



Arbitration CAS 2002/A/396, Baxter/International Ski Federation (FIS), award of 30 September 2002

Panel : Mr. Jacques Baumgartner (Switzerland), President ; Mr. Quentin Byrne-Sutton (Switzerland) ; Mr. Hans Nater (Switzerland)

Alpine skiing

Inadvertent doping

Calculation of the suspension

Interpretation of regulations

1. **Suspensions based on Section D, Rule 2, art. 1.2.1 of the FIS Medical Guide, which provides the following sanction for inadvertent doping : « *Suspension from participation in all international ski competitions for three months for the first offence (during a fixed period within the actual or next competition season)* », should *a*) begin to run on the day the sample was taken until the end of the competition season underway, *b*) be interrupted between competition seasons (in order to be effective) and *c*) resume during the next competition season(s), either Northern or Southern Hemisphere season, until the suspension period has entirely run. The exact starting and ending date of each competition season (Northern and Southern Hemispheres) to be accounted for when calculating the period of suspension should be the most up-to-date FIS Calendar at the time the decision to sanction is made by the FIS.**
2. **The Panel considers that “all” international ski competitions must mean all the competitions classified as such by the FIS in its *International Ski Competition Rules* (“ICR”) and listed by it in the FIS Calendar. Thus, the current wording of the regulations does not allow calculating a suspension period in such fashion that only certain competitions on the FIS Calendar are selectively covered by the suspension.**

The Appellant competed for the British team in the men’s alpine slalom event on 23 February 2002 at the XIX Olympic Winter Games Salt Lake City 2002, at which he won a bronze medal.

As a medalist, the Appellant was selected to undergo a doping test after this event and he delivered urine samples “A” and “B”.

On 28 February 2002, the IOC informed the FIS that the “A” sample had tested positive and on 19 March 2002 informed the FIS that the “B” sample confirmed the findings of the “A” sample, i.e. the presence of Methamphetamine.

On 19 March 2002, the FIS wrote to the BSSF, indicating, among others, that with immediate effect Alain Baxter:

“...is suspended from participating in FIS calendar events until the end of the FIS points evaluation period for the 2001/2002 season. Thereafter at its next meeting on June 3, 2002, the FIS Council will express the sanction according to the FIS Rules...”

On 3 June 2002, the FIS Council decided that Alain Baxter’s offence consisted of inadvertent doping and decided that the sanction would be a three-month suspension. In its official statement released thereafter, the FIS indicated that:

“Alain Baxter (GBR), Alpine Skiing, tested positive for Methamphetamine on 23rd February 2002 after the Men’s Slalom at the Olympic Winter Games in Salt Lake City (USA). The FIS Council decided that the offence was inadvertent doping and applied a sanction suspension of all FIS calendar competitions during the competition season until 15th December 2002”.

On 6 June 2002, the British Ski & Snowboard Federation (BSSF) wrote to the FIS seeking clarification of how the three-month period had been calculated in light of the applicable rules. In this letter, the BSSF indicated that Alain Baxter disagreed with the suspension period as calculated by the FIS.

On 11 June 2002, the FIS confirmed its decision and sanction in writing to the BSSF and provided the following clarification:

“In regard to a clarification of the sanction, the calculation of the three month made by the FIS Council was as follows:

One month at the end of the 2001/2002 competition season (during which there were no FIS World Cup races for which he was qualified), one month competition period in the Southern Hemisphere (during which there are no FIS World Cup races) and one month at the beginning of the 2002/2003 season until 15th December 2002 during which period he will be ineligible for two FIS World Cup Slaloms”.

On 24 June 2002, in light of this clarification by the FIS, Alain Baxter objected to the sanction by appealing against the decision of the FIS.

On 27 June 2002, the FIS wrote to the BSSF to indicate that the Appellant would be eligible only for one World-Cup slalom and not two as incorrectly mentioned in the decision of 11 June 2002.

According to R 58 of the Code as there is no choice of law by the Parties and because the FIS is domiciled in Switzerland, Swiss law governs the appeal.

The regulations that are applicable to this appeal consist of the relevant rules promulgated by the FIS, among others those contained in its *Statutes*, in the *Medical Guide 2001/2002*, in *The International Ski Competition Rules* (“ICR”) and in the *Rules of the FIS Points 2001/2002*.

The relevant provisions of the *Medical Guide* include the following:

“FIS DOPING RULES

D. DISCIPLINARY PROCEDURES FOR DOPING OFFENCES

[...]

Rule 2 – Sanction

1. *If an athlete is found to have committed a doping offence after the procedure described in Rule 1 has been carried out, and this is confirmed after a hearing, respectively consideration of the written statement of the National Association on behalf the athlete waives the right to a hearing, then he shall be sanctioned. The FIS Council decides on the appropriate sanction according to the FIS sanction catalogue. The sanction is valid from the date on which the sample was provided and the athlete’s results shall therefore be annulled from all competitions in which he has participated since then.*
2. *The athlete has the right to appeal the decision of the FIS Council to the Court of Arbitration for Sport (CAS).*

FIS Sanction Catalogue

[...]

1.2.1 Inadvertent use of doping

“Suspension from participation in all international ski competitions for three months for the first offence (during a fixed period within the actual or next competition season).”

Among the provisions of the *International Ski Competition Rules*, the following are relevant:

“202.2 The FIS Calendar Conference will be held every year in the month of May/June.

202.3 The FIS Council will publish the FIS Calendar on the Internet.

1260 FIS Points

1260.1 The FIS points of the competitors registered with the FIS are established according to the rules laid down by the Sub-Committee for classification of Alpine Competitors.

1260.2 The FIS points lists based on these rules form the basis for the division of the competitors according to points. The corresponding commentary is part of these competition rules and will be renewed annually.”

In connection with the above provision, the FIS each year adopts its *Rules of the FIS Points*.

According to art. 3 of the *Rules of the FIS Points 2001/2002*, the evaluation period is from 15 November 2001 to 22 April 2002 for the Northern Hemisphere and from 1 July 2002 to 15 October 2002 for the Southern Hemisphere.

The FIS Calendars available on Internet on 17 July 2002 indicate 30 April 2002 as the date of the last competition during the previous Northern-Hemisphere season, 25 July-27 September 2002 as the period during which competitions will be held in the Southern-Hemisphere season to come and 26 October 2002 as the date of the first competition to take place again in the Northern-Hemisphere.

On 12 July 2002, the Appellant filed its Appeal Brief, containing in particular the following request for relief:

"A determination that the three month suspension imposed on the Appellant ends on 18th August 2002; two calendar months and seven days having been served between 23rd February (being the date of the positive test and the Appellant's immediate suspension by the Respondent) and 30th April 2002 (the end of 2002 competition season) with a further period of one calendar month minus seven days to be served from 25th July 2002 (the start of the 2003 competition season) until 18th August 2002, such that the three month suspension is served "during a fixed period during the actual or next competition season" in accordance with the FIS Medical Guide 2001/2002, or such other date as the Court of Arbitration for Sport may determine so that the 3 month suspension is properly served during a fixed period in accordance with the published FIS Sanction Catalogue contained in the FIS Medical Guide 2001/2002."

On 31 July 2002, the Respondent filed its answer, requesting for relief "... *that the Appellant's appeal be dismissed?*".

The parties accepted that the CAS proceed on the basis of written submissions only.

LAW

1. In the present case, the jurisdiction of the CAS derives from R47 of the Code, which provides that:

"A party may appeal from the decision of a disciplinary tribunal or similar body of a federation, association or sports body, insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports body."

And from section D, Rule 2, art. 2 of the *FIS Medical Guide 2001/2002*, which provides that:

"The athlete has the right to appeal the decision of the FIS Council to the Court of Arbitration for Sport (CAS)."

Furthermore, section E, art. 1 of the *Medical Guide* provides:

"An athlete may appeal to the Court of Arbitration for Sport (CAS). Any decision made by the statutory bodies of FIS may be submitted exclusively by way of appeal to the Court of Arbitration for Sport in Lausanne, Switzerland, which will resolve the dispute definitely in accordance with the Code of Sports-related Arbitration. The time limit for appeal is twenty-one days after the reception of the decision concerning the appeal." (See also R49 of the Code.)

2. The Appellant's appeal is against the decision of the FIS Council, i.e. the decision "*of a disciplinary tribunal or similar body of a federation*". The *Medical Guide* provides for arbitration before the CAS and the Appellant has exhausted the legal remedies available prior to the appeal to the CAS (there is none). The conditions set by R47 of the Code are therefore met. Moreover, the Respondent accepted the jurisdiction of the CAS.
3. Whether the FIS validly communicated its decision to the Appellant on 3 June 2002 or on 11 June 2002, the appeal is admissible because filed on 24 June 2002 within the applicable 21-day deadline. Moreover, the Respondent recognized the admissibility of the appeal.
4. In essence, the Appellant is claiming that the FIS violated the applicable regulations by incorrectly accounting for the following factors when deciding the three-month suspension would end on 15 December 2002:
 - The FIS sanction catalogue applies to all international ski competitions in the FIS Calendar.
 - The Medical Guide provides for a suspension during a fixed period.
 - The Medical Guide provides that the sanction applies from the date on which the sample was provided, which in this case was 23 February 2002.
 - The applicable FIS Calendar provides that that the 2002 competition season ended on 30 April 2002 and the 2003 competition season began on 25 July 2002.
5. Due to the way the FIS calculated the suspension, the Appellant would in effect be suspended from competition for seven months instead of three months, the proper breakdown of the period of suspension being as follows:

DATE	JUSTIFICATION	LENGTH
From February 23, 2002	Date of the positive test	2 months and 7 days
To April 30, 2002	End of the 2002 competition season	
From July 25, 2002	Effective start of the 2003 competition season	1 month minus 7 days
To August 18, 2002	End of the three-month suspension	

6. In essence, the Respondent is claiming that its regulations were correctly applied and the appeal should be dismissed because:
 - It has shown fairness and consistency in the calculation of the period of suspension for Alain Baxter compared to other cases where competitors have been sanctioned for inadvertent doping.
 - Given Alain Baxter's results and racing profile/history the calculation suggested by the Appellant would render the sanction ineffectual, because the period of suspension

would not include any World Cup slaloms for which the Appellant is qualified and would run during the Southern-Hemisphere competition season to which slalom racers no longer participate and during which Alain Baxter could not improve his FIS points.

- According to the provisions of the FIS Sanction Catalogue (art. 1.2.1) contained in the *FIS Medical Guide*, the Respondent would have been entitled to apply the entire three-month suspension as a fixed period during the next season, i.e. from 15 November 2002-15 February 2003, which would have been much more penalizing for the Appellant.
7. However, in order to be effective yet fair, the suspension was calculated by the FIS so as to allow the suspension to run during the end of the FIS points evaluation period for 2001/2002, when the Appellant was serving an automatic suspension, with the remaining month to be applied at the start of next Northern-Hemisphere competition season at a time when the Appellant would otherwise have participated in a World-Cup slalom. The calculation is as follows:

DATE	JUSTIFICATION	LENGTH
From February 23, 2002	Date of the positive test	2 months
To April 22, 2002	End of the FIS points evaluation period for 2001/2002	
From November 15, 2002	Start of the next Northern Hemisphere competition season	1 month
To December 15, 2002	End of the three-month suspension	

- 8. The Appellant is not challenging the choice by the FIS of a three-month suspension period as the sanction, i.e. is not questioning the appropriateness of such sanction.
- 9. The Appellant is only contesting the way in which the FIS chose to calculate when and how the three-month suspension period should apply in light of the applicable regulations.
- 10. Consequently, the main issue the CAS has to determine concerns the interpretation of the applicable regulations and more specifically whether the FIS decision of 3 June 2002 is in conformity with such regulations.
- 11. The central provision that needs interpreting is section D, Rule 2, art. 1.2.1 of the *FIS Medical Guide*, which provides the following sanction for inadvertent doping: “*Suspension from participation in all international ski competitions for three months for the first offence (during a fixed period within the actual or next competition season).*”
- 12. Being silent in that respect, the first question art. 1.2.1 raises is when the suspension begins.

13. In this connection, the Panel considers art. 1.2.1 must be interpreted in light of two other provisions contained in the *FIS Medical Guide*, namely section D, Rule 1, art. 2, which provides:

"On receipt of a positive sample ("B" sample if requested), the competitor or team will be automatically disqualified from the competition and the competitor suspended forthwith from participating in FIS calendar events until the FIS Council confirms the duration of the suspension."

And section D, Rule 2, art. 1, which provides:

"...The sanction is valid from the date on which the sample was provided and the athlete's results shall therefore be annulled from all competitions in which he has participated since then."

14. Since, according to the foregoing provisions, the sanction is valid from the date the sample was provided and any results achieved thereafter are annulled, any suspension period decided by the FIS must necessarily begin to run on the date when the sample was provided.
15. In the present case, the date when Alain Baxter provided the sample is 23 February 2002. Thus, his three-month suspension period should have been calculated to run from that date.
16. Although neither the initial official statement by the FIS regarding the sanction nor its communication and clarification of 11 June 2002 to the Appellant specified when the suspension began to run, in its answer brief in these proceedings the FIS declared that: *"The suspension of the Appellant was calculated by the FIS Council so that a period of two months of the total three months were during the actual competition season from 23rd February ..."* (our emphasis).
17. For the above reasons, among others, the Panel disagrees that under the current FIS regulations the Respondent would have been entitled to decide that the entire three-month suspension would begin to run only from the beginning of the 2002/2003 Northern-Hemisphere competition season, i.e. from 15 November 2002 onwards, as the Respondent states elsewhere in its answer brief.
18. The second question section D, Rule 2, art. 1.2.1 of the *FIS Medical Guide* raises is what must be understood by the terms *"... all international ski competitions..."* and *"...competition season..."*.
19. The Panel considers that "all" international ski competitions must mean all the competitions classified as such by the FIS in its *International Ski Competition Rules* ("ICR", see notably 1st Section, art. 201) and listed by it in the FIS Calendar. Thus, the current wording of the regulations does not allow calculating a suspension period in such fashion that only certain competitions on the FIS Calendar are selectively covered by the suspension. This is further supported by the fact that section D, Rule 2, art. 1.2.1 of the *FIS Medical Guide* refers to a suspension during a *"... fixed period within the actual or next competition season"*, which implies that the suspension must run in a continuous fashion during the season, independently from the categories of competition comprised in the season.

20. Consequently, the FIS did not properly observe the applicable regulations when invoking the Appellant's racing history, personal profile, results and presumed training program/expectations to argue that certain competitions and parts of season should not be considered when calculating the suspension period.
21. Concerning the meaning of the terms "*competition season*", the Panel considers it is given by the applicable regulations, notably art. 3 of the *Rules of the FIS points 2001/2002* according to which the evaluation period for FIS points in the Northern Hemisphere is from 15 November 2001 to 22 April 2002 and in the Southern Hemisphere from 1 July 2002 to 15 October 2002. More specifically, as confirmed by the FIS Calendars and by the Respondent in its answer brief, the FIS competition **year** (which runs each year from 1st July to 30th June) currently comprises the two following competition **seasons**:
 - **The Northern Hemisphere**: 15 November until 22 April.
 - **The Southern Hemisphere**: 1 July 2002 until 15 October.
22. Consequently, the arguments the FIS made in its answer brief are not consistent with the applicable regulations when it states that the Southern-Hemisphere competition season can be entirely ignored in the calculation of the three-month suspension period given the Appellant's racing history, personal profile, results and presumed training program/expectations. It is noteworthy in this relation that the Respondent's arguments and position in its answer brief partly contradict the method of calculation the FIS previously indicated as the basis of its decision. Indeed, in its letter of 11 June 2002 to the BSSA, the FIS indicated:

"In regard to a clarification of the sanction, the calculation of the three month made by the FIS Council was as follows:

*One month at the end of the 2001/2002 competition season (during which there were no FIS World Cup races for which he was qualified), **one month competition period in the Southern Hemisphere (during which there are no FIS World Cup races)** and one month at the beginning of the 2002/2003 season until 15th December 2002 during which period he will be ineligible for two FIS World Cup Slaloms" (our emphasis).*
23. The Panel considers furthermore that the words "... *fixed period **within the actual or next competition season***" (our emphasis) contained in section D, Rule 2, art. 1.2.1 of the *FIS Medical Guide* do not allow the FIS to pick and chose how to split a period of suspension within a competition year. Indeed, since, according to the regulations, the starting date of any suspension is the date when the positive sample was given and the period of suspension must be fixed (continuous) and cover all international competitions, the foregoing words simply give the FIS the option to apply any outstanding part of the suspension during the next competition season if it cannot run entirely during the time left within the actual competition season. This confirms that in the present case, the part of the three-month sanction left to run at the end of the Northern-Hemisphere Season during which Alain Baxter was sanctioned should have been applied during the following Southern-Hemisphere season (as, according to its clarification of 11 June 2002, the FIS *partly* decided initially).

24. For all the above reasons, the Panel deems the Respondent's decision to sanction the Appellant with a three-month suspension period did not observe the applicable regulations insofar as the calculation of the suspension period is concerned.
25. In sum, the Panel considers that, under the currently applicable regulations, suspensions based on section D, Rule 2, art. 1.2.1 of the *FIS Medical Guide* should *a)* begin to run on the day the sample was taken until the end of the competition season underway, *b)* be interrupted between competition seasons (in order to be effective) and *c)* resume during the next competition season(s), either Northern or Southern Hemisphere season, until the suspension period has entirely run. The exact starting and ending date of each competition season (Northern and Southern Hemispheres) to be accounted for when calculating the period of suspension should be the most up-to-date FIS Calendar at the time the decision to sanction is made by the FIS.
26. In conclusion, the Panel would like to point out that it understands the Respondent's desire to seek effectiveness in its sanctions. However, since such effectiveness must be sought while observing the regulations in force, the FIS would need to modify its regulations if it wished to have the right to distinguish certain categories of competitions and/or the two competition seasons when calculating a suspension period for certain categories of racers or all racers. That said, such distinctions are not easy to make because they involve speculating on the relative effectiveness of a sanction for given individuals (this being illustrated by the precedents listed by the Respondent in relation to prior sanctions for inadvertent doping offences). Also, the goal of achieving effective sanctions must be appropriately balanced with the need for the FIS to decide upon and notify sanctions rapidly (in order to account for the competitors' need for planning).

The Court of Arbitration for Sport rules that:

1. The appeal filed by Alain Baxter on June 24 2002 is upheld.
2. This decision made by the International Ski Federation (FIS), notified to the Appellant on 11 June 2002 is modified as follows:
The three-months suspension is fixed between 23 February and 30 April 2002 (Northern-Hemisphere competition season) and between 25 July and 18 August 2002 (Southern-Hemisphere competition season).
3. (...)