Doping Code (“WADC”).

1.2 Football Canada is the governing body for Amateur Football in Canada. Football Canada adopted the CADP on December 10, 2008. The Canadian Junior Football League (CJFL) is a member of Football Canada.

1.3 Alexander Hupe is an athlete affiliated with Football Canada. He is a member of the CJFL and therefore subject to the rules of the CADP.

2.0 BACKGROUND

2.1 After a football game held in Kelowna, British Columbia on October 13, 2012, a urine sample was collected from Mr. Hupe. The urine sample resulted in an adverse analytical finding which was received by the CCES from the World Anti-Doping Agency (“WADA”) accredited laboratory on October 31, 2012. The Certificate of Analysis indicated the presence of testosterone, mesterolone and nandrolone, all of which are classified as prohibited substances according to the 2012 WADA prohibited list.

2.2 On the basis of the adverse analytical finding, the CCES asserted that Mr. Hupe had committed an anti-doping rule violation and proposed that he be declared ineligible to compete for a period of two (2) years (in accordance with Rule 7.38 of the CADP).

3.0 PROCEDURAL HISTORY

3.1 On November 2, 2012 Mr. Hupe, by email communication, indicated that he did not have a Therapeutic Use Exemption (“TUE”) for the banned substances, waived the analysis of his B sample, and accepted a voluntary provisional suspension in accordance with CADP Rule 7.15. He was then advised of the four options available to him, including proceeding to a hearing to determine the anti-doping rule violations and consequences, or waiving the need for a hearing.

3.2 From November 2, 2012, to December 13, 2012, individuals from Football Canada, the CJFL, CCES and SDRCC attempted to communicate with Mr. Hupe by placing calls to his cell phone and leaving voice mail messages; by sending emails to his email address; by placing phone calls to the phone number listed for Mr. Hupe's parents; and by sending letters through UPS.

3.3 The only response received from Mr. Hupe was an email dated December 19, 2012, sent to Ronald White of Football Canada in which the athlete expressed a desire to waive his right to a hearing.

3.4 On December 19, 2012, Mr. Hupe was advised in an email communication from Kevin Bean of the CCES as to the appropriate procedure to follow in order to submit a signed waiver of right to a hearing form.

3.5 No waiver of hearing form was received from Mr. Hupe and the Tribunal issued Procedural Order #1 on January 9, 2013, advising him that if a waiver of right to a hearing was not received by the SDRCC by January 14, 2013, a hearing would take place in his absence pursuant to Rule 7.5 of the Canadian Sport Dispute Resolution Code. The Procedural Order also stated that a hearing held in the absence of Mr. Hupe would be conducted by way of written submissions.

3.6 A signed Waiver of Right to Hearing was never received from Mr. Hupe.

3.7 On January 16, 2013, the Tribunal issued Procedural Order #2 requiring that the hearing take place in the absence of Alexander Hupe. The Tribunal also ordered that such hearing be conducted by way of written submissions, and that the written submissions filed by the CCES be sent by process server to the residential address listed for Mr. Hupe with a deadline of January 29, 2013, for the receipt of any submissions that he wished to make.

4.0 RELEVANT ANTI-DOPING RULES

4.1 Rules 7.23 to 7.26 of the Canadian Anti-Doping Program establish that the presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily sample is an anti-doping rule violation.

4.2 Rule 7.38 of the CADP states that the period of Ineligibility in Mr. Hupe's circumstances for a first violation of Rules 7.23 to 7.27 shall be two (2) years Ineligibility.

5.0 CCES SUBMISSIONS

5.1 The CCES submits that through the documents filed on its behalf, it has discharged its burden of proof to the required standard that the asserted anti-doping rule violation was committed by Mr. Hupe. The CCES notes that their written submissions have not been contested and that Mr. Hupe has chosen not to participate in the hearing even though he was given every opportunity to do so.

5.2 The CCES also submits that Mr. Hupe has failed to tender any evidence at this hearing and thus has failed to demonstrate the existence of “exceptional circumstances” so as to reduce the otherwise applicable sanction. Therefore the CCES submits that the appropriate sanction for a first presence violation as mandated in CADP Rule 7.38 is a two-year period of ineligibility.

5.3 The CCES further submits that since Mr. Hupe accepted a voluntary provisional suspension on November 2, 2012, which appears to have been respected, the two-year period of ineligibility should commence on November 2, 2012.

6.0 DECISION

6.1 Section 7.5 of the Canadian Sport Dispute Resolution Code states as follows:

Provided that reasonable efforts have been made to contact the Person whom the CCES asserts to have committed a violation of the Anti-Doping Program, if that Person is unreachable, or is avoiding contact, or has not confirmed receipt of the notification from the CCES and/or the SDRCC which addresses that Person’s right to a fair hearing and the consequences of not participating at the hearing, the Panel may decide that the hearing will proceed without the participation of such Person.

6.2 I am satisfied that every reasonable effort was made to communicate with Mr. Hupe and to advise him of his right to participate in a hearing before me. I ordered pursuant to Section 7.5 that the hearing proceed in the absence of the athlete and further ordered that the hearing be conducted by way of written submissions and that Mr. Hupe be given the right to make submissions at any time prior to the completion of the hearing process.

6.3 On December 19, 2012, an affidavit was filed by Jeremy Luke, the Director of the Anti-Doping Program for the CCES documenting the many attempts that were made to communicate with Mr. Hupe.

6.4 On January 15, 2013, a further affidavit was filed by Jeremy Luke. This affidavit and its exhibits provide the information and business records of the CCES regarding the alleged anti-doping allegation, and constitute the evidence submitted by the CCES. The athlete was sent copies of these documents.

6.5 Mr. Hupe chose not to take part in the hearing. Although he indicated that he would file a waiver of his right to a hearing, none was ever received. CADP Rule 7.85 permits the doping tribunal to draw an adverse inference against an athlete who refuses to take part in the hearing process.

6.6 The CCES bears the burden of proof to establish an anti-doping rule violation to the comfortable satisfaction of the Doping Tribunal.

6.7 I am comfortably satisfied on the evidence before me and in the absence of any evidence to the contrary that the CCES has met its burden of establishing that Mr. Hupe has committed an anti-doping rule violation pursuant to Rules 7.23 to 7.26 of the CADP.

6.8 No evidence of exceptional circumstances has been presented in this case. I find therefore that the appropriate sanction is a period of two (2) years ineligibility from competition which commences on November 2, 2012, the date on which Mr. Hupe accepted a provisional suspension.

Dated at Ottawa, Ontario, this 14th day of February, 2013.



Hugh L. Fraser
Arbitrator