

SPORT DISPUTE RESOLUTION CENTRE OF CANADA

IN THE MATTER OF THE CANADIAN ANTI-DOPING PROGRAM;

AND

IN THE MATTER OF AN ANTI-DOPING RULE VIOLATION BY
JORDON BRUCE (ATHLETE)

ASSERTED BY

THE CANADIAN CENTRE FOR ETHICS IN SPORT (CCES);

AND

IN THE MATTER OF A HEARING BEFORE THE DOPING TRIBUNAL

(SDRCC File No. DT 12-0188)

(Doping Tribunal)

SOLE ARBITRATOR: JOHN P. SANDERSON, Q.C.

REPRESENTING THE CCES: DAVID LECH

REPRESENTING THE ATHLETE: SELF-REPRESENTED

PRELIMINARY TELECONFERENCE DATES: JANUARY 23, 2013 and
FEBRUARY 18, 2013

DATE OF DECISION: MARCH 27, 2013

DECISION

INTRODUCTION

This arbitration is pursuant to the application of Rule 7 (Doping Violations and Consequences Rules) of the Canadian Anti-Doping Program (CADP) concerning Jordon Bruce, an athlete affiliated with Bobsleigh Canada Skeleton. The issue in summary form is whether Mr. Bruce committed an anti-doping rule violation while on the team, and if so, what are the consequences of that violation.

POSITION OF THE PARTIES

The Canadian Centre for Ethics in Sport (CCES) is an independent non-profit organization which is responsible for maintaining and carrying out the CADP, including providing anti-doping services to national sports organizations and their members. CCES submits to this tribunal that Mr. Bruce committed an anti-doping rule violation involving a prohibited substance. CCES further submits the appropriate sanction is a two-year period of ineligibility from competition, the mandated period of ineligibility under the CADP. The position of CCES is that there are no appropriate reasons for eliminating or reducing the period of ineligibility due to Mr. Bruce's refusal to participate in these proceedings.

Mr. Bruce has elected not to participate in this arbitration process, despite being given every opportunity to take part. In particular, I note the Procedural Order I issued on March 12, 2013, which reads as follows:

Whereas:

Jordon Bruce has not submitted a signed Waiver of Right to a Hearing by the final stated deadline of January 11, 2013; and

Jordon Bruce did not participate in the two preliminary meetings convened by the Tribunal on January 23, 2013 and on February 18, 2013, despite being notified of his right to do so.

The Tribunal orders the following:

1. That the written submissions filed by the CCES be sent by registered mail to the residential address listed for Jordon Bruce, with an attached notice advising him that any written submissions that he wishes to make in response to those submitted by the CCES must be received by the SDRCC no later than **4 p.m. (EDT) on March 22, 2013.**

No response was filed by Mr. Bruce on or before the prescribed date and time.

BACKGROUND FACTS

The sample giving rise to the adverse analytical finding was collected in competition at the National Bobsleigh Championships on October 21, 2012 in Calgary, Alberta, in accordance with the Doping Control Rules of the CADP. The adverse analytical finding was received by the CCES from the World Anti-Doping Agency (WADA) accredited laboratory on November 2, 2012. A copy of the Certificate of Analysis is in evidence before me. It indicates the presence of methylhexanamine, classified as a prohibited substances according to the 2012 WADA Prohibited List. Further, this substances is identified as a “specified substance” pursuant to Rule 7.4.

The CCES completed its initial review according to Rule 7.63 of the Doping Violations and Consequences Rules of the CADP. The CCES received and reviewed in detail what little information was provided by Mr. Bruce. The CCES determined that there was no apparent departure from the Doping Control Rules of the CADP or the laboratory analysis that undermines the validity of Mr. Bruce’s adverse analytical finding. Consequently, the CCES informed Mr. Bruce that he had committed an anti-doping rule violation pursuant to Rules 7.23 to 7.26 of the Doping Violations and Consequences Rules (Presence in Sample). In the case of Mr. Bruce, this was and is a

first violation and as a result the CCES proposed that the sanction be two years of ineligibility in accordance with Rule 7.38 of the CADP.

OPTIONS AVAILABLE TO MR. BRUCE

As an athlete facing an asserted anti-doping rule violation, CCES gave Mr. Bruce five options to consider, as follows:

- 1) Proceed to a hearing;
- 2) Waive his right to a hearing;
- 3) Decide to voluntarily accept a provisional suspension;
- 4) Decide to voluntarily admit to the anti-doping rule violation asserted against him by the CCES; or,
- 5) Provide further information to the CCES

It was made clear to Mr. Bruce that he has the burden and obligation to prove the circumstances outlined in Rules 7.42 to 7.43, to attempt to reduce the otherwise applicable sanction of two years. These Rules read as follows:

7.42 Where an *Athlete* or other *Person* can establish how a *Specified Substance* entered his or her body or came into his or her *Possession* and that such *Specified Substance* was not intended to enhance the *Athlete's* sport performance or mask the *Use* of a performance-enhancing substance, the period of *Ineligibility* found in Rule 7.38 shall be replaced with the following:

First violation: At a minimum, a reprimand and no period of *Ineligibility* from future *Events*, and at a maximum, two (2) years' *Ineligibility*.

7.43 To justify any elimination or reduction under Rule 7.42, the *Athlete* or other *Person* must produce corroborating evidence in addition to his or her word which establishes to the comfortable satisfaction of the Doping Tribunal the absence of an intent to enhance sport performance or mask

the *Use* of a performance enhancing substance. The *Athlete* or other *Person's* degree of fault shall be the criterion considered in assessing any reduction of the period of *Ineligibility*. The *Athlete* or other *Person* shall have the onus of establishing that his or her degree of fault justifies a reduced sanction. [Code Article 10.4]

Mr. Bruce failed to convince CCES, on the basis of very limited initial explanations, that CCES should reduce the sanction below two years as provided in Rules 7.42 to 7.43. As is evident from the Procedural Order noted above, no signed waiver of right to a hearing was provided by Mr. Bruce, notwithstanding a final stated deadline of January 11, 2013. Mr. Bruce was provided with notification with respect to two preliminary teleconferences convened by the Tribunal on January 23, 2013 and February 18, 2013. In both cases, Mr. Bruce did not participate in the teleconferences nor did he provide any explanation or request for an extension, despite notification of his right to do so. As a result, the written submissions filed by the CCES and briefly summarized above were sent by registered mail to Mr. Bruce's residential address and he was advised that any response submitted to SDRCC must be received by the end of the day March 22, 2013. No written submission or response was received by that date.

CCES is a signatory to the World Anti-Doping Code ("Code") and is responsible for ensuring that the CADP is consistent with international best practices. The general purpose of the WADC is to protect the rights of athletes and the integrity of sport.


According to the CADP, an athlete is responsible for any prohibited substance(s) found to be present in his or her body. It is not necessary that intent, fault, negligence, or knowledge be demonstrated to establish a violation. A first "presence" violation requires a period of ineligibility for two years unless the Athlete establishes that his or

her degree of fault justifies a reduced sanction. In this case, Mr. Bruce has declined to participate in the proceedings, either to produce evidence or to make submissions.

DECISION

In the circumstances, I have no option but to draw an adverse inference against Mr. Bruce for his failure to participate in the arbitration proceedings convened specifically to consider CCES' asserted anti-doping rule violation by Mr. Bruce and the proposed sanction of two years ineligibility. Since Mr. Bruce has chosen to ignore the opportunity provided to him by the Rules and by myself as Arbitrator to participate as is his right, he must bear the consequences. Accordingly, after reviewing all of the evidence before me, I find that I must impose as a sanction against Mr. Bruce a period of ineligibility of two years, the standard sanction provided by the Rules. As no voluntary provisional suspension was accepted nor was there an admission to the anti-doping rule violation made, I find that the two-year period of ineligibility shall start on the date hereof.

Dated at Vancouver, British Columbia this 27th day of March 2013.



John P. Sanderson, Q.C.
Sole Arbitrator