IMPORTANT NOTE: *This version is a translation of the original French version*

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

NO: SDRCC 21-0516 (2)

JACOB VALOIS
(Claimant)

AND

JUDO CANADA
(Respondent)

Before:

Karine Poulin, Arbitrator

Representatives:

Representatives for the Claimant Jacob Valois:	Antoine Godin-Landry Julie-Anne Pelletier
Representatives for the Respondent:	Mathieu Laplante-Goulet Nicolas Gill

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DECISION

OVERVIEW

[1] The Claimant has been a carded athlete since 2015, with the exception of the year 2017-2018.

[2] On July 5, 2021, the Respondent informed the Claimant of its decision to recommend to Sport Canada that he be removed from the Athlete Assistance Program (loss of carded status) on the one hand, and that it cancel his right to access the National Training Centre (the "**Training Centre**") of the Institut National du Sport du Québec (the "**INS-Q**"), on the other hand.

[3] The Claimant appealed the Respondent's decisions pursuant to article 6 of the *Canadian Sport Dispute Resolution Code* (the "**Code**").

[4] The Claimant is asking the Tribunal to annul the decisions of the Respondent communicated in its letter of July 5, 2021. He is also asking the Tribunal to order the Respondent to reinstate him on the list of athletes recommended to Sport Canada for participation in the Athlete Assistance Program (the "**AAP**") and to order it to restore his right to access the National Training Centre of the INS-Q.

[5] The Claimant maintains that the Respondent's decision to recommend to Sport Canada that he be removed from the list of athletes nominated for carding is abusive in that it constitutes a disproportionate sanction in relation to his alleged faults. He also invokes abuse of contract, the absence of progressive disciplinary sanctions and a violation of his fundamental right to be heard.

[6] As for the revocation of his right to access the Training Centre, the Claimant alleges that the Respondent did not have the power to render that decision, such that the Respondent exceeded its jurisdiction, justifying the invalidation of its decision.

[7] The Respondent, on the other hand, considers that its decisions are well-founded in fact and in law.

[8] After analyzing the evidence, the Tribunal quashes the decisions rendered by the Respondent. The notices sent to the Claimant, on which the Respondent based itself in rendering its decision to recommend his removal from the list of athletes nominated for carding, are non-compliant and the decision is null. The Tribunal thus orders the reinstatement of the Claimant on the list of athletes recommended for the AAP for the carding cycle that ended December 31, 2021.

[9] As for the prospective reinstatement of the Claimant on the list of athletes recommended for the AAP for the carding cycle commencing January 1, 2022, the Tribunal lacks jurisdiction to do so, as it is seized not with a contestation of a grant of carded status, but rather a contestation of withdrawal thereof. The Tribunal will thus limit itself to ordering the Respondent to see to it that the Claimant is not financially disadvantaged or penalized for the current carding period and to use its best efforts to ensure that the Claimant is considered for a grant of carded status for the current cycle.

[10] As for the decision to revoke the Claimant's right to access the Training Centre, the Respondent did not have the jurisdiction to render it.

[11] Under the circumstances, the Tribunal orders that the Claimant's right to access the Training Centre be restored and that an Individualized Support Plan ("ISP") be put in place.

II

CONTEXT

[12] The Claimant is an elite-level judoka. As a child he was diagnosed with a medical condition that continues to affect his organizational abilities (his "Medical Condition" or his "Condition") for which he is treated and takes medication. However, his Condition does not prevent him from performing well in his discipline, as his sports career attests. In fact the Claimant has won numerous medals since October 2010 and joined the Quebec team as an alternate in August 2015 and then the National Team at the end of the following month.

[13] While his Medical Condition does not hamper his judo performance, it does cause him difficulties, particularly in managing his schedule. With the help of his parents, he has succeeded in organizing his day-to-day activities.

[14] That said, in addition to his training, the Claimant is continuing his college-level (Cégep) studies remotely. While he used to reside with his parents on the Montreal South Shore, he wanted to be closer to the Training Centre to make travelling there easier and save time. That is why, on June 20, 2020, he signed a lease for an apartment for the period of July 1, 2020 to July 1, 2021. He shares the apartment with two other judokas (Shady and Mohab El Nahas) and their parents.

[15] On August 27, 2020 the Claimant was injured, sustaining a ruptured left Achilles tendon that required surgery, followed by several months of convalescence with a gradual resumption of physical activity. The parties agreed to follow the progressive return protocol recommended by the Claimant's surgeon.

[16] This injury had an unfortunate consequence for the Claimant. He had qualified to compete in the Tokyo Olympic Games scheduled for the summer of 2020, but because of the COVID-19 pandemic, the Games were postponed to the summer of 2021. Due to his injury, the Claimant could not compete in those Games.

[17] As my colleague Pound has indicated, judicial notice has been taken of the fact that the COVID-19 pandemic has caused huge disruptions.[1] In this instance, that judicial notice allows me to note that in Quebec (and no doubt elsewhere as well) the mental health of many citizens has been sorely tested. The Claimant was one of those adversely affected, as the oral evidence shows.

[18] In addition to the psychological stress he experienced due to the pandemic, public health measures and concomitant restrictions, the Claimant has lived in a climate of instability as far as his domicile is concerned. Because of the quarantine periods prescribed for travelers, the Claimant had to temporarily move out of his shared apartment on several occasions in order to allow his co-lessees (competing abroad) to self-isolate upon returning to Canada, as the Respondent did not arrange for any lodging for athletes returning from competing abroad, leaving them to manage their quarantine themselves.

[19] It must be noted that while the Claimant's move to be closer to his Training Centre allowed him to save precious time, it was not without other consequences. No longer having the benefit of his parents' assistance, certain errors were made and

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[1] *Alex Lepage-Farrell and Speed Skating Canada*, SDRCC 20-0472.

communications between him and the Respondent's representatives were no longer as efficient.

[20] Thus, between January and June 2021, numerous emails were exchanged between the parties, and in particular two notices were sent by the Respondent to the Claimant. As the Respondent considered that the Claimant had committed a third failure to meet his training commitments, the following letter was sent to him on July 5, 2021:

[Translation]

> Montreal, July 5, 2021
>
> Re: Failure to meet training commitments
>
> Mr. Jacob Valois
>
> As provided in the carding agreement signed on September 24, 2020;
>
> • The athlete undertakes to follow the training program designed by the members of the national training staff (Paragraph 1(b))
> • Training will be monitored on a monthly basis, and any non-compliance by the athlete will be considered a breach of contract (Schedule B; paragraph 3)
>
> Over the last few months, several warnings were sent to you:
>
> • A first warning in writing was sent to you on January 26, 2021 at 9:06 a.m.
> • A second warning in writing was sent to you on February 3, 2021 at 8:30
> • Blatant failure to meet the minimum training requirement for the months of March, April and May (sent in writing)
> • Blatant failure to meet the minimum requirement for June (see email of June 25, 12:47 p.m.)
>
> For these reasons we are obliged to recommend to Sport Canada that you be removed from the Athlete Assistance Program as specified in paragraph 11.2.1 of the AAP (Failure to meet training commitments).
>
> Also, for the same reasons, we are revoking your right to access the National Training Centre at the INS-Q effective immediately.
>
> You have the right to contest Judo Canada's recommendation by filing an appeal with the SDRCC (http:/ /www.crdsc-sdrcc.ca/) within 30 days.
>
> Sincerely,
>
> Nicolas Gill
> CEO/HPD

[21] In addition to the financial constraints that loss of his carded status entailed for the Claimant, another consequence of the Respondent's decision to revoke his right to access the Training Centre was that he was no longer a member of the National Team and could no longer aspire to represent Canada and compete at the Olympic Games.

[22] This is the context in which I must decide the validity of the Respondent's decisions set out in its letter of July 5, 2021.

III

ANALYSIS AND DECISION

Preliminary remarks

[23] The hearing in this matter was held virtually on March 14 and 18, and the parties gave me until April 5 to issue the reasons for my decision, the conclusions of which were communicated to them within the period prescribed by the Code, even though the parties had agreed to extend the deadline from March 25 to March 28.

[24] I would first of all like to acknowledge the exemplary work of the lawyers on this file. In my 17 years of practice as a lawyer, 11 of them as an arbitrator, I have never witnessed such close and effective collaboration. The hearing, which was to have taken three days (March 14, 15 and 18) was shortened to two days due to the unavailability on March 15 of the Claimant's lawyer, who was not on the file when the hearing dates were scheduled.

[25] To expedite the proceedings and make up for lost time, the lawyers provided me with a joint statement of admitted facts, as well as six sworn statements in lieu of examinations in chief. Thus, at the hearing, they proceeded directly with cross-examining and (as required) re-examining those witnesses.

[26] The lawyers together organized the order in which their witnesses testified, without regard for which party had the burden of proof, in order to accommodate witnesses who were on a plane when they were scheduled to testify. On their own initiative they presented me with a hearing timetable and, subsequently, with a revised timetable.

[27] I thank them for their exceptional work and exemplary professional conduct.

Objection to evidence

[28] At the hearing, it was noted that on March 10, 2022 the Respondent filed a sworn statement by Alexandre Émond which was not signed by the witness. The Respondent's lawyer maintains this was a clerical error and that, inadvertently, the unsigned statement was filed rather than the signed one, which he had in his possession when he served his sworn statements in accordance with the agreed timetable.

[29] He maintains that the adverse party, by cross-examining the witness on his sworn statement, implicitly waived the right to ask that it be excluded. This statement, which is essentially to the same effect as other statements previously filed, took no one by surprise, especially since it merely corroborates certain exhibits already filed. He points out that the rules of procedure in arbitrations allow for some flexibility and submits that the Claimant will not suffer any prejudice.

[30] He thus requests authorization to file the signed version of the witness's statement.

[31] The Claimant, on the other hand, objects to the filing of this sworn statement.

[32] First, he categorically denies having waived his right to request that the statement be excluded, maintaining that cross-examination of the witness was done solely to protect his rights in the event that the Tribunal allowed the statement to be filed.

[33] Furthermore, as for an alleged clerical error, he maintains that this was no mere "clerical" error. On the contrary, this was the fifth breach by the Respondent of the judicial contract, i.e. the timetable of deadlines that was drawn up in its presence.

[34] While one of the missed deadlines was due to health reasons and was thus a random event, the four others remain unjustified and unjustifiable. The Claimant's lawyer points out the irony of this situation, where the Respondent has committed four unjustifiable breaches during the arbitral proceedings, while the Claimant is alleged to have committed breaches of the same nature for which he is being severely punished.

[35] For these reasons the Claimant asks that I deny the Respondent permission to file the said statement.

[36] At the hearing the objection was taken under advisement. I now have to rule on it.

[37] I seriously considered the possibility of allowing the objection on the ground that the sworn statement, duly signed, was not filed within the agreed period. Since this is the fifth missed deadline, I think it would be amply justified and justifiable to show the Respondent less clemency and deny it the permission requested. That said, I believe it is more appropriate to dismiss the objection.

[38] The case law recognizes that an error by a party's lawyer should not prejudice that party's rights. Moreover, having compared the signed and unsigned versions, I note that their content is identical and that the Claimant, under the circumstances, will suffer no prejudice.

[39] For these reasons, the objection is dismissed and the statement is allowed.

I - RECOMMENDATION TO WITHDRAW THE CLAIMANT'S CARDED STATUS

Burden of proof

[40] Section 6.10 of the Code provides as follows:

> **6.10 Onus of Proof in Team Selection and Carding Disputes**
>
> If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities. [our emphasis]

[41] First of all, the Respondent maintained that this provision covers cases dealing with the awarding of carded status and not cases where a recommendation is made to withdraw it. However, the Respondent has confirmed this Tribunal's jurisdiction to decide this first question, stemming from the decision of arbitrator Pound in the matter of *Lepage-Farrell*[2] where the arbitrator declared that the arbitral tribunal had jurisdiction to hear the *carding dispute*. The Respondent thus confirms this Tribunal's jurisdiction to decide this first question.

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[2] *Supra*, note 1.

[42] Thus, in accordance with section 6.10 of the Code, the onus is first on the Respondent to show, on a balance of probabilities:

1. That the criteria for the awarding of carded status, and incidentally for recommending that carded status be withdrawn, were appropriately established; and
2. That the decision to recommend to Sport Canada that the Claimant's carded status be withdrawn was made in accordance with those criteria.

[43] Once the Respondent has met this burden, the onus is then on the Claimant to show that he should not have been the target of a recommendation to revoke his carded status.

1. Criteria for the award and withdrawal of carded status

[44] The Respondent did not overly elaborate on this first point and the Claimant did not contest that the criteria had been appropriately established.

[45] In fact, the criteria for awarding carded status are established annually by the Respondent, reviewed by Sport Canada, and published by the Respondent within the prescribed period, in accordance with the provisions of the AAP.

[46] Furthermore, the grounds for withdrawing an athlete's carded status and the procedure to be followed are provided for in section 11 of the AAP, and the Claimant does not contest the appropriateness of these grounds or this procedure. In light of the foregoing, I conclude that the Respondent has discharged its burden as regards this first point.

[47] I now must determine if the Respondent's decision to recommend to Sport Canada that the Claimant's carded status be withdrawn was made in accordance with the prescribed procedure.

2. Procedure for the withdrawal of carded status

[48] The AAP provides that an athlete may lose his or her carded status for the following reasons:

> **11.1 Policy**
> Carded Athletes may have their carded status withdrawn under the following conditions:
>
> - Failure to meet training or competition commitments;
> - Violation of the Athlete/NSO agreement;
> - Failure to meet athlete responsibilities outlined in the AAP policies and procedures;
> - Gross breach of discipline;
> - Investigation for cause; and
> - Violations of anti-doping rules.
>
> In most cases, the NSO makes the recommendation that carded status be withdrawn; however, Sport Canada may also withdraw carded status without a recommendation from the NSO. These situations are noted in the following sections. [our emphasis]

[49] In this instance, it is alleged that the Claimant failed to meet his training commitments. These are set out in the carding agreement signed by the parties on September 24, 2020 and provide in particular that the Claimant must undergo five judo training and five physical training sessions per week.

[50] The AAP specifies the following procedure for the withdrawal of carded status for failure to meet training commitments:

> **11.2 Procedure**
> **11.2.1 Failure to Meet Training or Competition Commitments**
>
> Failure to meet agreed upon training or competition commitments may include:
>
> - A decision by the carded athlete to live in an environment not conducive to high-performance achievement;
> - Any deliberate action by the carded athlete that significantly risks or limits performance; or
> - An inability to meet the training and competition obligations outlined in the carded athlete's annual training/competition plan or the Athlete/NSO Agreement for the particular carding cycle.
>
> **Note**: Failure to achieve preset performance objectives does not in itself establish failure to meet agreed upon training or competition commitments.
>
> If a NSO wishes to recommend withdrawal of carded status for an alleged failure to meet agreed upon training and competitive commitments, the NSO must first:
>
> - Provide a verbal warning to the athlete, including the steps and timelines to remedy the situation and the consequences of a failure to heed the warning;
> - Follow-up with a written warning to the athlete if the verbal warning is not heeded.
>
> If the above steps are not successful in resolving the matter and the NSO still wishes to recommend withdrawal of carded status, the NSO must provide written notification to the AAP, with a copy to the athlete, recommending withdrawal of the athlete's carded status. This written notification must:
>
> - Indicate the grounds on which the recommendation for withdrawal of carded status is being made;
> - Indicate the steps already taken to address the issue (verbal warning followed by formal letter of warning);
> - Notify the athlete of his or her right to contest the NSO's recommendation to withdraw carded status through the NSO's internal appeal process within the prescribed time.
>
> (…)[our emphasis]

[51] This is where the core of the dispute resides.

[52] The Respondent maintains, first of all, that the Claimant failed to meet his training commitments, and second, that its recommendation that his carded status be withdrawn was made in accordance with the procedure provided for in section 11 of the AAP reproduced (in part) above.

[53] The provisions of the AAP must however be read in conjunction with those of the carding agreement between the parties, which provides as follows:

> [Translation]
>
> **Section 4**
>
> 4. Where one of the parties to this agreement believes the other party has failed to comply with its obligations under this agreement, it shall forthwith:
>
> a) notify that party in writing of the alleged default;
>
> b) where applicable, indicate in the notice to that party the steps to be taken to remedy the situation; and,
>
> c) where applicable, indicate in the notice a reasonable period within which such steps shall be taken. On AAP-related matters, the athlete may direct such notice to the Manager of Sport Canada and to AAP, who may act on behalf of the athlete and indicate to Judo Canada the steps to be taken to remedy the situation.
> [our emphasis]
>
> **Section 6**
>
> 6. In the event of the Athlete failing to comply with this Agreement, Judo Canada shall conduct a review in accordance with the discipline policy and may apply the sanctions as published in the Discipline Procedures in the National Team Handbook. In the event of a decision by Judo Canada that an Athlete is to be removed from carding, the Athlete shall be notified by registered mail, with copies sent to the Athlete Assistance Program Manager and Sport Consultant of Sport Canada, at least thirty (30) days prior to the date when the Athlete is to be removed from carding.
> [our emphasis]
>
> **Schedule B**
> **Section 3**
>
> 3. Training
>
> Training will be monitored on a monthly basis between October 1, 2020 and December 31, 2021, as agreed with the Assigned Trainer. Five judo training sessions and five physical training sessions per week are expected of the athlete, unless otherwise agreed with the trainer. ***Failure by the athlete to comply with his or her commitment to follow the prescribed training will be considered a breach of contract by the athlete. (Point 4). Upon the third such monthly failure, a recommendation will be made to Sport Canada to remove the athlete from carding***. [emphasis in the original]
>
> *** An injured athlete must nonetheless attend training sessions and follow a rehabilitation plan (at the National Centre) as recommended by the trainer and the physiotherapist.*

> For any questions, change of plan or missed training session, contact your National Trainer in advance.

[54] At the hearing, I asked the parties what they understood by "three monthly failures" in order to make sure that there was no dispute in this regard. Each of the parties indicated that this meant failures that occurred during three separate months during a carding cycle, as opposed to three failures during a given month. Consequently I note that there is no dispute in this regard and I need not dwell on this question further.

[55] Now it must be determined if the procedure specified in the AAP was followed.

[56] As indicated by my colleague Paule Gauthier in the matter of *Joliane Melançon and Judo Canada*,[3] the procedure provided for in section 11.2.1 of the AAP is mandatory, and the notices given must respect the criteria set out therein, i.e. they must indicate to the athlete the steps to be taken, the timelines to remedy the situation and the possible consequences of a failure to heed the warning.

[57] In this instance, on January 26, 2021, Marie-Hélène Chisholm, High Performance Manager, sent an email to the Claimant in which she mentioned several failures on his part and specified that [translation] "*This is a first warning of failure to comply with your 2020-2021 carding conditions*".

[58] The alleged failures are the following:

a. Unjustified failure to attend weight-training sessions;

b. Irregular attendance at follow-up appointments with the nutritionist;

c. Failure to comply with the health measures imposed by the INS-Q; and

d. Failure to attend obligatory conference.

[59] Now, this notice does not in any way specify the unjustified failure or failures to attend weight-training sessions, or the dates of the missed appointments with the nutritionist, or the date(s) of the obligatory conference(s) that the Claimant failed to attend.

[60] In fact, the evidence shows that it was not until receipt of the sworn statement of Ms. Chisholm that the Claimant first learned of his alleged failures to attend training sessions. Furthermore, he only learned at the hearing what conference he failed to attend. As for his appointments with the nutritionist, the Claimant maintains that he was in touch with his nutritionist on a regular basis.

[61] The third allegation against the Claimant must be placed in context.

[62] The evidence shows that the Claimant shared an apartment with two other athletes and their parents during the period from July 1, 2020 to July 1, 2021. As the other two athletes competed abroad in January 2021, they had to quarantine upon returning to Canada. By remaining in the apartment with them, the Claimant risked contracting COVID-19. This situation, of which this was the third recurrence since October 2020, required the Claimant to move temporarily for a third time.

[63] This "quarantine" situation had in fact been discussed with Mr. Jean-Pierre Cantin in October 2020, and then with Ms. Chisholm at around the same time. Ms. Chisholm

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[3] *Joliane Melançon and Judo Canada*, SDRCC 14-0238, M^tre^ Paule Gauthier, arbitrator.

then indicated that Judo Canada did not manage the quarantine of its athletes and that the El Nahas brothers' would be quarantining in their apartment. The Claimant thus had to either self-isolate in his room after the brothers returned, or move out temporarily. It was agreed that the Claimant would temporarily vacate the apartment for the duration of the brothers' quarantine.

[64] Moreover, before the brothers' return in January 2021, the Claimant's mother had again contacted Mr. Cantin and proposed that the Respondent lease premises from *Airbnb* for athletes returning from competition. There was no follow-up to this discussion.

[65] Thus in mid-January the Claimant temporarily moved in with Benjamin Kendrick, an athlete on the national team with whom he trained. By doing so, the Claimant had changed his family bubble. Then on Friday January 15, 2021, Mr. Kendrick seriously injured his shoulder and asked the Claimant to drive him to the hospital in Ottawa for treatment. The Claimant and Mr. Kendrick left for Ottawa on Friday night and Mr. Kendrick was dropped off at the hospital by the Claimant early Saturday morning.

[66] After returning to Montreal, on January 18 the Claimant indicated on his COVID questionnaire that he had been outside the province.

[67] As indicated above, at that time the Respondent had not put any measures in place to manage the quarantines of its athletes returning from international competition.

[68] It is true that by moving out, the Claimant had perhaps not respected the health measures to the letter. However, this alleged fault on the part of the Claimant takes no account of the prevailing context. I am consequently of the opinion that this reproach is but an unfounded pretext.

[69] From my point of view the notice of January 26, 2021 is invalid not only due to its imprecision, but also because it does not indicate the consequences of failing to comply with expectations, namely loss of the athlete's carded status.

[70] Because of the grave consequences that a recommendation to withdraw carded status can have on an athlete, the latter must be expressly and accurately informed of the allegations being made against him or her.[4]

[71] The case law recognizes that the rules of natural justice supplement any contract, and that they apply to any not-for-profit organization as in this instance.[5]

[72] The rules of natural justice include in particular the right to be heard.[6] As a notice is often a preliminary step before a decision is rendered or a sanction imposed, it follows that the person receiving the notice must have sufficient details of the allegation(s) being made against him or her in order to be able to rectify the situation and validly provide his or her point of view, and the latter must be taken into account in making the decision to be rendered.[7]

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[4] *Joliane Melançon and Judo Canada*, SDRCC 14-0238, *supra*, note 3.
[5] *Girard v. Yacht Club de Québec*, 2016 QCCS 3100, citing Judge Jean Bouchard in *Ste-Marie* v. *Club nautique de L'Anse St-Jean inc.*, 2006 QCCS 200.
[6] *Baker v. Canada (Minister of Citizenship and Immigration),* 1999 CanLII 699 (SCC); *Auclair v. Ville de Montréal,* 2018 QCCS 3937; *Girard v. Yacht Club de Québec*, supra, note 5; *Syndicat des travailleuses et travailleurs de ADF – CSN v. Syndicat des employés d'Au Dragon forgé inc.,* 2013 QCCS 793.
[7] *Baker v. Canada (Minister of Citizenship and Immigration),* supra, note 6; *Girard v. Yacht Club de Québec*, supra, note 5.

[73] By sending the Claimant an imprecise notice, the Respondent cannot maintain that he was given a true opportunity to be heard and to express his point of view. In fact, the evidence shows that despite Mr. Cantin's recommendation to Ms. Chisholm that a meeting with the Claimant, her and himself be convened,[8] such a meeting never took place.

[74] The intensity of the requirements of natural justice will vary depending on the nature of what is at stake, such that where the livelihood of a taxpayer is directly involved, as in this instance, respect for the requirements of natural justice, including procedural fairness and the right to be heard, will be all the more important.[9]

[75] In this instance, the decision to recommend that the Claimant's carded status be withdrawn entailed major consequences for his livelihood and his ability to train, such that such a decision could not be made without regard for the requirements of natural justice.

[76] Given my conclusion, I am of the view that the Claimant had not accumulated three monthly failures as at July 5, 2021, and that the Respondent could not validly recommend that his carded status be withdrawn.

[77] Not only was the first notice given in January invalid, but so was the second notice dated February 3, 2021, which stated the following:

> [Translation]
>
> Hello Jacob,
>
> We have been informed that you failed to show up for your blood-sample appointment that was scheduled [grammar mistake in original] for Monday February 1. If you have a valid reason [grammar mistake in original] for this failure, please let us know what it is, otherwise this is a second warning for failing to comply with your carding agreement. Thank you for your understanding. [our emphasis]

[78] The evidence shows that the February 1 absence was justified, and no one has contradicted that this justification was accepted. Consequently, there was no February 3, 2021 notice, and the decision of July 5, 2021 thus references a second notice that was not a notice per se.

[79] However, during his testimony, Mr. Nicolas Gill, Chief Executive Officer and High Performance Director, and signor of the July 5 letter, specified that the date of February 3, 2021 that appears on his letter is erroneous and that the date should have been March 3, 2021. But in fact, the evidence (P-9) shows that the "true" second notice is dated March 2 and not February 3 or March 3.

[80] I cannot overly stress the need for a notice, and let alone a decision, to be precise and accurate, at the risk of being declared invalid.

[81] In addition, for form's sake, let us examine the communication of March 2, 2021. It reads as follows:

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[8] Exhibit I-6.

[9] *Girard v. Yacht Club de Québec*, supra note 5, citing Justice Thérèse Rousseau-Houle in *Pires* v. *Ligue de taxis de Montréal inc.*, 1994 CanLII 5523 (QC CA).

[Translation]

Jacob,

As stipulated in the email of January 26, 2021, here is the report on the follow-ups with the collaborators for the month of February.

• February 1 – missed blood-sample appointment – 10:10 a.m. * Reason: woke up late
• February 1 – Missed 11:00 a.m. weight-training session * Reason given [grammar mistake in original] to trainer: you were at your blood-sample appointment
• February 12 – Missed appointment with Dr. Ostiguy - *Couldn't get a taxi
• February 19 – missed weight-training session - *Reason – Gabun's vehicle was in the garage

• February 20 – missed judo training – no justification
• February 21 – missed judo training – no justification
• February 22 – Missed weight training – no justification
• February 23 – arrived 30 minutes late for weight training – reason: forgot [grammar mistake in original] to take your medication

These [grammar mistake in original] failures constitute a breach of your carding agreement. This is your second warning.

And just a reminder, for your absences to be justified you must inform your trainer and the latter must confirm that your justification is an acceptable reason. Otherwise, the absence will not be justified [grammar mistake in original].

I encourage you to contact your trainers if there are conflicts with your training schedule.

If you would like some support in order to better manage your stress associated with the requirements of your carding agreement and the rules of the INS-Q (public health), you may contact me and I will put you in touch with a specialist.

The next evaluation will be on March 26, 2021.

Please confirm receipt of this email.

If you have any questions, you may contact [grammar mistake in original] your trainer, the High Performance director/manager or me.

Thank you

[82] Contrary to the notice of January 26, this notice lists the specific failures, which were contested at the hearing.

[83] However, as with the notice of January 26, this notice does not indicate the consequences for the athlete's carded status of not complying with this second notice.

[84] Thus, notwithstanding the fact that the decision of July 5 refers to the February 3, 2021 notice, which was not actually a notice, even had it correctly referred to the second notice as being that of March 2, the latter would also be invalid.

[85] Thus, the two notices on which the July 5, 2021 decision is principally based are invalid, and that in and of itself suffices to declare the Respondent's decision null.

[86] Furthermore, the decision also references a [translation] "Blatant failure to complete the minimum training [grammar mistake in the original] requirement for March, April and May" and a "Blatant failure to complete the minimum requirement for June". However, the evidence shows that the faults in March and April 2021 were minor, justified by the Claimant and accepted by the Respondent,[10] whence the absence of any notice for those months.

[87] In May, all the absences were justified and accepted[11] by the Respondent. Despite this, Mr. Gill testified that he took them into account in deciding to recommend the withdrawal of the Claimant's carded status.

[88] As for the month of June, an email was sent to the Claimant by the fitness trainer, Alexandre Émond, which reads as follows:

> [Translation]
>
> Hello Jacob,
>
> This is a follow-up email regarding your training over the last few weeks. Several facts have come to light that are not representative of the attitude expected of a carded athlete.
>
> You were absent on Tuesday June 8, 2021 because you had to fill out forms for school.
>
> You engaged in improper behaviour during the training session on June 17, 2021 by dancing inappropriately during the training session, thereby disturbing the other athletes in your bubble. At another point during the session, you put your knee on the neck of another athlete who was lying on the ground saying "I can't breathe".
>
> You arrived late on several occasions, including on Friday June 18, 2021 when you were 40 minutes late because you had forgotten your judogi.
>
> You missed a weight-training session on Monday June 21, 2021 without notifying anyone, because you didn't get up until 1:00 p.m. that day.
>
> There is a lack of seriousness and consistency in your training.
>
> Alexandre Émond

[89] This email, which is not a notice, contains a number of allegations that were vigorously contested by the Claimant, in particular that he didn't notify his trainer of his absence on June 8, that he danced inappropriately and thereby bothered his colleagues and, finally, the circumstances surrounding the "I can't breathe" event.

[90] The Claimant in facts affirms that he asked his trainer for leave to be absent that day or the day before because he had to fill out important documents for school. In

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[10] Sworn statement of Marie-Hélène Chisholm dated March 13, 2022, para. 46.
[11] Exhibit P-13.

addition, the evidence does not show how or why the Claimant's dancing was supposedly inappropriate. Also, the evidence shows that Alexandre Émond did not witness the "I can't breathe" event, despite his sworn statement to that effect,[12] which event, when placed in context, appears much less serious than the June 25 email suggests.

[91] While this email of Alexandre Émond is not a notice, the facts related therein played a role in the decision of July, 5, 2021, as Mr. Gill confirmed in his testimony.

[92] Because of the foregoing, I conclude that the decision of July 5, 2021 regarding the recommendation to remove the Claimant from the list of carded athletes is null and void and must be invalidated.

[93] The lawyers pleaded and submitted authorities in support of their positions regarding the applicable standard of review in this case. But since the decision at issue is null *ab initio*, regardless of the applicable standard, it cannot be upheld, as it is both incorrect and unreasonable.

[94] The Claimant also argued that the Respondent should have applied a disciplinary measure, as provided in the carding agreement, [13] rather than recommending withdrawal of his carded status. He maintains that the only faults that could have led to a sanction being imposed on him pursuant to the contract are not sufficiently serious to justify his expulsion, for all practical purposes, from the National Team and the withdrawal of his carded status. He relies in this regard on the *Archery Canada*[14] decision, the relevant excerpt from which is the following:

> 44. But a decision to take away Mr. Lyon's carding and prevent him from attempting to qualify for the Olympics is, in my view, too extreme a sanction for the breaches of policy and breaches of the Athlete Agreement that occurred. Athletes work their entire lives to be the best they can be, and qualification for the Olympics for many athletes is the pinnacle of a career in amateur sport. I choose not to take away from Mr. Lyon the opportunity to try to qualify.
>
> 45. While I considered leaving Mr. Lyon on the National team but allowing Archery Canada to rescind its nomination of him as a carded athlete, I decided against that remedy as removing his funding would severely impact his chances of performing at his best, should he be successful in making the Olympic team. I decided that the two issues were tied together and that I had to decide (as both parties urged me to do) both issues one way or the other. [our emphasis]

[95] As for the Respondent, its position is that it had discretionary power, and in this instance it chose to invoke breach of contract and exercise its right of unilateral termination provided for in the carding agreement instead of imposing a disciplinary

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[12] At paragraph 4 of his sworn statement.

[13] Section 6 of the agreement provides as follows:
[Translation] "In the event of the Athlete failing to comply with this Agreement, Judo Canada shall conduct a review in accordance with the discipline policy and may apply the sanctions as published in the Discipline Procedures in the National Team Handbook. In the event of a decision by Judo Canada that an Athlete is to be removed from carding, the Athlete shall be notified by registered mail, with copies sent to the Athlete Assistance Program Manager and Sport Consultant of Sport Canada, at least thirty (30) days prior to the date when the Athlete is to be removed from carding."

[14] *Archery Canada v. Jay Lyon*, SDRCC 16-0292.

measure.[15] The Respondent adds that in matters of contractual interpretation, equity does not apply.

[96] The Claimant invokes abuse of right and the disproportionality of the sanction. He points out that his faults in this instance are minimal compared to the faults committed in the matter cited above. If the athlete in that case was reinstated and continued to receive his funding, he sees no reason why his case should be any different.

[97] As indicated above, the Respondent's decision is null and of no legal effect, and that is dispositive of this dispute. Furthermore, while it is true that section 6 of the carding agreement does not require that a disciplinary measure be imposed prior to a decision to withdraw carded status, it remains that each party must exercise its rights in accordance with the requirements of good faith,[16] which entails that it must not exercise them in an excessive and unreasonable manner.[17] That being so, were it not for the invalidity *ab initio* of the Respondent's decision, I would have been of the view, like my colleague Stitt in *Archery Canada*,[18] that the decision to withdraw the Claimant's carded status constitutes an excessive sanction akin to an abuse of right, particularly in the context of this file.

[98] In concluding on this question, I must emphasize that as at the date hereof, the carding cycle to which the carding agreement pertains ended on December 31, 2021. The question arose during the hearing as to what would be the actual effect of a decision ordering the Respondent to reinstate the Claimant on the list of athletes recommended to Sport Canada for the AAP.

[99] The Respondent maintained that the effect of such an order would be limited to the Claimant receiving the funding he should have received up to December 31, 2021. In fact, according to the Respondent, the Claimant does not meet the criteria for being awarded carded status for the current carding cycle, and I therefore cannot order that he be placed on the list of athletes recommended for the current cycle, the renewal of the recommendation not being automatic, as the Respondent points out. As proof of this, the Respondent reiterates that the Claimant did not have carded status for the 2017-2018 cycle. Ultimately the Claimant must qualify each year, in his category and in accordance with the criteria then in effect, in order to be eligible for a recommendation.

[100] In addition, the Respondent alleges that the Claimant perhaps could have continued to receive funding throughout the appeal period by availing himself of the provisions to that effect in section 11.2 of the AAP, but to its knowledge the Claimant did not avail himself of this possibility. According to the Respondent, it is now impossible for the Claimant's carded status to be extended beyond December 31, 2021.

[101] For his part, the Claimant continues to insist that he be reinstated on the list of recommended athletes, with retroactive and prospective effect. He maintains that no evidence has been led to the effect that he does not qualify for carded status for the current cycle. He therefore requests that the Respondent, which has the power to

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[15] Exhibit P-4: Carding agreement, s. 6.
[16] C.C.Q., s. 6.
[17] C.C.Q., s. 7.
[18] *Archery Canada v. Jay Lyon*, SDRCC 16-0292, supra, note 14.

recommend him for carding, be compelled to make such a recommendation and it will then be up to Sport Canada to decide the matter.

[102] The Claimant further alleges that the appeal proceedings and the length of the appeal process are what prevented him from being on the recommendation list for the current carding cycle, assuming, without any admission, that he does not qualify for a renewal of his carded status, as the Respondent maintains. He submits that it would be just and equitable for the parties to be restored to their initial positions, and reiterates that it is up to Sport Canada to render a decision on his eligibility for carded status for the current cycle.

[103] I note first of all that the Claimant has not specified whether or not he availed himself of the possibility of asking Sport Canada to pay him a monthly allowance while the appeal proceedings were ongoing (beyond the two months following the Respondent's decision), and no evidence has been led one way or the other.

[104] Nor has the Claimant proved that he qualifies for such a recommendation for the current cycle, and this absence of proof is due to the fact that the undersigned is not strictly speaking seized with a contestation concerning the awarding of carded status. Rather, it is the withdrawal of carded status for the previous cycle that is the subject of this appeal, and the fact that the Claimant is currently not on the list of athletes recommended for the AAP for the current cycle is due to the withdrawal of his carded status as of December 31, 2021.

[105] Furthermore, the Claimant is correct in affirming that the annulment of the Respondent's decision should normally result in the parties being restored to their original positions, as if that decision had never been made, and thus as if the Claimant still had carded status on December 31, 2021. Be that as it may, in the absence of a decision by the Respondent refusing to nominate the Claimant for inclusion on the list of athletes recommended for the AAP for the current cycle, or a decision by Sport Canada refusing to award the Claimant carded status for that cycle, I do not have jurisdiction to rule in this regard.

[106] Fully restoring the parties to their original positions pursuant to this decision is in practice not feasible in this instance.

[107] However, what the Claimant is seeking to achieve through an order that he be reinstated on the list of athletes recommended for the AAP is not to be penalized for the current cycle on account of the fact that as at December 31, 2021 this dispute had not been resolved and he was no longer on the Respondent's list of athletes recommended for the AAP on that date.

[108] Consequently, the Tribunal's powers are limited to ordering the Respondent to see to it that the Claimant is not financially disadvantaged or penalized during the current carding cycle, and to use its best efforts to ensure that he is not financially disadvantaged or penalized during that period and that he is considered for an award of carded status for the current cycle.

[109] To that end, the Respondent will have to reassess the situation as if, on December 31, 2021 and uninterruptedly since July 5, 2021, the Claimant had continued to be a member of the National Team, had continued to train at the Training Centre and had remained on the list of athletes recommended for the AAP.

[110] A final word is in order regarding the length of the proceedings.

[111] It was alleged that it is due to the length of the appeal process that the Claimant is now without carded status for the cycle ended December 31, 2021 and without renewed carded status for the current carding cycle.

[112] It must be borne in mind that another arbitrator had been appointed before me, and the hearing in this matter began last September. However, for reasons I am unaware of and have asked not to be apprised of, one of the parties requested the recusal of that arbitrator at the end of a day's hearing, such that a jurisdictional arbitrator rendered a decision on this request, following which I was appointed by the parties in early January 2022 to resolve this dispute.

[113] If the process proved to be lengthy, it is partly for that reason. I do not know which party requested the recusal, but if a jurisdictional arbitrator granted the request, it is because it was justified. It would thus be judicious of me not to assign blame for this unfortunate situation to either of the parties.

II - THE DECISION TO RESCIND THE CLAIMANT'S RIGHT TO ACCESS THE TRAINING CENTRE

[114] The contestation of the Respondent's decision to revoke the Claimant's right to access the Training Centre is not covered by the Code. However, for the sake of efficiency and proportionality, the parties agreed that I be seized of it, as it is closely tied to the first decision.

[115] In this instance the evidence shows that the Respondent entered into an agreement whereby the INS-Q, which manages the premises of the Training Centre located at the Olympic Stadium in Montreal, provides services to the Respondent in connection with training and a facility (called the National Centre). The witness Nicolas Gill, Chief Executive Officer and High Performance Director at Judo Canada, admitted his limited knowledge of the terms of the agreement, but indicated that the Training Manual (exhibit P-3) (the "**Manual**") specifies the accesses and operations of the Training Centre at the INS-Q and includes certain terms of the agreement between the Respondent and the INS-Q.

[116] According to the Manual, the athletes are evaluated by INS-Q staff three times a year,[19] and in the event of an unsatisfactory evaluation, the Manual specifies a series of measures to be taken before expelling an athlete from the National Centre.

[117] In this instance, no unsatisfactory evaluation of the Claimant by INS-Q staff was filed into evidence. Moreover, no measures were taken by the INS-Q against the Claimant.

[118] Finally, the testimony of Mr. Gill reveals that he is not an employee or officer of the INS-Q. He is not a member of the INS-Q's staff.

[119] Consequently, the Respondent did not have the jurisdiction to revoke the Claimant's right to access the Training Centre and its decision is null and of no legal effect.

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[19] See the Training Manual, exhibit P-3, p. 7: the athletes are evaluated on May 20, August 31 and December 31 of each year.

[120] Incidentally, I would add that if the Respondent had had the jurisdiction to render this decision, the intensity of the requirements of natural justice varies with the nature of what is at stake,[20] particularly where an organization intends to expel a member[21] as is the case here, and that in this instance the rules of natural justice were not followed. The following passage is particularly apt:

> [Translation]
>
> [42] In the matter of *Mineau* v. *Club de golf KI-8 EB Ltée*, Judge Robert Legis stated the following:
>
> > [10] The right to be heard (*audi alteram partem*) invoked by the claimant, while one of the two fundamental rules of our legal system, has no absolute content. This rule will be more or less exacting depending on the importance of what is at stake, the litigant's obligation to have recourse to the body or tribunal concerned, and the context. In this case the life, liberty, livelihood or fortune of the claimant is not directly at stake. He is free moreover to be subject to the rules of the defendant or to choose to be subject to the rules of another golf club. He may also choose not to be subject to the rules of any golf association. He may also choose to play golf at a course other than the defendant's. (...) [our emphasis]

[121] In this instance, the Claimant's participation in the Olympic Games is contingent on his nomination to the National Team and on qualifying for the Games. To participate in the national program and hope to qualify for the next Olympic Games, the Claimant must meet certain performance criteria, which he can only do by training with the best judokas, i.e. at the Training Centre. The revocation of his right to access the Training Centre is tantamount in this instance to his expulsion from the national program. Consequently, the Respondent's decision, even were it within its jurisdiction, had to be made with the greatest regard for the rules of natural justice, which it was not.

[122] The Respondent argued that the Claimant was not expelled, because expulsion is a disciplinary measure, whereas here the decision was not disciplinary in nature, but rather administrative, i.e. for breach of contract.

[123] With respect, I do not share his view. The fact of the matter is that the Claimant no longer has access to the Training Centre and has thus been excluded therefrom, regardless of whether this is a disciplinary or administrative consequence.

[124] In addition to the foregoing, the Respondent points out that it did not withdraw the Claimant's status as a member of Judo Canada, and he can thus continue to practice judo.

[125] In reply, the Claimant maintains that even though he is a member of Judo Canada, this is of no use to him if he cannot train with the best and compete with the National Team. He admits there is a theoretical distinction, but the line is thin and the result for all practical purposes is the same: the Claimant loses his ability to compete at the elite level.

[126] I agree with the Claimant.

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[20] *Girard v. Yacht Club de Québec*, supra note 5, citing Justice Thérèse Rousseau-Houle in *Pires* v. *Ligue de taxis de Montréal inc.*, 1994 CanLII 5523 (QC CA).
[21] *Id.*

[127] That being so, and as discussed with the parties and their lawyers upon the completion of the hearing, if the Respondent's decision is annulled, which it is in this instance, the Claimant's reinstatement with the Respondent must be undertaken, and I have the power, with the consent of the parties and in accordance with section 6.11 of the Code, to issue such orders in that regard as I deem appropriate.

[128] I made it clear to the Claimant that an order annulling the Respondent's decision would in no way mean "Pass Go, collect $200"[22] and the Claimant fully understood my comment.

[129] It is evident here that the Claimant appears to have "pushed the boundaries a little too far" for the Respondent's liking. I note that the Claimant acknowledges not being perfect and having some failings that need to be corrected. That being the case, I have not commented in this decision on the credibility of the testimonies and I have not indicated the lacunae in the evidence of both parties regarding absences and lateness and whether they were justified, justifiable, rejected, accepted or acceptable, as this was not necessary given the conclusions I have come to.

[130] Suffice it to say however that I have read and analysed each of the exhibits and sworn statements. I have assessed the credibility of the witnesses, which I consider uneven. I have compared the documents inter se, and while some absences or instances of lateness were real and possibly not justified, as the Respondent maintains, a considerable number of them were justified and accepted. Nevertheless, the Claimant appears in the tables, or is indicated in the sworn statements as having been absent or late without justification, whereas in fact the evidence shows that these absences or late arrivals were justified and accepted. I am compelled to note that the exhibits contain numerous inaccuracies and that many errors were made, such that the Respondent's evidence is thereby weakened.

[131] It is also true, as the Respondent points out, that the evidence of the Claimant, who tried, one year after the fact, to reconstitute his attendance at training sessions using the Google Maps application on his cell-phone, has only limited value in that it shows where his cell-phone was at a given point in time, but without indicating whether he was in a training room or somewhere else in the Olympic Stadium building.[23] That said, given the conclusions I have come to, this is of lesser importance.

[132] Notwithstanding the foregoing, and regardless of the fact that the notices given are invalid, it remains that, objectively, the Claimant was absent on numerous occasions, justifiably or not, and late on several others. It appears that these absences and late arrivals were attributable inter alia to his injury and subsequent appointments, and to the lack of stability in his routine, particularly because of the numerous changes in his living quarters.

[133] Nevertheless, tardiness and absences on the part of an athlete, whether or not afflicted with a Medical Condition and whether or not occurring during a pandemic, tie

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[22] A reference to the popular board game Monopoly.
[23] The Training Centre is located at the Olympic Stadium.

up resources and can be disruptive, in addition to having consequences on the organization of training sessions and on the financial level.[24]

[134] The evidence shows that because of the Claimant's Medical Condition, it is critical for him to have a routine and to adhere to it. As the consequences of COVID-19 have required numerous adjustments in order for the INS-Q and the Training Centre to remain open, the INS-Q has had to take drastic measures and the Respondent was compelled to create training bubbles, change the schedule every two weeks, etc. These changes were not attributable to the Respondent alone, or to the INS-Q, but were due largely to governmental requirements in this period of global crisis.

[135] It seems nonetheless that the Claimant, on account of his Condition, was particularly affected. As each case is unique, there can be no question here of generalizing my findings and blindly applying them to other situations, and more specifically, I am not saying that all athletes afflicted with a Medical Condition will react in the same way or be affected in the same manner, or that the measures imposed in this case must be imposed in all cases.

[136] Thus, having made this caveat, given the Claimant's reintegration at the Training Centre, I consider it appropriate to order the parties to negotiate and put in place an Individualized Support Plan (ISP) within 15 days of receiving this decision. The purpose of an ISP is to assist the Claimant with his organizational problems and thereby avoid the unfortunate events of the past. The Claimant will have to learn to live with his Condition his entire life, and having the tools to help him be more autonomous will be beneficial both for his athletic career and on a personal level.

[137] Furthermore, the ISP will also be beneficial for the Respondent as it will equip the Claimant with useful tools which will ultimately result in the use of fewer of the Respondent's resources over time, while allowing it to ensure that the Claimant's commitments are being met. It will also allow required adjustments to be made progressively, such that each party will be satisfied with the other's performance.

[138] Since an ISP is, by definition, individualized (and thus personalized), some recommendations and suggestions are being sent to the parties in a separate document not published with this decision. These recommendations and suggestions are intended to facilitate the resumption of contact between the parties and to help them with the process of reintegrating the Claimant while avoiding the pitfalls of the past and constructing the future on a solid foundation.

[139] Finally, I would like to add one last remark.

[140] I indicated above that the Respondent's evidence regarding the Claimant's presences, absences and lateness for training sessions contained numerous errors. In order to avoid the recurrence of such a situation, in the conclusions hereto I will order the parties to sign a document each week noting the Claimant's presences, absences and late arrivals and, as the case may be, the justification therefor with the notation "accepted" or "rejected" in respect of the justification, and each party will retain a copy of this document.

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[24] According to the evidence heard, when an athlete is absent for an appointment (e.g. blood-sampling) the Respondent is billed for the service that was to have been rendered, and is also billed when the service is actually rendered, thus generating unnecessary expenses.

[141] I note moreover that the reasons accepted and acceptable for lateness and absences are not always clear and appear to be subject to the personal appraisal of each individual. While it is not necessary to determine in advance each and every acceptable reason, as unforeseen circumstances can arise and it is impossible to predict all of the situations that are likely to occur, it would be preferable for a range of reasons, not limitative but rather indicative, to be established in order to exclude arbitrariness from the decision and allow a degree of foreseeability.

[142] Hitherto it seems that the rule has been to give advance notice of lateness or absence, supported by a justification. In the instant case it appears that the principal fault found with the Claimant is that he did not give advance notice of his absences and late arrivals. Without declaring that this is a bad rule, I must say that it leaves broad scope for arbitrariness, which is not desirable for either of the parties. Is it enough for the athlete to say "I will be absent for such and such a reason" for the absence to be automatically justified? If so, the rule is clear, but can lead to abuse on the part of the athlete. If not, it is clear that this situation can quickly and easily lead to an abuse of power on the part of the Respondent. In either case, this situation can lead to an impasse and a dispute. While I won't issue an order to this effect as I do not have the power to do so, I nevertheless urge the Respondent to reflect on this question and if possible put clearer rules in place.

FOR THESE REASONS, THE TRIBUNAL:

ALLOWS the Claimant's appeal;

ANNULS the Respondent's decision, communicated in its letter of July 5, 2021, to recommend to Sport Canada that the Claimant be withdrawn from the Athlete Assistance Program;

ORDERS the Respondent to reinstate the Claimant on the list of athletes recommended to Sport Canada for participation in the Athlete Assistance Program for the carding cycle ended December 31, 2021;

ORDERS the Respondent to see to it that the Claimant is not financially disadvantaged or penalized during the current carding period and to use its best efforts to ensure that the Claimant is not financially disadvantaged or penalized during that period and that he is considered for an award of carded status for the current cycle;

FOR THE PURPOSES OF THE PRECEDING ORDER, ORDERS the Respondent to reassess the situation as if, on December 31, 2021 and uninterruptedly since July 5, 2021, the Claimant had continued to be a member of the National Team, had continued to train at the Training Centre and had remained on the list of athletes recommended for the AAP;

ANNULS the Respondent's decision, communicated in its letter of July 5, 2021, to revoke the Claimant's right to access the National Training Centre at the INS-Q;

ORDERS the Respondent to restore the Claimant's right to access the National Training Centre at the INS-Q;

ORDERS the parties jointly to put in place an Individualized Support Plan for the benefit of the Claimant within 15 days of receiving this decision;

ORDERS the parties to jointly review the Individualized Support Plan on a regular basis, and at least twice during the first year following this decision;

ORDERS the parties to sign a document each week noting the Claimant's presences, absences and late arrivals and, as the case may be, the justification therefor with the notation "accepted" or "rejected" indicated in respect of the justification, and **ORDERS** each party to retain a copy thereof; and

RETAINS jurisdiction to rule on costs, as the case may be.

Rendered in Kirkland, this 4th day of April, 2022

Karine Poulin, arbitrator