



CCES v. Molnar



Introduction

- Claimant:** Canadian Centre for Ethics in Sport (CCES)
- Respondent:** Steve Molnar
- Invited Parties or Observers:** Bobsleigh Canada Skeleton, Government of Canada, World Anti-Doping Agency (WADA), International Bobsleigh and Skeleton Federation
- Type of Dispute:** Doping
- Arbitrator:** James W. Hedley
- Date of Decision:** December 13, 2006

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Dispute Summary

Steve Molnar was alleged to have committed an anti-doping rule violation during the National Bobsleigh Championships in October 2005.

As required under Canada's anti-doping policy, a tribunal was constituted through the Sport Dispute Resolution Centre of Canada (SDRCC) to determine whether a rule violation had been committed and, if so, to identify the appropriate sanction against the athlete.





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Background Facts

In August 1998, while a member of Alberta's bobsleigh team, athlete Steve Molnar tested positive for the presence of a banned substance. In 2000, as a result of the anti-doping rule violation, Mr. Molnar was handed a four-year suspension.

Almost six years later, in October 2005, Mr. Molnar participated in the Bobsleigh National Championships. He was not a member of the national team at the time, nor was he trying out for either the provincial or national teams. It appears he was there as a replacement for another athlete who had recently left the team.

During the competition, Mr. Molnar was selected for doping control testing. He tested positive for three substances on the World Anti-Doping Agency (WADA) list: cannabis metabolite, methandienone and metabolites, and oxymetholone metabolites.

The first substance, cannabis, is a so-called "threshold substance". It is permitted in the body to a threshold of 15 mg/ml. Mr. Molnar's concentration was found to be 86 mg/ml. The presence of the other two substances at any level is strictly prohibited.

Background Facts (continued)



Mr. Molnar did not dispute that he had ingested these three substances.

Nevertheless, he did not submit willingly to a lifetime ban from competition which is the prescribed penalty for a second anti-doping rule violation.

As is his right, he placed the burden of establishing the violation on the CCES.

It was determined that Mr. Molnar did not possess a therapeutic use exemption (TUE), which may be granted to an athlete required to use a prohibited substance for medical reasons.



Athlete's Position

Mr. Molnar's case was based on the following arguments:

- Since he was not a member of the national team, and was not trying out for either the national or provincial teams, he did not anticipate being tested when he agreed to participate in the national championships;
- He had not signed any document stating his obligations as a participant in the national championships, particularly with respect to anti-doping measures; and,
- in the absence of signed documentation, he should not have been chosen for testing.





CCES' Position



The CCES case was based on the following arguments:

- The Canadian Anti-doping Program (CADP) states that, for the purpose of doping control, the rules apply to anyone who participates in sport at the national level;
- The competition in question was sanctioned by a national sport organization (Bobsleigh Canada Skeleton); and,
- As a participant at the national championships, Mr. Molnar was under the authority and jurisdiction of the CCES, was subject to doping control, and was responsible for any violations.

Arbitrator's Analysis

Arbitrator James W. Hedley, confirmed the validity of the test results, noting that Mr. Molnar himself had admitted to ingesting the three substances.

Under the rules of the CADP, the period of ineligibility can be eliminated or reduced if the athlete demonstrates that there were “exceptional circumstances” (i.e. there was no fault or negligence on the part of the athlete).

Mr. Hedley noted that the athlete, in this case, made no attempt at establishing those exceptional circumstances; in fact, Mr. Molnar candidly admitted taking the prohibited substances.

The only contentious issue in the case centers on whether Mr. Molnar was liable to be tested in the first place, given that he was not a member of the national team, nor was he even trying out. The arbitrator noted that Mr. Molnar had not signed any form of written contract with Bobsleigh Canada Skeleton and that merely competing in the event was not a substitute for a written document.

Arbitrator's Analysis (continued)

Mr. Hedley did conclude, however, that an implied agreement existed that confirmed the athlete's duty to comply with anti-doping regulations:

“It resides at the very core of the elite athlete’s culture. The suggestion that any athlete competing at a high level, under written contract or not, is unaware of the potential for testing, not liable to abide by anti-doping policies and rules and not liable to any penalties resulting therefrom is completely untenable.”

Mr. Hedley further noted that the athlete in this case had been tested at least three times previously and had served a lengthy suspension for a doping violation.



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Ruling

Mr. Hedley confirmed the anti-doping rule violation.

Quoting Rule 7.20 of the CADP, he imposed a lifetime ban from competition on Mr. Molnar, effective December 13, 2006.





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Lessons Learned

1. One does not “choose” to participate in the anti-doping program; by definition in the CADP, any person who participates in an competition sanctioned by a national sport organization, or its affiliates, is subject to doping control.
2. Prior doping violations by the same athlete are taken into account in establishing the sanction.

