

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION
NORTH AMERICAN COURT OF ARBITRATION FOR SPORT PANEL**

UNITED STATES ANTI-DOPING AGENCY,	:	
)	
Claimant,)	FINAL AWARD
v.)	
)	
JAMES MORTENSON,)	AAA No. 30 190 00405 06
)	
Respondent.)	
	:	

WE, THE UNDERSIGNED ARBITRATORS, having been designated by the above-named parties, and having been duly sworn and having duly heard the proofs and allegations of the parties, FIND AND AWARD as follows:

I. PRELIMINARY

1. James Mortenson is a mountain bike rider, who at all material times has been and continues to be a member of USA Cycling, the national governing body (“NGB”) for the sport of cycling.

2. As a member of an NGB, Mr. Mortenson is subject to the USADA Protocol of Olympic Movement Testing (the “USADA Protocol”). Under this Protocol, USADA has the authority to determine which athletes will be subject to out-of-competition (“OOC”) testing. Each NGB has the responsibility to provide USADA with a list of athletes who meet the criteria to be included in its OOC testing pool.

3. The OOC testing rules require athletes to file quarterly Athlete Location Forms (“ALFs”) with USADA. These ALFs provide the locations and times they are available for testing. Athletes must be available for testing at the locations and times submitted to USADA.
4. The United States Olympic Committee National Anti-Doping Policies place obligations upon all athletes in Olympic sports to comply with the USADA Protocol and the OOC Testing Procedures:

10. Missed No Advance Notice Test

a. Under the Registered Testing Pool program implemented by USADA, it is the responsibility of each athlete designated by a National Governing Body for participation in the Registered Testing Pool to provide USADA with up-to-date information on his or her whereabouts so that he or she can be located for no advance notice testing. **Athletes identified for no advance notice testing are required to file Athlete Location Forms with USADA on a quarterly basis. They are also responsible for notifying USADA when they will not be available for testing at the location specified on their Athlete Location Form.** USADA has provided all athletes in the USADA Registered Testing Pool both a facsimile number and e-mail address to use in updating their Athlete Location Forms or to notify USADA that they will not be available for testing at the specified location at a particular time. The USADA procedure for determining that an athlete participating in the Registered Testing Pool program has a “missed test” is attached as Annex B.

b. **Any athlete have three missed tests within any rolling 18-month period shall be ineligible within the meaning of paragraph 6 of these policies for a period of two years from the athlete’s last “missed test.”** No athlete shall be disciplined for having three missed tests within an 18-month period unless the athlete has been offered an opportunity for a hearing as provided in paragraph 8 of these policies. Missed tests shall not be announced publicly until the conclusion of the hearing process.

USOC Anti-Doping Policies, Section 10 (emphasis added).

5. The USOC Anti-Doping Policies incorporate the USADA Procedure Regarding Missed Tests. This procedure divides “Missed Tests” into two categories: (1) “Athlete is not at the location(s) listed by the athlete on the USADA Athlete Location Form (*Missed Test-Unavailable*) and (B) “Athlete is selected for testing from the NGB’s Out of Competition pool but the athlete has not filed an Athlete Location Form for the quarter in which the draw takes place (the current quarter)” (*Missed Test-No Form on File*).
6. The sanction for an anti-doping violation is governed by the World Anti-Doping Code, which has been adopted by USADA and the USOC. It defines a permissive sanction range between three months and two years and authorizes each Anti-Doping Organization to enact rules setting the appropriate sanction time. The USOC has determined that the appropriate sanction for a United States athlete who receives three Missed Tests in an eighteen-month period to be two years.

II. FACTS

7. Mr. Mortenson met the criteria to be included in USA Cycling’s Out-of-Competition testing pools in October 2003. USADA sent him the initial OOC testing packet outlining his responsibilities as a member of the pool, and Mr. Mortenson was entered into the Pool for the first quarter of 2004.
8. Mr. Mortenson timely filed his ALF for the first, second, and third quarters of 2004, and he was OOC tested on February 11, 2004 and May 6, 2004. He tested negative.

9. Mr. Mortenson failed to file his ALFs for the fourth quarter of 2004 or the first, second, or third quarters of 2005. He was not drawn for testing for the fourth quarter of 2004, but he was drawn for the first, second, and third quarters of 2005.
10. For each of these quarters, in accordance with USOC Anti-Doping Policies, USADA confirmed with USA Cycling that Mr. Mortenson was in the OOC Testing Pool and sent him a written notice by overnight mail informing him that a *Missed Test-No Form on File* had been declared against him.
11. Mr. Mortenson did not respond to any of these written notices. Though he accumulated three *Missed Test-No Form on Files* during the first three quarters of 2005, USADA mistakenly informed him of a First Missed Test-No Form of File when it was actually his second. Similarly, he was given a Second Missed Test-No Form on File when it was actually his third.
12. When Mr. Mortenson neglected to file his fourth quarter 2005 form by the initial deadline of September 1, 2005, USADA took the extra measure of sending him an email informing him that he would receive his third Missed Test in an eighteen month period and be subject to penalty if he did not file his form.
13. USADA further called his home number to communicate his failure to provide his ALF. Mr. Mortenson was not home, and a woman informed USADA that Mr. Mortenson was in Bermuda. USADA attempted to call his cell phone but was unable to leave a message.
14. After two more phone calls and another email, Mr. Mortenson filed his fourth quarter 2005 ALF on September 30, 2005, the day before the final deadline for the quarter.

15. On October 22, 2005, a USADA Doping Control Officer, Travis Wilkinson, went to Mr. Mortenson's home in Eagle, Colorado to test him pursuant to his fourth quarter ALF. Mr. Mortenson was not at his residence and was reached by phone. He informed the Officer that he was in Denver and could not come back to Eagle for testing. The Officer offered to meet him within the two-hour time limit, but Mr. Mortenson said that he had to stay in Denver and would not be available. Mr. Wilkinson informed Mr. Mortenson that this attempt would be submitted to USADA as an unavailable to test. *See* Witness Statement of Travis Wilkinson. Mr. Mortenson confirmed these facts during the hearing.
16. As a result of these events, a *Missed Test-Unavailable* was declared. This missed test -- in fact Mr. Mortenson's fourth Missed Test in an eighteen-month period -- caused USADA to charge Mr. Mortenson with an anti-doping rule violation.
17. As described in the USADA Protocol, all arbitrations are administered by the American Arbitration Association (AAA) in conjunction with the Court of Arbitration for Sport.

III. RESPONDENT'S SUBMISSIONS

18. In testimony during the hearing, Mr. Mortenson stated that he believed that he qualified for the OOC pool because he went to the world championships in 2003. However, by 2004, he had largely given up trying to race competitively. He was no longer sponsored, and he was married with a daughter and had a great deal of responsibility. He did not have the time to commit to pro cycling.
19. Mr. Mortenson continued to race locally throughout 2005 and did not officially retire, but he ceased filling out the quarterly forms because, he

said, they were complicated and he was not sure that he had the time to continue racing. He considered himself semi-retired.

20. Currently, he has been placed on a mountain biking team for 2006 and is receiving equipment from sponsors to race. He would like to be forgiven the missed tests, and he offered to comply in the future.

IV. DISCUSSION AND FINDINGS.


21. The panel finds Mr. Mortensen guilty of an anti-doping violation for accruing at least three Missed Tests in an 18-month period.
22. Mr. Mortenson received the OOC test packet, which outlined his responsibilities as a member of the OOC testing pool, in October 2003. That he understood the necessity of filing quarterly ALFs is evidenced by his compliance for the first three quarters of 2004.
23. Despite USADA's attempts, through letters, emails, and phone calls, to make Mr. Mortenson aware of the consequences of his failure to file quarterly ALFs, he failed to file his ALF for the next four quarters. Only through extraordinary efforts of USADA did he file his ALF for the fourth quarter of 2005.
24. However, Mr. Mortenson failed to appear for the OOC testing attempt on October 22, 2005. Despite his knowledge that he was in violation of the testing rules, he declined to meet the testing officer within the two-hour time window.
25. Though the panel sympathizes with Mr. Mortenson's explanation of his failure to file the required forms, the rules are clear and straightforward. He is competing with other cyclists who are also required to comply with USADA rules, and it would not be fair to hold that he is not subject to testing while other athletes are.
26. Other arbitral panels have penalized athletes who claimed to have attempted to retire but did not pursue the official channels to do so. (see, e.g., Final Arbitration Award in the matter of Australian Water Polo Inc and Ms. Kelly Heuchan, 15 June 2006) In this case, Mr. Mortenson made

no gestures toward retirement; he simply stopped complying with the requirements.

27. Therefore, this panel imposes a two-year period of ineligibility commencing on the day of the hearing, August 22, 2006. WADA Code, Art. 10.8.
28. This panel also disqualifies any and all of Mr. Mortenson's competitive results achieved on and subsequent to October 22, 2005, the day of his last violation. WADA Code, Art. 10.7.
29. The administrative fees and expenses of the American Arbitration Association totaling \$750.00 and the compensation and expenses of the arbitrators totaling \$9,250.00 shall be borne entirely by the United States Olympic Committee.
30. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby, denied.
31. This Award may be executed in any number of counterparts, each of which shall be deemed an original, and all of which constitute one and the same number instrument.

Dated: September 25, 2006

FOR THE ARBITRAL TRIBUNAL

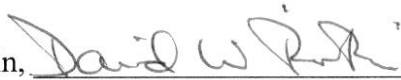


David W. Rivkin, Chair

Patrice M. Brunet, Arbitrator

Hon. James M. Murphy, Arbitrator

I, David W. Rivkin, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument-which is my Award.

Dates: September 25, 2006 David W. Rivkin, 

I, Patrice M. Brunet, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument-which is my Award.

Dated: September ____, 2006 Patrice M. Brunet, _____

I, Hon. James M. Murphy, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument-which is my Award.

Dated: September ____, 2006 Hon. James M. Murphy, _____