

**In the matter of the altercation on April 24, 2012
“Training Criterium” bike race involving**

Rider A

And

Rider B

Hearing: May 28, 2012

Panel: Tom McMahon, chair; Dave Dorning; Karin McSherry

Appearing for the Manitoba Cycling Association: Jason Carter, President, Manitoba Cycling Association; Shaun Leonhardt, Chief Event Commissaire

Introduction

The Manitoba Cycling Association (MCA) has authority under s. 30 of the MCA Constitution to hear complaints against members for any conduct that is detrimental to the MCA. The Board decided to create a disciplinary panel of two Board members and to invite a third person to chair the panel. Tom McMahon was invited to chair the panel. Tom is co-chair of Bike to the Future; General Counsel to the Indian Residential Schools Truth and Reconciliation Commission; and former Deputy Chief Commissioner of the Residential Tenancies Commission. Tom has never been a member of the MCA and has never attended or participated in a bike race. Tom’s main role was to ensure a fair hearing and proper decorum during the hearing.

Although the MCA Constitution does not expressly provide for the creation of a disciplinary panel, s. 19 of the Constitution allows the MCA Board to make appropriate rules for the operation of the Association. In general, Boards have the power to appoint special committees to assist them from time to time.

It was explained that any party could appeal the panel’s decision to the full MCA Board and from there, a further appeal to the MCA members at the Annual General Meeting or at a Special General Meeting. It was explained that the Panel would base its decision on what it believed was the most probable sequence of events (i.e.: balance of probabilities).

The above procedure was explained to the parties, and all expressly consented to proceed on that basis.

Incidents

The panel was created and the hearing held because of concerns of what happened on April 24th at a training criterium race. However, it was clear that incidents occurred in previous recent races that led to the April 24th incidents. On April 24th, Rider A and Rider B were engaged in various incidents that culminated in yelling and accusations and race officials felt it necessary to remove both riders from the race and to physically separate the two riders to ensure there would be no physical violence.

The MCA suspended both racers pending the results of this hearing. The MCA requested the panel to extend the suspensions for the entire 2012 racing year and to impose requirements on both racers, for Rider B, to take the Respect in Sport course; and for Rider A, to take some unspecified anger management counseling. The MCA also invited the panel to provide recommendations on MCA

procedures.

Evidence

The following is the panel's summary of the evidence.

- Rider A expressly admitted that he never “pulls” in a race (i.e.: never takes a turn at the lead of the pack where wind resistance is strongest); is quick to get angry; that he grabbed Rider B’s jersey while racing in order to confront Rider B about Rider B’s “bad riding”; that he felt he had to “take matters into his own hands” given that the MCA was not acting on his complaints or dealing with Rider B’s bad riding; and that Rider B had been racing in an erratic fashion directly in front of Rider A with the apparent intent of punishing Rider A for not taking a turn “pulling”. Rider A did not make any accusation that Rider B caused Rider A to crash on April 24. Rider A did not make any accusation that Rider B used any racial epithets. Rider A believes that Rider B is not being honest about the reasons for Rider B’s erratic riding. Rider A stated that he has been racing for many years. Rider A stated that he did not care whether or not his suspension is lifted and that he did not intend to seek anger management counseling. Rider A believes the MCA needs to discipline Rider B for his bad riding.
- Rider B expressly admitted that he took his turn “pulling” during the race and was seeking and expecting that others would also take a turn pulling. Rider B expressly admitted that there had been previous incidents between himself and Rider A in recent races. Rider B expressly admitted that on April 24th he rode in an erratic manner, which he blamed on using a new bike that he was not familiar with; that he rode in an aggressive manner, perhaps too aggressive for the nature of a training race, but Rider B stated that was because he was not aware of the nature of the race. Rider B stated that he has been racing for many years with very significant success. In short, Rider B is a very successful and experienced bike racer. Rider B stated, contrary to the evidence of the MCA officials, that Rider A did NOT squeeze Rider B off the race course on April 24th. Rider B would like both suspensions lifted and does not believe that he should be required to take the Respect in Sport course.
- The MCA officials observed that Rider B was riding in a surprisingly aggressive manner on April 24th, but they did not issue a warning to Rider B. Importantly, the Chief Event Commissaire stated that at one point Rider B disregarded one of the Commissaire’s instructions. The MCA officials are deeply concerned about repeat incidents if these two racers are permitted to race again this year. The MCA officials also feel that the MCA procedures are not adequate for dealing with situations of this kind. The MCA officials admitted that they have never seen either racer engage in a physical confrontation with anyone. Neither racer has any kind of disciplinary record with the MCA.

Although the written materials contained statements from other witnesses, they were not present at the disciplinary hearing and it was very difficult to assess the credibility of the statements or to deal with the statements in a manner that would be fair to the racers involved. For example, the panel would be concerned with statements such as an allegation of Rider B “purposely bumping into Rider C & Rider D at April 21, 2012 Circuit race”, but with no complaint, let alone in-person evidence, from Rider C and Rider D, it would not be fair to take this into consideration.

The written materials are more informative about the MCA’s lack of procedures and uncertainty concerning who is responsible for doing what with respect to a training criterium. It would seem that the MCA needs to adopt written procedures for these types of matters. The MCA should avoid unnecessary distinctions between “events”, “training” and “races” and should act in a manner that will ensure the MCA does not organize or supervise any kind of high speed bike event that fails to provide adequate supervision or any kind of complaint procedure for dangerous or disrespectful behaviour. The MCA has

to take responsibility for diligence and appropriate response mechanisms to provide the safest environment possible for its various events.

Findings

The panel reached the following findings:

- The panel believes Rider A's claim that Rider B's erratic riding was deliberate and targeted at Rider A for Rider A's race strategy of not pulling. The panel believes this problem occurred over several races but there was no procedure available to Rider A or intervention by MCA officials to address the complaint satisfactorily when they arose. As a result, the problem festered.
- The panel does not believe Rider B when he says his erratic riding was the result of his being unfamiliar with a new bike and does not believe Rider B when he says his aggressive riding was the result of not knowing the nature of the race he was riding in. As one of the most experienced and successful bike racers in Manitoba, these claims are not convincing. The panel believes that Rider B felt that Rider A was violating race etiquette by refusing to pull and that Rider B "took matters into his own hands" by riding in a manner that would, in effect, punish Rider A for not pulling. Erratic riding is dangerous. Further, the panel believes that Rider B disregarded an instruction of the Chief Event Commissaire to line up, and instead continued past the Commissaire to complete another warm-up lap. Although there was evidence of Rider B riding in an excessively aggressive manner, perhaps creating a danger to other cyclists in addition to Rider A, the panel notes that the race officials did not issue any warning to Rider B about aggressive riding.
- Rider A's grabbing of Rider B's jersey during a race is completely unacceptable and dangerous.
- In all the circumstances, the April 24th incident resulted in riding that makes racing more dangerous than it should be and a shouting match that would bring the sport into disrepute. These events could discourage potential and current members and officials from wishing to participate in the sport. While Rider B emphasized that he believes the two racers have much to offer the sport in Manitoba, incidents of this kind show how experienced racers who do not conduct themselves with a spirit of respect, safety and sportsmanship can be detrimental to the sport.
- No one was injured; neither racer caused the other racer to crash; no physical altercation occurred; neither racer has any disciplinary record with the MCA.
- The MCA officials are frustrated that the MCA does not seem to have a procedure that will lead to a formal decision in matters of this kind and as a result, felt it was necessary to create an ad hoc disciplinary panel, even though this is not expressly provided for in the MCA constitution.
- The MCA needs to develop procedures that will allow racers and race officials a meaningful opportunity to raise complaints so that they do not "take matters into their own hands". Race officials must take appropriate action when they observe dangerous or unsportsmanlike behaviour during an event.

Recommendations

The panel recommends:

1. Both suspensions be lifted immediately. The racers have no previous disciplinary records; there was no physical violence; there was no injury; ordinarily discipline should be progressive, beginning with a verbal warning; then removal from a race; a fine; a written warning; followed by progressively serious suspensions; all depending on the seriousness of the misconduct. The racers were removed from the race and have already been suspended for more than a month.
2. The MCA should write letters to both racers informing them of the Panel's findings and informing the racers that this letter will be kept on file by the MCA and is evidence that both have committed disciplinary misconduct as described in the Panel's findings. The MCA should inform both racers that another misconduct will result in immediate removal from a race and disciplinary hearing that could lead to a longer suspension.
3. The MCA should:
 - a. ensure that there is a procedure that allows a racer to make a formal, written complaint at the site of the race;
 - b. prepare forms for this purpose and have them available at all races;
 - c. ensure that race officials seek to confirm the facts with all potential witnesses immediately upon receipt of the complaint;
 - d. ensure that the chief race official describes the complaint/incident in writing and submits these to the appropriate Board official within 24 hours of the incident occurring;
 - e. ensure that a decision regarding the incident is taken within 72 hours and is recorded in writing and communicated to the persons involved in the complaint;
 - f. ensure there is a timely appeal process for that decision. To be timely, the appeal process will likely need to be limited to a panel of no more than three members;
 - g. ensure that race officials can initiate complaints themselves, in addition to racers initiating complaints; and
 - h. draft a code of conduct that it requires all racers to sign, that will address issues such as respect, sportsmanship, safety and erratic riding. Failure to comply with the code should result in a warning followed by suspension (except that serious incidents can result in immediate suspension).