

**ROWING CANADA AVIRON
REASONS FOR DECISION
DAVE THOMPSON DISCIPLINARY HEARING**

Date: July 27, 2020 (Documentary Hearing)

Discipline Panel: Daphne Simon, Adjudicator

Re: Dave Thompson - Disciplinary Hearing

Counsel for Complainant, [REDACTED]: Unrepresented

Counsel for Respondent, Dave Thompson: Gregory Rhone

BACKGROUND

In 2019, [REDACTED], a former Rowing Canada Aviron (RCA) athlete, filed a complaint against David Thompson, Senior Head Coach of the RCA's Women's Senior Team under the RCA's *Prevention of Abuse, Harassment, and Bullying Policy* (ABH Policy).

An independent third party was selected to conduct an investigation, pursuant to section 19 of ABH Policy. The Investigation Report (Report), dated June 12, 2020, concluded that Mr. Thompson violated the harassment and bullying sections of the RCA's ABH Policy. The parties received a copy of the Report.

This matter was referred to a Discipline Panel under the RCA's Discipline Policy (Policy) for a hearing on sanctions. This hearing is to be held as soon as possible. I have been retained by RCA to act as the Discipline Panel in order to adjudicate this matter and decide the appropriate sanctions.

Mr. Thompson is no longer a coach with RCA. From the time that [REDACTED] filed [their] complaint to the date of this hearing, there has been a global pandemic of the Coronavirus. This resulted in quarantines and lockdowns world-wide, effective March 2020. The 2020 Tokyo Olympics have been postponed and all competitive sports have been cancelled due to physical distancing measures.

PROCESS AND FRAMEWORK

This hearing is governed under the RCA's Discipline Policy. Section 27 of the Policy provides that a Panel will determine whether the hearing should be conducted by way of documentary evidence, oral hearing, in-person or a combination thereof.

I have determined that this matter proceed by way of a documentary hearing. I make this determination taking into account the nature of this matter. The single issue I must determine is what sanctions are appropriate having regard to the Report's evidentiary findings.

Section 29 of the RCA Discipline Policy states that where a hearing is held by way of documentary submissions the Panel will ensure that the parties are given a reasonable

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opportunity to provide written submissions, review submissions of the other parties and provide written rebuttal, as necessary.

I provided an opportunity to both parties to submit written submissions on the issue of sanctions. Mr. Rhone, Mr. Thompson's counsel, requested that he be provided a first opportunity to review [REDACTED] submission prior to submitting his client's submission. I granted that request. [REDACTED] provided [their] submissions to Mr. Rhone first. Mr. Rhone was then given the opportunity to review [REDACTED] submission and provide submissions on behalf of Mr. Thompson. [REDACTED] provided a rebuttal to Mr. Rhone's submissions. I am satisfied that the principles under section 29 provided a fair process for both parties to fully participate in this hearing.

Section 42 of the RCA's Discipline Policy states that the discipline and complaints process is confidential and that none of the parties shall disclose confidential information relating to the discipline or complaint to any person not in the proceedings.

SUBMISSIONS

[REDACTED] Submission

In [their] written submissions, [REDACTED] provided the following:

First, [they] submits that Mr. Thompson be expelled from RCA membership.

Second, [they] submits [they] is not interested in a forced apology for [themselves]. [They] submits that Mr. Thompson be required to send a note of apology to all the staff and athletes at RCA who were negatively impacted by his behaviour. [They] believes this would assist with the healing process for all involved.

Third, [REDACTED] submits that [they] does not wish any other individual to experience the profound negative impact Mr. Thompson's behaviour had on [their] own mental and physical health. As such, they submits that RCA make a public statement on national news and to World Rowing of the result of this discipline case. [They] submits that RCA also be mandated to provide honest feedback regarding any organization who wishes to hire Mr. Thompson.

[REDACTED] also recommends that Mr. Thompson be ordered to take courses on boundaries and ethics and be placed under supervision if he is to continue coaching.

Dave Thompson's Submission

Mr. Rhone provided the following written submissions on behalf of Mr. Thompson:

Mr. Rhone submits that what [REDACTED] is asking for in [their] submission has largely already been imposed. He states that Mr. Thompson was terminated from RCA and has thus effectively been expelled from RCA membership. Mr. Rhone submits that RCA released a press release in regard to his termination which received media coverage and thereby addresses [REDACTED] submission of a public statement.

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Additionally, Mr. Rhone notes that as part of Mr. Thompson's termination, RCA stipulated that they will not provide a fulsome and positive letter of reference but rather a limited letter of reference that confirms his dates of employment, position and duties and responsibilities. He submits that a *de facto* discipline has already been imposed.

Mr. Rhone submitted a voluntary note of apology from Mr. Thompson, reproduced below:

"I apologize to the complainant for any negative verbal, or other, interactions I had with [them] that made [them] feel demeaned, insulted, or otherwise uncomfortable. While I had no intention of creating a negative training environment and, in fact, I tried to create a positive environment, to motivate the team, and to achieve success for the organization, the team, and each individual athlete, the investigate (sic) report states that the complainant negatively interpreted my comments and behaviour in such a way that it caused a "loss of confidence, insecurity in the training environment, and loss of trust in coaches." For this I apologize to [REDACTED]."

As part of his submission, Mr. Rhone included letters from five other athletes that he coached to show that he is "not a monster whose entire career as a coach, and whose future, should be sullied by unnecessarily harsh sanctions." The statements are provided to put his coaching into some perspective.

Mr. Rhone characterized this matter as a minor infraction and requested that no further sanctions be imposed on Mr. Thompson.

[REDACTED] Rebuttal Submission

[REDACTED] was provided an opportunity to reply to Mr. Thompson's submissions. [They] submits that the sanctions imposed on Mr. Thompson by the RCA (ie termination, press release and no letter of reference) were in regard to a separate investigation whose case is still ongoing. [They] is requesting that further sanctions be imposed for this specific case. For example, [they] submits that the press release of his termination did not provide a reason.

[REDACTED] claims that this was not an isolated issue and that many other athletes experienced similar negative impact as a result of Mr. Thompson's personal attacks but were too afraid to come forward for fear of jeopardizing their career. [They] notes that the statements provided from other athletes show that Mr. Thompson practiced 'extreme favoritism'. [They] would be happy to provide statements that show a different side but the confidentiality of this process does not make [them] comfortable to reach out to staff and athletes.

[REDACTED] disagrees that this matter was a minor infraction and cites that a finding of Abuse, Harassment and Bullying will be processed as a major infraction according to the RCA Policy.

ANALYSIS AND DECISION

In making my decision, I rely on the findings in the investigation Report. The investigators were charged with interviewing the parties and witnesses, assessing credibility and made conclusions based on the direct evidence they received. The Report found that Mr. Thompson violated sections 15 and 17 of the AHB Policy. Mr. Thompson was found to have acted inappropriately in his interactions with [REDACTED]. His actions were characterized as consistent with the definition of bullying and harassment including behavior that was described as aggressive, demeaning, threatening and which had the effect of creating a

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hostile environment for [them] and other members of the RCA team.

This hearing is not an opportunity to 're-litigate' those findings or present new evidence about Mr. Thompson's coaching in order to modify that finding. My task is to review the Report, consider the submissions of the parties and apply the RCA's policies in determining an appropriate sanction.

I accept the submissions of [REDACTED] that this constitutes a Major Infraction. This is supported by Section 7 of the RCA Policy that provides that a complaint of Abuse, Bullying and Harassment that is accompanied by an Investigation Report substantiating the complaint is deemed to be a Major Infraction.

I therefore refer to section 34 and section 36 of the RCA Discipline Policy which governs Sanctions for Major Infractions and provides, in part:

s. 34

The Panel may apply the following disciplinary sanctions singly or in combination, for Major Infractions:

- a. Written reprimand to be placed in the individual's file;
- b. Written apology;
- c. Removal of certain privileges of membership;
- d. Suspension from certain RCA teams, events and/or activities;
- e. Suspension from all RCA activities for a designated period of time;
- f. Expulsion from membership;
- g. Fine;
- h. Other sanctions as may be considered appropriate for the offense.

s. 36

In applying sanctions, the Panel may have regard to the following aggravating or mitigating circumstances:

- a. The nature and severity of the incident;
- b. Whether the incident is a first offense or has occurred repeatedly;
- c. The individual's acknowledgment of responsibility;
- d. The individual's remorse and post-infraction conduct;
- e. The age, maturity or experience of the individual;
- f. Whether the individual retaliated; and
- g. The individual's prospects for rehabilitation.

In considering the appropriate sanction, it is important to note that Mr. Thompson is no longer with RCA. Mr. Thompson's termination occurred before the investigation Report was completed. [REDACTED] asserts Mr. Thompson was terminated for a matter that involved a different investigation, which is still unresolved. I have no information to support that assertion.

The Report indicates, at page 14, that Mr. Thompson agreed to participate in an interview with the investigator scheduled for March 10, 2020. On February 26, 2020, Mr. Rhone sent an email to the investigator advising that Mr. Thompson had been terminated and would not be participating in the previously scheduled interview.

Given that Mr. Thompson been expelled from RCA membership by virtue of his termination I will consider what other sanctions may be appropriate given the nature of this case. I am obliged to consider what sanctions RCA can realistically implement now that Mr. Thompson is no longer an employee of RCA.

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As noted, Mr. Thompson declined to be interviewed for the investigation to provide a fulsome answer to the allegations. His lawyer provided written submissions to the investigator. For the most part, Mr. Thompson denied the allegations or could not recall making certain derogatory comments. In submissions for this discipline hearing, Mr. Thompson continues to deny any wrongdoing. He blames the complainant, ██████████, for not being able to get along with him. He states that ██████████, despite his best intentions, had a negative view of their relationship and this sometimes happens between coaches and athletes. His efforts to accommodate ██████████ included assigning [them] to a different coach, instead of mending the relationship or ameliorating his behaviour. What is lacking from Mr. Thompson's submissions is an acknowledgement of the power imbalance inherent in a coach/mentee relationship. A coach has a high standard to meet in building a productive relationship with athletes. A coach should model the behaviour expected from athletes and staff alike. It should set the tone for mutual and respectful interactions. I find that Mr. Thompson has failed to take responsibility for his own actions. One example of this is the apology he provided, below.

The apology

The submissions provided by Mr. Rhone included a voluntary apology from Mr. Thompson. I have reproduced it, in part, below (emphasis added):

"...the investigate (sic) report states that the complainant **negatively interpreted** my comments and behaviour in such a way that it caused a "loss of confidence, insecurity in the training environment, and loss of trust in coaches." For this I apologize to ██████████."

I find Mr. Thompson's apology to be an inaccurate reflection of what the Report states. He misquotes the Report by stating that ██████████ 'negatively interpreted' his comments and behavior. That is not what the Report concluded at all. The Report concludes, at page 29, that "Mr. Thompson abused his role as a coach with respect to his conduct toward ██████████ by creating a toxic environment, which resulted in [their] "loss of confidence, insecurity in the training environment and loss of trust in coaches"."

The Report makes it clear that Mr. Thompson is solely responsible for creating a toxic environment. When Mr. Thompson states that his comments and behaviour were negatively interpreted it reinforces the conclusion that Mr. Thompson does not truly acknowledge or take ownership of his actions toward ██████████. I find Mr. Thompson's apology to be insincere and lacking in responsibility. As such, I don't believe a forced apology (or any apology) is an appropriate sanction in this case.

Cyberbullying

Mr. Rhone submits that the incident of cyber-bullying is on the 'low end of the spectrum' of the possible types of cyber-bullying. The incident involved Mr. Thompson removing ██████████ from a WhatsApp group, and temporarily blocking [them] from the message board of staff and athletes, after [they] voiced concern with the lack of notice regarding a scheduling issue.

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RCA has a zero-tolerance policy for abuse, bullying or harassment; there is no spectrum to consider here. No amount of bullying is acceptable, in my opinion. Bullying is characterized as mean behaviour that can lead to isolation of its victims. Mr. Thompson's public removal of ██████████ from the group, in view of [their] fellow athletes and staff, constitutes cyber-bullying. It was punitive and demoralizing. It isolated [them] from [their] peers and made an example of [them] for speaking out. I don't consider this to be a minor incident, as characterized by Mr. Rhone.

RCA athletes' statements in support of Mr. Thompson

Mr. Rhone submitted statements from five RCA athletes that Mr. Thompson coached in support of this hearing. I find the statements to be problematic for several reasons.

First, this hearing is not the forum to re-litigate the issues of whether Mr. Thompson violated RCA's ABH Policy. The Report found that he did. Four out of the five the athletes who provided statements did not participate in the investigation. They were not interviewed by the investigator where their evidence could have been properly considered and assessed. The fifth athlete was interviewed as a witness by the investigator. The Report found [their] evidence to be biased, contradictory and lacking in candour and credibility.

Second, even if these statements are provided as character references as opposed to an attempt to re-litigate the complaint, I do not find them to be persuasive. It is well documented in the Report that Mr. Thompson practiced extreme favoritism. There is no doubt that a select group of athletes benefitted from a productive and mutually respectful relationship with him. This does not change the way he interacted with ██████████. [They] stated that once you fell out of favour with Mr. Thompson there was not much that could be done to repair the relationship.

Third, and perhaps most importantly, I am very concerned that the collection of these statements is a breach of the confidentiality provision of RCA's Discipline Policy.

Section 42 of the RCA Discipline Policy states:

The discipline and complaints process is confidential involving only the parties, the RCA Board of Directors and "Designate", the RCA CEO, the Case Manager and the Panel. Once initiated and until a decision is released, none of the parties will disclose confidential information relating to the discipline or complaint to any person not involved in the proceedings.

The statements appear to have been written recently and collected for the specific purpose of this hearing. Two statements were sent by email directly to Mr. Thompson. They are dated July 18 and 19, 2020. (Mr. Thompson's submissions for this hearing were due on July 20, 2020) The subject lines are "Words of Reference" and "Lawyer Note", respectively. Other statements reference the 2021 Olympics, which was only recently confirmed. Others offered their contact information and welcome an opportunity to provide more information to the recipient of the letter.

It is reasonable to conclude that the collection of these statements was a breach of the confidentiality provision of the RCA Policy. It's hard to envision what else these statements were collected for, if not for this hearing. It is also reasonable to assume that the occurrence of this discipline matter would have been shared with and/or discussed with these athletes.

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This conduct is very concerning. It demonstrates a lack of respect to RCA's discipline process and a disregard of the rules. Perhaps it also indicates that Mr. Thompson does not treat this matter seriously.

In considering what sanctions are appropriate, I must also take into account what sanctions can be feasibly implemented now that RCA no longer has authority or influence over Mr. Thompson.

██████████ is seeking broader national attention to Mr. Thompson's discipline case for the sake of transparency. [They] is concerned that other athletes he coaches in future could experience similar abusive and bullying behaviour. I agree that this is a concern. It is likely that Mr. Thompson will continue his coaching career elsewhere. However, I don't believe an additional press release issued by RCA would address this concern. RCA has advised that it will not provide a fulsome or positive reference for Mr. Thompson – which assists to some degree in allaying the concern. ██████████ is requesting that RCA do more than this by providing any prospective employer with full and honest feedback about Mr. Thompson.

Section 33 of the RCA Discipline Policy states that after a discipline hearing, a decision will be distributed to the parties within 14 days. The decision will then be considered a matter of public record unless otherwise decided by the panel. I am not inclined to decide otherwise. I find that making this decision a matter of public record satisfies the need for transparency. It provides a sanction that allows the findings in this case to be publicly available. It is a sanction that is within RCA's ability to implement.

Mr. Thomson's disingenuous apology, his lack of responsibility and post-infraction conduct are aggravating factors that I considered in applying this particular sanction. The most appropriate sanction is one where Mr. Thompson is held accountable for his actions and not covered in a veil of secrecy. Practically speaking, a sanction that sheds light on this case is one that RCA can implement.

Pursuant to the Confidentiality section of the RCA Policy, I determine that RCA shall not redact Mr. Thompson's name from this decision. It shall be disclosed in order to give effect to the sanction imposed. RCA or ██████████ may make this decision publicly available, in its entirety, to anyone or any organization who needs to know. This ensures a level of transparency and accountability required in this matter.

Daphne Simon
Adjudicator for Rowing Canada Aviron