Arbitration CAS 2008/A/1489 Serge Despres v. Canadian Center for Ethics in Sport (CCES) & CAS 2008/A/1510 World Anti-Doping Agency (WADA) v. Serge Despres, CCES & Bobsleigh Canada Skeleton (BCS), award of 30 September 2008

Panel: Mr David Rivkin (USA), President; Mr Michele Bernasconi (Switzerland); Ms Paule Gauthier QC (Canada)

Bobsleigh
Doping (nandrolone)
Significant fault or negligence
Enhancement of sport performance
Proportionality of the sanction
Starting date of the sanction

1. **The athlete who did not contact the manufacturer of a nutritional supplement directly to seek a guarantee before ingesting it, has not taken a clear and obvious precaution. Simply believing such guarantees to be generic fails to explain why he/she did not take this additional, prescribed step. As a consequence, the athlete has not exercised a standard of care meriting a "no significant fault or negligence" reduction to the mandated two year period of ineligibility. The advice of a team nutritionist also constitutes an inadequate claim for establishing "no significant fault or negligence".**

2. **The ingestion of a nutritional supplement for faster recovery after a surgery *is* a performance-related reason.**

3. **The proportionality doctrine gives the CAS panels flexibility in cases involving extreme or exceptional circumstances. As the risk of contamination in nutritional supplements is widely known, the circumstances surrounding an athlete's adverse analytical finding are neither extreme nor unique in such case. As a result, there is no reason to reduce the two-year suspension period required under the applicable regulations.**

4. **Whatever effects a two-year ineligibility period would have on an athlete's ability to qualify for the Olympics or any other competition should in the ordinary course not have any bearing on when the ineligibility period begins or how long it lasts. An athlete's personal history or how severely the penalty would impact him or her given the particularities of his or her sport cannot be taken into account when fixing the penalty. This notwithstanding, and in accordance with the applicable regulations, fairness may require that the start date of an athlete's ineligibility be the date of his or her first sample collection.**

The Appellant of the arbitration CAS 2008/A/1489, Serge Despres (Mr. Despres), is a citizen of Canada who was a member of Respondent Bobsleigh Canada Skeleton (BCS), the national sport organization governing sports of bobsleigh and skeleton in Canada.

The Appellant of the arbitration CAS 2008/A/1510, the World Anti-Doping Agency (WADA), is an independent international anti-doping agency, whose aim is to promote, coordinate, and monitor, at the international level, the fight against doping in sports in all its forms.

The Respondent Canadian Center for Ethics in Sport (CCES) is an independent, non-profit organization that promotes ethical conduct in all aspects of sport in Canada. CCES maintains and carries out the Canadian Anti-Doping Program (CADP) and is signatory to the World Anti-Doping Code (WADC).

The following are facts that were either (a) admitted by the Parties in their respective Briefs; (b) admitted by the Parties during the course of the hearing; or (c) not contested by the Parties.

On August 9, 2007, CCES conducted an out-of-competition doping control in Calgary, Alberta, which included Mr. Despres. Mr. Despres' sample was analyzed by the Montreal WADA accredited laboratory. On September 7, 2007, CCES received a certificate of analysis with respect to Mr. Despres' sample. The analysis indicated an adverse analytical finding. Specifically, the sample contained a nandrolone (or norandrosterone, a precursor) concentration measured at 2.8 ng/mL.

Under the prohibited list international standard issued by the WADA, any concentration of nandrolone and its precursors that exceeds 2.0 ng/mL constitutes a violation of anti-doping rules. Section 3.0 of the CADP incorporates the WADA standard.

At the request of Mr. Despres, the B-sample was opened and analyzed by the Montreal WADA accredited laboratory. The analysis of the B-sample confirmed the presence of nandrolone or precursors.

The results from the A and B samples confirmed that the presence of nandrolone or precursors was of exogenous origin.

CCES issued a notice that Mr. Despres had committed an anti-doping rule violation according to rules 7.16 to 7.20 of the CADP. CCES proposed a sanction pursuant to rule 7.20 of two years' ineligibility. On November 8, 2007, Mr. Despres was provisionally suspended by BCS for a two-year period of ineligibility.

Mr. Despres did not intentionally use or take nandrolone or a precursor. The adverse analytical finding and resulting anti-doping rule violation was a direct result of Mr. Despres' decision to take Kaizen HMB supplements following hip surgery in June 2007.

Mr. Despres decided to take HMB supplements on the advice of John Berardi, a sports nutritionist contracted by BCS to give advice to individual athletes on specific diets and nutritional needs. He sought Mr. Berardi's advice following his surgery. Mr. Berardi recommended HMB in addition to several other supplements but did not specify any particular brands. Mr. Despres bought Kaizen HMB supplements at a local health food store after conducting some research but did not further consult with Mr. Berardi.

After the adverse finding, Mr. Despres submitted the supplements he was taking to Anti-Doping Research, Inc. for testing. The laboratory found that the Kaizen HMB supplements were contaminated with nandrolone. Given Mr. Despres' dosage, the estimated concentration level of nandrolone in the Kaizen HMB supplement was enough to have caused Mr. Despres' positive test results.

CCES testing confirmed that the Kaizen HMB supplements were indeed the reason that Mr. Despres tested positive for prohibited levels of nandrolone. CCES purchased samples of the supplements from the same lot and same store as Mr. Despres. These samples were tested by a WADA lab and found to be contaminated. The Parties agree that the adverse analytical finding and resulting anti-doping rule violation were caused by Mr. Despres taking contaminated Kaizen HMB.

No indications that the Kaizen HMB supplements contained nandrolone or any other prohibited substances were evident on the label.

Following his suspension by BCS, Mr. Despres submitted his case to the Sport Dispute Resolution Centre of Canada (SDRCC) Doping Tribunal. In a decision dated January 31, 2008, the Tribunal found that Mr. Despres satisfied Article 10.5.2 of the WADC, which allows for reductions in an athlete's period of ineligibility in circumstances of "no significant fault or negligence". The Tribunal decided that Mr. Despres met this standard and shortened his term of ineligibility to twenty months.

On February 19, 2008, Mr. Despres filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the SDRCC decision (the Appealed Decision). The appeal was made according to Article 13 of the Federation International de Bobsleigh et de Tobogganing (FIBT) Anti-Doping Rules, pursuant to which: *"[i]n cases arising from Competition in an International Event or in cases involving International-Level Athletes, the decision may be appealed exclusively to the Court of Arbitration for Sport in accordance with the provisions applicable before such court"*. Mr. Despres is an international-level athlete.

Mr. Despres filed his Appeal Brief on March 3, 2008.

On March 12, 2008, WADA filed a Statement of Appeal to CAS pursuant to Article R38 of the Code of Sports-related Arbitration (the Code) and Article 8.23(e) of the CADP, which allows WADA to appeal decisions of the Doping Tribunal to CAS *"[i]n cases arising from Competition in an International Event or in cases involving International-Level Athletes"*. WADA argued that its appeal was timely pursuant to Article R49 of the Code, which sets the time limit for appeal at twenty-one days from receipt of

the decision appealed against. In this case, a copy of the decision was only made available to WADA on February 20, 2008.

WADA filed an Appeal Brief on March 31, 2008.

CCES filed its Answer Brief on April 23, 2008.

Thereafter, on 30 April 2008, CAS issued a notice that the CAS Arbitral Panel for the two proceedings CAS 2008/A/1489 and 1510 (the Panel) was constituted as follows: Mr. David W. Rivkin as Chair, Mr. Michele Bernasconi as arbitrator designated by Appellant Despres, and the Hon. Paule Gauthier as arbitrator designated by Respondent CCES. The parties agreed that the two proceedings be dealt with jointly, and WADA and BCS accepted the Panel as constituted.

The hearing was held by videoconference on July 8, 2008, with Mr. David W. Rivkin sitting in London, Mr. Michele Bernasconi in Lausanne, and the Hon. Paule Gauthier in Quebec. Joining Mr. Bernasconi in Lausanne was François Kaiser, Attorney-at-Law representing WADA. Joining Ms. Gauthier in Quebec were Peter Lawless, CCES counsel, Don Wilson, CEO of BCS, Mr. Despres, Howard Jacobs, counsel for Mr. Despres, Ann Brown, General Manager, Ethics & Anti-Doping Services, CCES and Julien Sieveking, Manager Legal Affairs, WADA.

The Parties were given the opportunity to present oral arguments, both before and after the testimony.

During opening statements, Mr. Jacobs sought to file a chart created by Mr. Despres detailing the effect that various end dates to his ineligibility period would have on his ability to qualify for national and international competition, and the other Parties did not object. The Panel accepted this chart into evidence.

At the conclusion of the hearing, the Parties confirmed that they had no objections with respect to their right to be heard and to be treated equally in these arbitration proceedings.

Article 7.16 of the CADP provides that the *"presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's bodily sample is an anti-doping rule violation"*.

Additionally, Article 7.12 of the CADP provides:

> *The period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility to be served. Where required by fairness, such as delays in the hearing process or other aspects of Doping Control not attributable to the Person, the body imposing the sanction may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection. An Athlete with an Adverse Analytical Finding is eligible to participate unless or until an anti-doping rule violation is determined, subject to Rule 7.11 (Disqualification of Results in Competitions Subsequent to Sample Collection).*

Article 7.17 of the CADP provides:

> *It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their bodily samples. Accordingly, it is not necessary that intent, fault, negligence, or knowing Use on the Athlete's part be demonstrated in order to establish this anti-doping rule violation.*

Article 7.18 of the CADP provides:

> *Excepting those substances for which a quantitative reporting threshold is specifically identified in the Prohibited List, the detected presence of any quantity of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample shall constitute an anti-doping rule violation.*

Article 7.20 of the CADP provides:

> *Except for the specified substances identified in Rule 7.7, the period of Ineligibility imposed for this anti-doping rule violation shall be: two years ineligibility for the first violation, lifetime ineligibility for the second violation. However, the Athlete or other person shall have the opportunity in each case, before a period of Ineligibility is imposed, to establish the basis for eliminating or reducing this sanction for exceptional circumstances as provided in Rules 7.38, 7.39, or 7.40.*

Articles 7.38 and 7.39 of the CADP set out two categories of cases that may qualify for elimination or reduction of period of individual ineligibility based on exceptional circumstances.

Article 7.38: No Fault or Negligence

> *If the Athlete establishes in a individual case involving an anti-doping rule violation under Rules 7.16-7.20 … that he or she bears No Fault or Negligence for the violation, the otherwise applicable period of Ineligibility shall be eliminated. When a prohibited substance or its Markers or Metabolites is detected in an Athlete's Sample, the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility eliminated. In this event this Rule is applied and the period of Ineligibility otherwise applicable is eliminated.*

Article 7.39: No Significant Fault or Negligence

> *If an Athlete establishes in an individual case [involving Rules 7.16-7.20] that he or she bears No Significant Fault or Negligence, then the period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one-half of the minimum period of Ineligibility otherwise applicable …. When a Prohibited Substance or its markers or Metabolites is detected in an Athlete's Sample in violation of Rules 7.16-7.20, the Athlete must also establish how the Prohibited Substance entered his or her system in order to have the period of Ineligibility reduced.*

LAW

Jurisdiction and applicable law

1. The jurisdiction of the CAS, which is not disputed by any of the Parties, derives from Article R47 of the Code:

   An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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-related body.

2. In view of Art. 13 of the FIBT Anti-doping Regulations and Art. 8.22 and 8.23 of the CADP, the CAS has jurisdiction to hear the appeals filed by, respectively, Serge Després and WADA.

3. The CAS hearing is a de novo hearing of the case.

4. In accordance with Article R58 of the Code, the Panel is required to decide the dispute:

   according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association, or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.

5. The Panel notes that in this case the CADP rules to be applied are based on and are in conformity with the WADC.

Discussion

6. This is a case in which the parties agree on most of the facts. The question for the Panel to decide is whether these facts add up to a penalty of two years' ineligibility or whether they equal anything less.

7. A first violation requires a period of ineligibility of two years, unless there are exceptional circumstances that may justify an elimination or reduction of the sanction. The CADP sets out what are exceptional circumstances. There are two categories: "no fault or negligence" and "no significant fault or negligence". If either can be established by evidence by balance of probability, the imposed sanction can be reduced or eliminated.

A. No Fault or Negligence

8. In the present case, Mr. Despres does not argue that he qualifies for an elimination of his period of ineligibility under the "no fault or negligence" provision of Article 7.38 of the CADP. Mr. Despres ingested a nutritional supplement which, according to the parties' uncontested submissions, was the cause of Mr. Despres' adverse analytical findings. Mr. Despres took the supplement despite repeated warnings from CCES and WADA emphasizing the risk of contamination in nutritional supplements. Mr. Despres, a professional athlete, was familiar with these warnings but chose to take the risk regardless. He clearly failed to exercise the standard of care required for "no fault or negligence".

B. No Significant Fault or Negligence

9. The issue to be decided is whether Mr. Despres' fault or negligence is "significant" as defined in Article 7.39 of the CADP. As the CADP incorporates the WADC, the Panel first turns to the official commentary to the WADC for guidance in interpreting this provision. The commentary makes two essential points:

   (a) A period of ineligibility will be reduced based on no significant fault or negligence only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

   (b) A reduced sanction based on no significant fault or negligence may be appropriate in cases where the Athlete clearly establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances and the Athlete exercised care in not taking other nutritional supplements.

10. In the Panel's view, the circumstances in this case are not truly exceptional.

11. Although Mr. Despres argues that the Panel's decision to reduce the sanction period in 2005/A/847 applies in the present case, 2005/A/847 is distinguishable. In 2005/A/847, the Appellant made a direct inquiry with the distributor of the product to ascertain the safety of the supplement. The Panel noted that this direct inquiry fell within the category of *"clear and obvious precautions"*, which the Appellant in. 2005/A/847 took before ingesting the supplement. Had the Appellant in 2005/A/847 not taken these precautions, *"his conduct would indeed constitute 'significant fault or negligence'"*. In the present case, Mr. Despres did not make any attempt to contact the distributor or manufacturer of Kaizen HMB to obtain more information about the product. Had he done so, he would have demonstrated the higher level of care necessary to establishing "no significant fault or negligence".

12. Mr. Despres claims that he did not contact the manufacturer directly to seek a guarantee because he believed such guarantees to be "generic". If so, then this is all the more reason that

Mr. Despres should not have been satisfied by the guarantee posted on Kaizen's website. Mr. Despres was aware that obtaining a guarantee directly from the manufacturer was on the CCES list of suggested steps to take before selecting a nutritional supplement. Simply believing such guarantees to be generic fails to explain why he did not take this additional, prescribed step. Even if the guarantee had turned out to be wrong, at least Mr. Despres would have taken steps within his control to reduce the risk.

13. The Panel is not suggesting that an athlete must exhaust every conceivable step to determine the safety of a nutritional supplement before qualifying for a "no significant fault or negligence" reduction. To that end, the Panel recognizes Mr. Despres' argument that taking reasonable steps should be sufficient since "one can always do more". The Panel in 2005/A/847 followed this logic when it determined that even though the Appellant could have had the nutritional supplement tested for content, or simply decided not to take it altogether, *"these failures give rise to ordinary fault or negligence at most, but do not fit the category of "significant" fault or negligence"*. Similarly, the Panel distinguishes between reasonable steps Mr. Despres should have taken and all the conceivable steps that he could have taken. In light of the risks involved, the Panel finds that Mr. Despres did not show a good faith effort to leave no reasonable stone unturned before he ingested Kaizen HMB.

14. In addition to his failure to contact the manufacturer directly, the Panel finds that he failed to take the following reasonable steps before taking Kaizen HMB, and that these failures bar a finding that the Appellant exercised a standard of care meriting a "no significant fault or negligence" reduction to the mandated two year period of ineligibility.

    (a) Mr. Despres did not check with his doctor, the team doctor, or Mr. Berardi about whether Kaizen was a trustworthy brand of HMB supplements. Mr. Berardi testified that he told Mr. Despres after their meeting about supplements to feel free to call him back to consult about specific brands. Mr. Berardi would have then categorized the brands from least to most risky. He knew of certain frequently used brands which he could have recommended.

    (b) Mr. Despres should have done more thorough research. Although the Appellant testified to having done research over the internet for "one hour", websites flagged by WADA and CCES show that Kaizen promotes bodybuilding and sells products for muscle enhancement. While it is unclear whether these particular sites were available the at the time, Mr. Despres' testimony indicated that his own internet research was limited at best.

    (c) Even that limited research should have provoked caution. However, Mr. Despres failed to ask for more information and took Kaizen HMB despite coming across information on the internet that should have triggered greater vigilance. He testified that he saw links that showed Kaizen sold muscle enhancers, but said *"what company that sells supplements doesn't also produce this stuff as well?"* He did not email or call Kaizen, even though there was a link to the company's contact information and an offer on the website to provide product information sheets if requested. Mr. Despres was also aware, from information posted on the Kaizen website, that the standard of testing for Kaizen products was FDA

testing, which is not the same as the WADA standard because FDA testing does not test for WADA prohibited substances. He testified that he did not make further inquiries even after the results of his internet research because he believed *"it wasn't going to make a difference. If there was a drug in the product, the company wouldn't tell you"*. While Mr. Despres' attitude reflects what may be a realistic approach to the supplement industry, it is not the attitude of someone who sincerely wishes to make sure that what he is ingesting is free of contamination. Rather, his behavior shows that he took into account a certain margin of risk.

15. Mr. Despres' positive test was clearly not as a result of contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances.

16. In addition, Mr. Despres did not exercise due care in not taking other nutritional supplements. He testified that prior to the August 2007 test, he was taking Glutamine, Glucosamine Sulfate, and fish oil in addition to the HMB supplements.

17. On cross-examination, Mr. Despres admitted that he had taken supplements that were muscle enhancers or else were marked 'steroidal' right on the label. These were Axis Labs BCAA and Bulgarian Tribulus, two of the supplements from his medicine cabinet that were sent for testing after the adverse analytical finding. Mr. Despres explains that these supplements probably belonged to a girlfriend or were suggested to him by his coach, but he stopped taking them once he saw the warning label. However, the Panel finds that these incidents do not establish a pattern of care on the part of Mr. Despres when it came to taking nutritional supplements. Moreover, although the risks linked with nutritional supplements are very well known to the public and to athletes in particular and although CCES and WADA expressly discouraged the use of nutritional supplements, Mr. Despres took on the risk of contamination by taking not just one, but several supplements.

18. The Appellant claims that he did not take HMB supplements for performance reasons but rather to help him recover after a surgery. He testified that he took the supplements in order to recover sooner. The Panel finds that taking a nutritional supplement for faster recovery *is* a performance-related reason.

19. The Panel finds Mr. Despres' argument that he took HMB on the advice of the team nutritionist, Mr. Berardi, to be an inadequate claim for establishing "no significant fault or negligence". To hold otherwise would open a loophole for unscrupulous teams to use prohibited substances and then face reduced penalties. Moreover, Mr. Despres did not check Mr. Berardi's advice with a doctor or follow up on the advice by asking a doctor or Mr. Berardi himself about the specific brand.

20. During the hearing, Mr. Despres frequently referred to the widespread use of supplements by athletes. He testified that every coach and trainer with whom he worked gave supplements

directly to athletes. He claimed that even though everyone takes supplements and knew to take precautions, he took more precautions than anyone on his team. The Panel rejects this defense.

21. The Panel favorably notes that Mr. Despres acknowledges having made a mistake, has expressed regrets and hopes to act as a spokesperson on this issue. However, he essentially argues that whenever an athlete can prove that the supplement is contaminated, he or she should be found to have acted with "no significant fault or negligence". Given the numerous warnings by WADA, CCES, and other agencies about the risks of contaminated supplements, contamination alone cannot be a sufficient basis for finding "no significant fault or negligence". The WADA Code commentary refers to contaminated vitamins, not supplements, as providing a basis for such a finding.

C. Proportionality

22. Mr. Despres asks this Panel to reduce his ineligibility period using a proportionality analysis, even if we do not find this to be a case of "no significant fault or negligence".

23. The Panel does not have to rule on this important question, because if proportionality could be applied without a finding of "no significant fault or negligence", it could only be used to reduce sanctions in extreme and exceptional circumstances. Therefore, even if proportionality could be applied in some circumstances, they do not exist here.

24. The "no fault or negligence" and "no significant fault or negligence" exceptions to an otherwise strict liability anti-doping rule are themselves embodiments of the proportionality principle. These standards recognize that the strict liability rule might in certain instances fail to reach a just outcome. The Panel sitting in CAS 2006/A/1025 found that *"[i]n very rare cases in which the WADC and CADP exceptions do not provide a just and proportionate sanction, i.e. when there is a gap or lacuna in the WADC, that gap or lacuna must be filled by the Panel…applying the overarching principle of justice and proportionality"*. The WADC and CADP do not have a gap here, because the "no significant fault or negligence" and "no fault or negligence" standards are meant to deal with precisely this type of situation. Unfortunately for Mr Despres, for the reasons described above, he simply does not meet these standards.

25. If the Panel could apply a proportionality analysis to reduce a sanction, it would only be able to do in extremely rare and unusual circumstances. Although Appellant cites to prior CAS decisions like CAS 2007/A/1252, and CAS 2005/A/830, these decisions involved extenuating or unusual circumstances that merited a finding of "no significant fault or negligence", or where the Panel found the appropriate sanction to be unjust or disproportionate to the circumstances surrounding the positive test result. These considerations do not apply in the present case. For instance, CAS 2007/A/1025 involved an athlete who tested positive for etilefrine, a prohibited substance, after drinking water he had poured into a glass he believed to be his own, but which was in fact used by his wife moments earlier to take a menstrual pill which had left a small and

undetectable amount of residue. Unlike in CAS 2007/A/1025, Mr. Despres was not the *"victim of an extraordinary and unpredictable sequence of events"*. Mr. Despres knew he was taking a supplement, was aware of the risks of doing so, but took it anyway because he wanted to enhance his performance by recovering faster from surgery.

26. In the Panel's view, the facts of this case do not warrant a reduction in Mr. Despres' period of ineligibility based on a proportionality analysis. The proportionality doctrine gives the Panel flexibility in cases involving extreme or exceptional circumstances. As the risk of contamination in nutritional supplements is widely known, the circumstances surrounding Mr. Despres' adverse analytical finding were neither extreme nor unique. As a result, the Panel does not reduce the two-year suspension period required under the WADC and the CADP.

D. Start Date

27. Mr. Despres asks this Panel to begin his ineligibility period earlier, so as to allow him to qualify for international events during selection races in October 2007.

28. The Panel holds that whatever effects a two-year ineligibility period would have on Mr. Despres' ability to qualify for the Olympics or any other competition should in the ordinary course not have any bearing on when the ineligibility period begins or how long it lasts. Mr. Despres cannot seek to have 2005/A/847 apply in one part of his case but not in another. In 2005/A/847, the Panel decided that an athlete's personal history or how severely the penalty would impact him or her given the particularities of his or her sport cannot be taken into account when fixing the penalty.

29. However, the Panel believes that in accordance with Article 7.12 of the CADP, fairness requires that the start date of Mr. Despres' ineligibility should be the date of his first sample collection, August 9, 2007. While not fully accepting all of his testimony on this subject, it does appear that he was legitimately confused as to whether continuing to compete and not immediately taking a provisional suspension would have an effect ultimately on the date his suspension would end.

30. Therefore, the panel begins his two-year suspension on August 9, 2007. One result of using this earlier date is that all of his competition results following that date must be considered void and eliminated.

The Court of Arbitration for Sport rules that

1. The award of the SDRCC of January 31, 2008 is set aside.

1. Mr. Serge Despres is declared ineligible for a period of two years, commencing on the date of his sample collection, August 9, 2007, and concluding on August 8, 2009. All results from competition on or after August 9, 2007 shall be considered void.

2. To the limited extent specified in the prior paragraph, each of the appeals filed by Mr. Despres on February 19, 2008 and by WADA on March 31, 2008 is upheld.

3. (…).

4. All other prayers for relief are rejected.