

Background

1. This appeal by Samuel Hadley was against the decision by Snow Sports New Zealand (SSNZ) not to nominate him for the one available place to compete at the 2020 Winter Youth Olympics (“the Youth Olympics”) in Lausanne, Switzerland early next month.
2. Mr Hadley’s father, James Hadley, had initially filed the appeal prior to all of the internal avenues of appeal before SSNZ were exhausted.
3. On 12 December 2019, a teleconference between the parties was held to determine their respective positions. It was noted that the final decision of SSNZ had to be known before any appeal could be brought before the Tribunal. Mr Castle was asked to invite SSNZ to declare its position. Later that day, SSNZ confirmed that its original decision not to nominate Samuel Hadley would stand.
4. There was thereafter jurisdiction for the Tribunal to consider an appeal. On 13 December 2019, a further timetabling teleconference was held and directions for filing were made.

Appeal

5. The appeal is against the decision to nominate Harrison Messenger, instead of the Appellant, for the Alpine male place for the Youth Olympics. There is no question that both of these young men are competent and experienced skiers, either of whom could be nominated with confidence. However, there was only one spot and the choice had to be made.
6. Initially, the basis of the appeal was that the selectors erred in placing undue weight on one-off performances of the other athlete, which disadvantaged the Appellant as he had not attended these events in order to concentrate on his end-of-year school exams. The Appellant contended that his combined results over an extended season spanning three months clearly established that he was the number one ranked male athlete eligible for selection. He further argued that he regularly beat the nominated athlete in “key events”, and that he is the New Zealand National Under 21 Overall Champion and he held all available New Zealand Under 21 titles (Giant Slalom and Slalom).

Discussion

7. Although this appeal was considered under extreme urgency, an extraordinary array of material was available for our consideration and a number of byways as well as highways were traversed. Only the Appellant had formal legal representation and we were vigilant to ensure that everyone participating in the Sunday evening hearing had the opportunity to advance their perspectives and to challenge directly those with a different view, while ensuring the last word was with the Appellant. The fundamental challenge was to assess the reality of the Snow Sport environment and not get bogged down in semantic constructs divorced from the operation of the sport.
8. At the end of the day it was common ground that the critical provision is Clause 4.4 of the applicable Nomination Criteria which provides:

“4.4 Ranking: If there are more Athletes who meet the Over-riding Criteria set out in clause 4.1, than quota places available, nomination will be decided by the Selectors having regard to the following factors, in priority order: (a) FIS points and FIS rankings; (b) National Youth series points; (c) The Athlete’s potential result at the Games; (d) The potential of an Athlete for the Beijing 2022 Olympic Winter Games; and/or (e) Any other factors the Selectors consider relevant including but not limited to, the athlete’s ability to contribute to the team”.

On careful assessment it became clear that only 4.4[a] was critical as there was nothing which did not flow from the proper interpretation of that requirement which was effective.

9. Upon ultimate analysis the Appellant’s position came down to a complaint that athletes could not or would not properly know or understand what was meant by FIS points and FIS rankings as these appeared on the Open List. We were not persuaded that there can be any sensible issue about this. What is prescribed are the points and rankings on the 8th list, not points or rankings with regard to individual events. The latter are reflected in and constitute the material from which the former are made up. However there was no convincing evidence that there could be misunderstanding or a lack of transparency. The National Youth series points were not effectively different and the rankings were the same. We found that the YOG Allocation Lists were not a useful source of evidence within this regime in determining the position between athletes

individually. The Allocation Lists are created for the sole purpose of allocating quotas to countries.

10. The Snow Sports New Zealand position on the appeal was encapsulated as:

“The Selectors correctly applied 4.4(a). The FIS points feed the FIS rankings. Therefore, if an athlete attains lower points than another then the athlete’s ranking for that event must similarly be lower. Harrison’s FIS points in the 8th list GS of 90.75 (and his associated ranking of 2056) was lower than Sam’s FIS points in the 8th list SL of 108.75 (and associated ranking of 2347). Harrison’s ranking of 1394 (derived from his points of 126.28) in the 8th list SG is lower than his or Sam’s ranking in either the 8th list GS or SL lists”.

Nothing presented on the appeal altered that position, and we were satisfied that it was operative.

11. During the course of the hearing there was dialogue as to the consequences of the Tribunal finding there had been a failure properly to interpret and apply the ranking requirements. Should that lead the Tribunal to alter the ranking between the two athletes it should declare that the selection process had misfired and should be recommenced with whatever consequences that might have? Fortunately that point did not arise but it would be unusual for the Tribunal to take over the selection process itself if it was established that there has been a procedural mistake.
12. We are not satisfied that there was cherry picking by the selectors, bias, an appearance of bias or any unfairness. Different or other criteria could be prescribed for dealing with a ranking exercise in circumstances like this which some might argue would be better, but we are not persuaded that there was any deviation from the current requirements which lead to the ranking of Harrison Messenger ahead of Samuel Hadley.

13. The exercise undertaken within the sport and by the NZOC were in accordance with the prevailing protocols. The discretions exercised were available and rational. Accordingly there was no basis upon which the Tribunal could intervene and second guess the selection task, and the appeal had to be dismissed.

Dated: 18 December 2019



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Sir Bruce Robertson
Chairman