

BETWEEN **Laurel Hubbard**
Appellant

AND **Olympic Weightlifting New Zealand**
Respondent

AND **New Zealand Olympic Committee**
Interested Party

**DECISION OF SPORTS TRIBUNAL
DATED 18 July 2017**

Tribunal: Sir Bruce Robertson (Chairman)
Chantal Brunner
Robert Hart

Present: Laurel Hubbard, Appellant
Simon Kent, Respondent, Olympic Weightlifting New Zealand
Tara Pryor, Interested Party, New Zealand Olympic
Committee

Registrar: Matt Skinner

1. Laurel Hubbard is a member of Olympic Weightlifting New Zealand (OWNZ). Ms Hubbard is ranked number one in the Commonwealth rankings and is currently based in New Caledonia.
2. On 13 July 2017, Ms Hubbard filed a Form 3 Notice of Appeal to the Sports Tribunal in respect of a decision by OWNZ not to allow New Zealand athletes to compete at the Pacific Cup International (PCI) weightlifting competition in New Caledonia.

Background

3. The PCI was scheduled to be held in December 2017, but this was moved forward to 4 August 2017 with the deadline for entry of 20 July.
4. On 9 July 2017, Ms Hubbard learnt that the International Weightlifting Federation (IWF) had approved the PCI to be recognised as a Commonwealth Games Individual Qualification event. That evening she emailed OWNZ requesting permission to compete at the PCI.
5. Ms Hubbard needed permission to compete as the current OWNZ nomination rules state that athletes can only participate in certain approved events throughout the year. The results of the approved events are taken into consideration when determining athletes national and international rankings and for selection purposes.
6. As the PCI was originally scheduled to be held in December 2017 it had not been considered by OWNZ when it decided on what weightlifting events would be deemed approved events for the purposes of the nomination criteria. The PCI was not an event that New Zealand athletes could enter without approval.
7. On receiving Ms Hubbard's email OWNZ Executive Group (EG) considered whether to permit New Zealand athletes to participate at this event. The EG considered the ramifications of including it in the OWNZ nomination criteria. The EG decided in a 5-1 vote that in order to keep the authenticity of the nomination process that New Zealand athletes should not be permitted to compete at the PCI. It considered that the late notice of approval may adversely affect those athletes that did not have

sufficient time to prepare mentally, financially and/or physically for an event that was unplanned for and unanticipated.

8. It concluded that allowing New Zealand athletes to participate in the event would be unfair for those that would not be able to participate and potentially score points to increase their national and international rankings.
9. On 12 July, following a further request from Ms Hubbard, the EG reconsidered but upheld their previous decision not to allow New Zealand athletes to compete at PCI.

Appeal to Sports Tribunal

10. On 13 July, Ms Hubbard appealed to the Sports Tribunal against the decision of the EG not to allow New Zealand Athletes to compete at the PCI.
11. An appeal to the Sports Tribunal is provided for in Article 15(a) of the OWNZ Constitution that states:

"15. Appeals to the Sports Disputes Tribunal of New Zealand (SDT)

a) Where the EG has made a decision concerning a member and that member is dissatisfied with that decision, the member has a right to appeal the decision to the SDT. The appeal shall be heard by and determined by the SDT in accordance with the Rules (copies of which are available from OWNZ) and such decision shall be final."

12. On 14 July, an urgent telephone conference was convened by the Chairman to consider the matter. This involved Ms Hubbard, Simon Kent the OWNZ High Performance Director, and Tara Pryor the General Manager of Operations and Programmes at NZOC. During this conference the possibility of allowing Ms Hubbard to participate as a guest was raised. The effect of participating as a guest would be that Ms Hubbard's results in the event would not go towards her national or international rank but she would enjoy the advantage of participating in competition.

The respondent acknowledged that this was a possibility that could be investigated.

13. Ms Hubbard was sympathetic to the idea that she could possibly compete as a guest, but nevertheless believed that it was unfair in principle for a sports body to restrict their athletes from being able to participate at internationally recognised events where they could improve their individual rankings.
14. As the parties were unable to reach an agreement during the teleconference meeting, the Chairman made orders that:
 - (a) The appellant submit any additional material to the Registrar of the Sports Tribunal by 6.00pm (NZST), Friday 14 July 2017; and
 - (b) A full hearing on the matter would be held via teleconference at 3.00pm (NZST), Monday 17 July 2017.
15. On the evening of Friday, 14 July, the appellant filed a further document that asserted that the decision to bar athletes from participating in the PCI was made with no consultation or attempts to consult a number of coaches, athletes or members of OWNZ. The document also contained a list of coaches and athletes that the appellant had contacted to check whether they were aware that the PCI tournament had been brought forward. The respondent reacted to this in an email from Simon Kent. A substantial factual gulf emerged. Although it is interesting background it does not effect the critical issues.

Decision

16. On 17 July, a substantive hearing of the matter was held by teleconference call.
17. The Tribunal was very mindful of the competing interests that arose within this matter. However, having carefully considered the written and oral material we are satisfied that the decision made by OWNZ was reasonably available.

18. Ms Hubbard challenged whether any NSO could lawfully ban its athletes from competing at an international event to which they had been invited. She contended that this was unique in the history of OWNZ and not known to have occurred otherwise in Oceania. She said such restraint had occurred without proper consultation and without many affected athletes and coaches even knowing that PCI had been rescheduled. Secondly, she argued that the decision taken by the EG was harmful to her at various levels. Thirdly, the harm to her also applied to other athletes with potentially even greater adverse consequences for them. Finally, she noted an ongoing future harm if the respondent maintained this stance and refused athletes the right to participate in events like the 2017 Asian Indoor and Martial Arts Games (AIMAG) later this year.
19. Ms Pryor advised that NZOC had decided that no New Zealand team would be sent to the AIMAG in any event.
20. OWNZ, through Simon Kent, maintained that there was an overwhelming need to maintain the integrity and authenticity of the selection process. This meant that having created a list of sanctioned events which everybody knew about it was essential that it was maintained. It would create more deterrents than advantages if there were continuing changes to the approved list as totally unexpected matters arise.
21. While we are sympathetic to the right of athletes to participate at events to which they have been invited, we understand the purpose behind the creation and implementation of the OWNZ nomination criteria. The nomination criteria may, in some unusual circumstances like before the Tribunal today, result in what may be perceived as restrictive outcomes, but it is clear that the intention behind the criteria is to create a level playing field for all athletes which requires that the athlete perform well at prescribed events.
22. All OWNZ athletes had been aware of which events throughout the year they may participate at for the purpose of increasing their IWF world ranking and for OWNZ selection purposes. This meant athletes could organise their routines, obtain leave from work, and ensure they were

financially prepared to target certain events throughout the year. Any late addition to the approved events could only advantage those that attend and compete. Athletes unable to attend with such late notice may be disadvantaged relative to those that have the financial security, time availability, or flexible training routine which permits them to compete. The fact that Ms Hubbard is current residing and training in Noumea indicates that a guest slot for her might make sense. That is for the parties to determine.

23. We accept that one of the purposes of OWNZ is to increase and facilitate the participation in New Zealand in weightlifting. However, in the context of high performance Olympic weightlifting we acknowledge that OWNZ must have the ability to create and implement strategies and processes that it believes are best suited in identifying and selecting New Zealand's best weightlifters. It is important that these processes and strategies are objectively fair and applied consistently between athletes.
24. This problem has arisen because of unanticipated circumstances emerging at a very late point. The OWNZ nomination process was thorough and fair. There were competing considerations. The priority accorded by the EG was rational and a properly available alternative. There is no basis for us to interfere with that assessment and the appeal must accordingly be dismissed.

Dated: 18 July 2017



.....
Sir Bruce Robertson
Chairperson