

Case 32 - Selection Appeal (2)

2014 Sochi Winter Olympic Games

Key words

Selection Policy; Discretion; Sochi 2014; Winter Olympics; Trivial Errors; Natural Justice; Selection Appeal; [Fair Selection of athletes](#)

Summary

Athlete W successfully appealed the decision of the National Ice Skating Association (NISA) 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. The selection was remitted back to the NISA Selectors with instruction that the matter should be reconsidered in accordance with the Selection Criteria. The Selectors undertook the process a second time, and again did not nominate Athlete W. A Second Appeals Panel was appointed by Sport Resolutions in accordance with NISA's Dispute Resolution Policies and Procedures, as Athlete W alleged that the Selectors at the reconvened meeting had again failed to follow the Selection Criteria. The Appeals Panel found that the second reconsidered decision had been taken in accordance with the Selection Criteria, and the appeal was therefore dismissed.

Background Facts

Athlete W successfully 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. The first Appeals Panel upheld the appeal, finding that the Performance Director had made his recommendation entirely on the basis of World Cup Ranking and did

not consider all relevant performance indicators, as required by the Selection Criteria. The Appeals Panel 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.

A second selection decision was made by the Performance Director and ratified by the NISA Selectors which again did not select Athlete W. Athlete W appealed against the second selection decision on the basis that it was i) contrary to the Selection Criteria; ii) contrary to natural justice and in particular to the duty on a sports governing body to take into account all relevant criteria when reaching decisions; and iii) contrary to the first Appeal Panel's direction that the Performance Director must take into account performance indicators that could reasonably have any bearing on his decision.

Reasoning and Decision of the Tribunal

When the Performance Director informed Athlete W of his second selection decision he provided Athlete W with a two page document of written reasons for non-selection. The Appeals Panel found that these reasons should not be approached as a carefully written judgment where any apparent contradiction or omission to mention a relevant matter could lead readily to an inference that material factors had been disregarded or given unreasonable weight when reaching the judgment.

The Appeals Panel found that whilst there were some errors in both the written reasons for non-selection and NISA's written response to Athlete W's Notice of Appeal, they were trivial in nature and overall did not cast any doubt on the correctness of the selection process followed by the Performance Director and the validity of the second selection decision. The appeal was therefore dismissed.

Learning points

- Selection decisions which are made without following the process outlined in the relevant selection policy will be at risk of being set aside on appeal.
- Ideally reasons should be fully articulated and explained; although, it may be possible, by implication, to conclude that the relevant factors had been taken into account, even if not expressly mentioned (especially where a full written statement reasons is not possible given time constraints).
- Written reasons explaining athlete selection decisions, particularly where drafted under time constraints, will not necessarily be interpreted on appeal as definitive or absolute accounts. Where errors are made in terms of information relevant to exercise of selection discretion, they will not undermine that exercise of discretion unless they are more than trivial and are at least capable of effecting the actual decision.

