

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

**SDRCC DAT 20-0016
(DOPING APPEAL TRIBUNAL)**

DEREK PLUG

(Claimant)

AND

CANADIAN CENTRE FOR ETHICS IN SPORT (CCES)

BOBSLEIGH CANADA SKELETON (BCS)

(Respondents)

AND

WORLD ANTI-DOPING AGENCY (WADA)

INTERNATIONAL BOBSLEIGH & SKELETON FEDERATION (IBSF)

(Parties)

Matthew Wilson

Jurisdictional Arbitrator

INTRODUCTION

1. I was appointed as a Jurisdictional Arbitrator pursuant to section 6.10 of the Canadian Sport Dispute Resolution Code (“the Code”) to determine whether the Doping Appeal Tribunal has jurisdiction to hear Derek Plug’s (“the Athlete”) Appeal of a decision of the Doping Tribunal (chaired by Arbitrator Yves Fortier) issued on August 2, 2019.
2. Following written submissions on the issue of jurisdiction, a hearing took place on March 25, 2020. I heard oral arguments from the Athlete and the Canadian Centre for Ethics in Sport (“the CCES”).
3. For the following reasons, I conclude that the SDRCC does not have jurisdiction to hear the Athlete’s appeal.

BACKGROUND

4. It is necessary to provide a brief chronology of events prior to the filing of this application. This chronology was described in the CCES’ submissions, and a sworn affidavit of Kevin Bean, Senior Manager, Canadian Anti-Doping Program (“CADP”), and not seriously disputed by the Athlete.
5. On March 15, 2018, the CCES issued a Notification of an Anti-Doping Rule Violation to the Athlete.
6. The Athlete requested a hearing before the SDRCC on the alleged violation and the proposed sanction. On August 2, 2019, Arbitrator Yves Fortier, sitting as the Doping Tribunal, rendered a decision finding that the Athlete had committed a second anti-doping rule violation that resulted in a period of ineligibility of eight years pursuant to CADP Rule 10.7.1 (c).
7. The CCES delivered a Determination Letter to the Athlete on August 20, 2019 confirming the Doping Tribunal’s decision and advising the following:
 - a. The sanction for a second rule violation was an eight-year period of ineligibility;
 - b. The Athlete is not eligible to participate in any capacity in any sport activity or other activity sanctioned by Bobsleigh Skeleton Canada;
 - c. Any competitive results since the date of sample collection (January 9, 2018) are disqualified unless otherwise determined by CADP Rule 10.8; and
 - d. CCES is required to publicly report the anti-doping rule violation and related sanction within 20 days of the end of the period for any party to file an appeal (CADP Rule 14.3.2).
8. On August 22, 2019, the Athlete wrote to the CCES advising that he would be appealing the Doping Tribunal’s decision and would be requesting his file from the SDRCC. The Athlete submitted a Notice of Appeal to the SDRCC on August 30, 2019.

9. In correspondence dated September 6, 2019, Raik Bauerfeind of the International Bobsleigh Skeleton Federation (“IBSF”) advised the CCES that at the time of sample collection (January 9, 2018), the Athlete was considered an “international level athlete” in accordance with the IBSF Doping rules.
10. On September 9, 2019 the CCES delivered an Amended Determination Letter to the Athlete advising that any appeal of the Doping Tribunal’s decision must be filed with the Court of Arbitration for Sport (“CAS”) within 21 days of the arbitrator’s decision. The CCES further advised that due to the confusion regarding the Athlete’s status as an international athlete, he would have 21 days from receipt of the Amended Determination Letter. The CCES relied on Rule 13.7.1 of the CADP. On September 18, 2019, the CCES sent a follow-up letter to the Athlete.

The Athlete commences the appeal process with the CAS

11. The Athlete advised the CCES that he understood his right to appeal was with the CAS in a letter dated September 30, 2019. On the following day, he wrote to the Anti-Doping Division of the CAS advising that he intended to appeal the Doping Tribunal’s decision.
12. The CAS wrote to the Athlete on October 2, 2019 and advised that he needed to do the following:
 - a. Pay the CAS Court Office Fee;
 - b. File his Statement of Appeal by courier to the CAS Court Office; and
 - c. Provide as many copies as there are other parties
13. The CCES was informed by the CAS, on October 22, 2019, that the Athlete had missed the deadline for appealing, but that he had advised the CAS that his appeal would be filed shortly. This did not occur.
14. On December 16, 2019, the CCES wrote to the Athlete advising him that its file would be closed and that the required public disclosure would proceed. The Athlete responded by stating that he had paid the fee to CAS.
15. The CAS wrote to the Athlete on December 19, 2019 to advise that his appeal was “manifestly late”. It requested a response from the Athlete by December 23, 2019.
16. The Athlete responded on December 24, 2019 with an explanation for the delay and an acknowledgement that his appeal should have been to the CAS and not to the SDRCC. In this correspondence, the Athlete stated as follows:

“...as an international athlete I was subject to appealing to the CAS not the SDRCC”.
17. On January 6, 2020, the CAS denied the Athlete’s appeal on the basis of delay.
18. When the CCES informed the Athlete that it would be proceeding with a media release of his domestic file (January 10, 2020), the Athlete delivered a Notice of Appeal to the SDRCC with respect to the Doping Tribunal’s decision.

THE PARTIES' POSITION

19. The CCES objects to the jurisdiction of the SDRCC to hear the Athlete's appeal. The CCES argues that as an international athlete the Athlete's only avenue of appeal is with the CAS. It relies on CADP Rule 13.2.1, which states as follows:

13.2.1 Appeals Involving International-Level Athletes or International Events

In cases arising from participation in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to CAS in accordance with its rules and procedures.

20. In the alternative, the CCES argues that when the Athlete commenced the appeal to the CAS, he was attorned to that process and thus precluded from appealing to the SDRCC.

21. During the course of the hearing, the Athlete acknowledged that he was an international athlete. This may have been in dispute at some point in the proceeding, but was clarified and resolved during the course of oral submissions. The Athlete explained that he did not realize that as an international athlete he could not appeal to the SDRCC. The thrust of the Athlete's position is that he believes he was treated unfairly by the CAS when it dismissed his appeal for delay and did not return his application fee. He argues that these are extenuating circumstances that ought to be considered in determining that the SDRCC has the jurisdiction to hear his appeal.

ANALYSIS

22. The issue before me is whether the SDRCC Doping Appeal Tribunal has jurisdiction to hear the application filed by the Athlete.

23. The SDRCC has no inherent jurisdiction over sports-related disputes and certainly cannot assume jurisdiction for all doping appeals. Furthermore, it cannot grant or decline jurisdiction based on extenuating circumstances, which is what it is being asked to do by the Athlete. The SDRCC Doping Appeal Tribunal either has the jurisdiction to hear the appeal or it does not.

24. The starting point for my analysis is the provisions of the Code related to Doping Appeals. Section 7.15 of the Code stipulates that the decisions of the Doping Dispute Panel in respect to international athletes are to be appealed to the CAS in accordance with its rules and procedures. Section 7.15 reads as follows:

7.15 Scope of Doping Appeal in Respect of an International-Level Athlete

Pursuant to Rule 13.2.1 of the Anti-Doping Program, in cases arising from competition in an international event or in cases involving International-Level Athletes, the decisions of the Doping Dispute Panel may be appealed exclusively to the CAS in accordance with its rules and procedures.

25. Section 7.15 of the Code mirrors CADP Rule 13.2.1 as set out earlier in this decision. The focus of the CCES' jurisdictional objection is on CADP Rule 13.2.1 as it stipulates the forum for an appeal of a Doping Dispute Panel for an international athlete.
26. From reading Section 7.15 of the Code and CADP Rule 13.2.1, the only conclusion available is that an appeal of the Doping Dispute Panel by an international athlete must proceed to the CAS and not to the SDRCC Doping Appeal Tribunal.
27. This conclusion is reinforced by Section 7.13 of the Code, which describes the decisions that may be appealed to the SDRCC Doping Appeal Tribunal. When Sections 7.13 and 7.15 are read as a whole, it is apparent that international athletes seeking to appeal a Doping Tribunal decision must proceed to the CAS.
28. The Athlete's primary argument was that the SDRCC should consider his extenuating circumstances to assume jurisdiction over his appeal. Even if this were possible (and it is not), the Athlete's circumstances are not extenuating. He advised the CAS of his intention to appeal the Doping Dispute Panel's decision on October 1, 2019, but did not complete the appeal process until some time in December 2019. The Athlete's appeal to CAS was denied for being "manifestly late". These are not extenuating circumstances.
29. There is nothing in the CADP or the SDRCC Code that confers jurisdiction on the SDRCC to constitute a Doping Appeal Tribunal to hear the Athlete's appeal in this case. Thus, I am compelled to conclude that the SDRCC does not have jurisdiction to hear this matter. The CCES' objection to the jurisdiction of the Doping Appeal Tribunal is allowed.
30. Given my conclusion, it is not necessary to deal with the CCES' alternative position.
31. The matter of costs was not discussed during the hearing. My inclination would be not to award costs, but if a party seeks costs, I am prepared to maintain jurisdiction should any party file submissions on costs no later than seven days from issuance of these reasons.
32. The application is dismissed.

Dated this 31st day of March, 2020 in Whitby, Ontario.



Matthew R. Wilson
Jurisdictional Arbitrator