

Case 31 – Selection Appeal (1)

2014 Sochi Winter Olympic Games

Key words

Selection Policy; Discretion; Rankings; Sochi 2014; Subjective, Objective; Successful Appeal; [Fair Selection of athletes](#)

Summary

Athlete W appealed the decision of the National Ice Skating Association (NISA) Selectors not to nominate him for selection to the GB Non-Relay speed skating team at the 2014 Sochi Winter Olympic Games on the grounds that the NISA Selectors had not followed the published Selection Criteria. An Appeals Panel was appointed by Sport Resolutions in accordance with NISA's Dispute Resolution Policies and Procedures. The Appeals Panel found that the decision had not been taken in accordance with the Selection Criteria, as the Selection Panel did not take all factors in the Selection Policy into account. The Appeals Panel therefore upheld the appeal, set aside the Performance Director's recommendation, and ordered that the Performance Director consider the selection afresh.

Background Facts

Athlete W appealed the decision of NISA not to nominate him for selection to the GB Non-Relay speed skating team at the 2014 Sochi Winter Olympic Games. Athlete W appealed on the grounds that the NISA Selectors had not followed the published Selection Criteria when selecting the athlete to fill the third and final individual place available. The first two places had been selected simply by reference to the two highest ranked skaters from the World Cup Rankings. In

relation to the third place, the Selection Criteria stated that “[t]he Performance Director will take into account performance indicators from the 2013/14 season and other past performances”. Two athletes were eligible for selection for the third and final place, and Athlete R was selected over Athlete W. Athlete W argued that the Performance Director had neglected to properly consider all relevant performance indicators and that had he done so, he would have selected Athlete W.

Reasoning and Decision of the Tribunal

NISA’s Performance Director stated in his selection decision that “[t]he third place on the team is a Performance Directors selection and I continue with the same objective process that the third highest ranked skater from a single distance from World Cup Rankings 1, 2, 3 and 4” should be selected. Athlete R, ranked third highest was therefore selected, and Athlete W, ranked fourth highest, was not selected.

The Appeals Panel noted that in his statement, the Performance Director added that whilst a subjective argument for both skaters could be made using training times, lower level competitions, relay tests and time trials, he had ultimately taken the view that as the skaters were similar in all areas, to make a decision using the World Cup ranking, as had been used for the first two skaters, was the fairest and most obvious objective analysis.

The Appeals Panel found that the Performance Director had not taken the decision in accordance with the Selection Criteria, as that required him to take into account information wider than the World Cup rankings. The Appeals Panel recognised that what weight to give to the different elements of that wider information, including the 2013/14 World Cup performances, was to be a matter for the Performance Director’s own fair and honest judgment, but that he was not entitled to discard the wider information entirely.

The Appeals Panel therefore upheld the appeal, set aside the Performance Director’s recommendation, and ordered that the Performance Director consider

the selection afresh, taking into account performance indicators from the 2013/14 season and other past performances.

Learning points

- Selection decisions which are made without taking into account factors that are identified as relevant in a selection policy will be at risk of being set aside on appeal.
 - Where a Selector is afforded a measure of discretion, this must be exercised in a fair and unbiased manner, taking into account all matters referred to in the Selection Policy.
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