

**BETWEEN            PAUL MARTELLETTI**  
**Appellant**

**AND                    ATHLETICS NEW ZEALAND**  
**Respondent**

**AND                    NEW ZEALAND OLYMPIC COMMITTEE**  
**Interested Party**

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**REASONS FOR DECISION OF SPORTS TRIBUNAL  
DATED 28 July 2016**

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**Tribunal:**            Sir Bruce Robertson (Chairperson)  
Ron Cheatley  
Chantal Brunner

**Hearing:**            26 July 2016 in Auckland

**Present:**            In person:  
Daniel Kalderimis, Paula Gibbs, and Ollie Neas, counsel for  
Appellant  
Aaron Lloyd and Jonathan Embling, counsel for Respondent  
Graham Seatter and Linda Hamersley, Athletics New Zealand  
Peter Pfitzinger, in support of Athletics New Zealand  
Tara Pryor, New Zealand Olympic Committee

By telephone:  
Paul Martelletti, Appellant  
Nicholas Anderson, Dr Rupert Macey-Dare and Professor  
Martin Hazelton in support of Paul Martelletti

**Registrar:**           Megan Lee-Joe

## **INTRODUCTION**

1. On 18 July 2016, Paul Martelletti filed an appeal with the Tribunal against the decision of Athletics NZ not to nominate him for the Men's Marathon event at the Rio Olympic Games (the Games).
2. Mr Martelletti was advised of his non-nomination on 12 July. Without prejudice communications involving Mr Martelletti, his counsel and coach (Mr Anderson), and Athletics NZ and NZOC occurred between 14 and 16 July. Given the date for confirmation of the New Zealand Olympic team with the Games organisers of 18 July, NZOC agreed to provide sports entry to Mr Martelletti for the Games subject to the outcome of this appeal.
3. An urgent in hearing person was set down for Tuesday 26 July at 10.30am noting the need for NZOC to attend to logistical arrangements should the appeal be successful while allowing time for all parties to file submissions and witness statements. Written submissions and ten witness statements / expert reports were filed in support of the appeal prior to the hearing which canvassed Mr Martelletti's marathon running record, his performances at two 2016 IAAF Gold Label Marathon Events in London and the Gold Coast, the effect of his illness prior to and during both of those qualification events, his physiological and mental capabilities in the sport of marathon running, and statistical analyses concerning his capability to achieve a top 16 placing at the Games. Athletics New Zealand provided written submissions and three witness statements in response.
4. At the hearing, the parties' respective positions were set out by Messrs Kalderimis and Lloyd and extensive cross examination of Mr Martelletti, Mr Anderson, Dr Macey-Dare, and Professor Hazelton for the Appellant and Messrs Seatter and Pfitzinger for the Respondent took place. At the conclusion of the hearing, the Tribunal Chair advised the parties that the panel would adjourn to deliberate and that the decision would be communicated by the Registrar. At 10am the next morning, the Registrar advised that the Tribunal had unanimously decided that the appeal could not succeed and was accordingly dismissed with reasons to follow as soon as possible. We now set out the reasons for our decision.

## **GROUND OF APPEAL**

5. The appeal was advanced upon the following grounds set out in clause 11 of the Agreement between NZOC and Athletics NZ regarding the Application, Nomination and Selection Process for the Games:

- (a) that the applicable Nomination Criteria was not properly followed and/or implemented (clause 11.1(a)); and
  - (b) there was no material on which the nomination decision could reasonably be based (clause 11.1(d)).
6. The Appellant sought an order from the Tribunal to conclusively determine the issue by nominating him for selection to the NZOC; or alternatively to refer the question of nomination back to Athletics New Zealand for reconsideration.

## **NOMINATION CRITERIA**

7. The Nomination Criteria laid down by Athletics NZ is set out in a document entitled "2016 Rio Olympic Games Nomination Criteria: 5<sup>th</sup> – 21<sup>st</sup> August, Rio De Janeiro". The relevant provisions are:

- **Clause 2 ELIGIBILITY:**

2.1 In order to be eligible for nomination for the 2016 OG an athlete must: ... (j) Have achieved a *Performance Standard* (as set out in clause 4) within the following *Qualification Periods* [being 1<sup>st</sup> January 2015 to 11<sup>th</sup> July 2016 for the Marathon events];

2.2 *For Individual Events:*

The Nomination Panel may nominate athletes who are capable of a Top 16 placing at the 2016 OG with the potential to win an Olympic Diploma (Top 8), and that have a track record of sufficient quality and depth that the Nomination Panel believes the athletes will be competitive at the 2016 OG and will perform credibly in the Individual Event. In addition to the *Discretionary Considerations* set out in clause 8, in determining whether or not this criteria has been met, the Nomination Panel will consider, in order of preference:

- a) Athletes who achieve an 'ANZ-A' *Performance Standard* at the Compulsory Selection Trials (refer 6.1a and 6.1b) and win either the Senior Women's or the Senior Men's events at the Compulsory Selection Trials;
- b) Athletes who achieve one (1) 'ANZ-A' *Performance Standard* during the *Qualification Period*;
- c) Athletes that have not previously represented in a senior Black Singlet Team, who achieve one (1) 'ANZ-B' *Performance Standard* during the *Qualification Period*;
- d) Athletes that have previously represented in a senior Black Singlet Team, who achieve two (2) 'ANZ-B' *Performance Standards* during the *Qualification Period*;

- e) Athletes who are proven performers but do not fulfil the requirements outlined in clause 2.2(a), (b), and (d) as a result of exceptional circumstances (e.g. injury/illness, family bereavements, unfavourable conditions when in peak form etc.).

- **Clause 3 ENTRY REQUIREMENTS:**

- Marathon Events**

- 3.6 NZOC can only enter athletes in *Marathon Events* if they have achieved a *Performance Standard* at an IAAF accepted Marathon Competition (i.e. as listed on the IAAF website). The first 20 runners in the Men’s and Women’s Marathon in the IAAF World Championships Beijing 2015 and the top 10 finishers at the IAAF Gold Label Marathons 2015 and 2016 (held during the qualification period) will also be considered as having achieved the *Performance Standard*.

- **Clause 4 PERFORMANCE STANDARDS**

- 4.1 The Nomination Panel will only consider *Performance Standards* that have met all IAAF rules and regulations and are published on the official Athletics NZ Rankings website.

- 4.2 For the purpose of this Nomination Criteria, *Performance Standards* mean:

Men			Event
"ANZ-A"	"ANZ-B"	"IAAF"	
10.16	10.20	10.16	100m
20.50	20.60	20.50	200m
45.40	45.80	45.40	400m
1:45.80	1:46.10	1:46.00	800m
3:36.20	3:37.20	3:36.20	1,500m
13m20:00	13m25:00	13m25:00	5,000m
28m00:00	28m05:00	28m00:00	10,000m
<b>2hr12:00</b>	<b>2hr14:00</b>	<b>2hr19:00</b>	<b>Marathon</b>
1hr21:30	1hr23:00	1hr24:00	20km Race Walk
3hr50:00	3hr54:00	4hr06:00	50km Race Walk
8m25:00	8m30:00	8m30:00	3000m SC
13.47	13.55	13.47	110mH
49.40	49.75	49.40	400H

- **Clause 7 AUTOMATIC NOMINATION**

- There is no automatic nomination for the 2016 OG.

• **Clause 8 DISCRETIONARY CONSIDERATIONS**

- 8.1 The *Nomination Panel* has the discretion to make enquiries of the athlete or other persons, as it sees fit, to nominate athletes that meet the eligibility requirements set out in this *Nomination Criteria*.
- 8.2 The *Nomination Panel* may give weight to any one or more of the nomination factors below in clause 8.3 and, if it does, to apply such weighting to one or more athletes as it sees fit. No particular factor shall be weighted more or less significantly by reason only of the order in which that factor appears in this *Nomination Criteria*. The *Nomination Panel* shall not be required to provide any explanation of these factors or any relevance to nomination or non-nomination.
- 8.3 In applying their discretion the *Nomination Panel* may consider any factor or combination of factors that are, in their opinion, relevant to their decision whether or not to nominate an athlete, including but not limited to the athlete's:
- a) Performance at the Compulsory Selection Trial;
  - b) Potential to be highly competitive at the 2016 OG;
  - c) Ranking at the time of the *Compulsory Selection Trial/s* for those athletes that receive dispensations;
  - d) Competitive record against other athletes under consideration for nomination in the same event;
  - e) Commitment and focus on competing at the 2016 OG;
  - f) Demonstrated compliance with the rules of events and competitions;
  - g) Understanding and respect for the obligations that accompany being a member of a New Zealand team when competing at the 2016 OG, including respect for team members and support staff;
  - h) History of performances at previous selected individual or team events; and
  - i) Recent injuries or illness.
- 8.4 In any decision regarding the nomination of athletes in the team, the *Nomination Panel* may, in their sole discretion, take into account or give weight to any extenuating circumstances, including but not limited to:
- a) Injury or illness;
  - b) Travel delays;
  - c) Equipment failure;
  - d) Bereavement or personal misfortune; and / or
  - e) Any other factors reasonably considered by the *Nomination Panel* to constitute extenuating circumstances.

## **APPELLANT'S EVIDENCE**

8. Mr Martelletti is based in London and took up marathon running in 2007. Since the start of 2016, he has been particularly dedicated to the goal of attaining selection for the Men's Marathon Event at the Games.
9. In 2016, Mr Martelletti targeted two IAAF Gold Label Marathon Events in pursuit of this goal. The first was the London Marathon in April where he finished in a time of 2:17:26 (two hours 17 minutes 26 seconds) in 21<sup>st</sup> place, while suffering from a cold. This was under the IAAF Games qualification time of 2:19 but outside Athletics NZ 'B' Performance Standard of 2:14 and its 'A' Performance Standard of 2:12.
10. The second qualification event was the Gold Coast Marathon on 3 July. Mr Martelletti said that he was again suffering from a cold / chest infection, worse than that in London, which affected his performance. In that race, Mr Martelletti placed 13<sup>th</sup> in a time of 2:18:57 and won the Oceania Championship Marathon title. This time was again under the IAAF qualification time but outside the 'A' and 'B' Performance Standards set by Athletics NZ in its Nomination Criteria.
11. Mr Martelletti and his coach, Mr Anderson considered that he had been on track for a 2:14 time at the London Marathon based on fitness and form as indicated by personal best times run over 10km (road), and half marathon distances in the lead up to the event and over 10,000m (track) in the week following the London Marathon.
12. Mr Martelletti believed however that his performance had been adversely affected by a cold he was suffering from during the race. Mr Martelletti did not visit a doctor in relation to his cold, in part due to the difficulties in making an appointment through the British National Health Service and in other part, he felt that he had to race regardless of what the medical advice might have been given his training efforts (including a month in Kenya) and shortage of other opportunities to qualify for the Games. Mr Martelletti obtained a retrospective medical certificate as requested by Athletics NZ after he lodged an appeal with them. It was accepted by both parties that Mr Martelletti was suffering from the common cold at the time of the London Marathon.
13. In relation to his London Marathon result, Mr Martelletti also referred to other factors which he thought should have been taken into account by the selectors: the highly competitive nature of this race, no limitation on

number of entries per nation (compared to a limit of 3 runners per nation for Rio), and his handicap through starting in the mass field as opposed to the elite field (including starting behind the elite field, more congestion, no use of pacemakers, and having to carry own nutrition).

14. Significant cross examination of witness evidence focussed on the effect of various impediments on Mr Martelletti's performance at the 2016 London Marathon in particular, a common cold illness, and the disadvantages from not starting in the elite field notably congestion and lack of access to pacemakers. Expert evidence was provided by a London economist, Dr Macey-Dare who on the basis of certain assumptions adjusted Mr Martelletti's time for each of these factors to conclude that he would have been capable of running under 2:14 at the London Marathon.
15. Expert evidence was also provided by Professor Hazelton concerning the difficulties of predicting top 16 placings in the Olympic Marathon event based on prior world rankings and performances in the qualification period as compared to the shorter distance stadium events. During cross examination, Mr Lloyd sought to distinguish the four outliers used by Professor Hazelton from Mr Martelletti's case on the basis that those runners had in fact achieved sub 2:14 times (or in one case 2:14:01) in recent years.
16. Mr Martelletti produced further evidence at the hearing to explain the differences between marathon times run at Major Games (such as the Olympics and World Championships) and Major Marathon Events (such as the London, Berlin and Boston Marathons). This is discussed further in relation to the evidence presented for Athletics NZ.

#### **ATHLETICS NZ'S EVIDENCE**

17. The primary evidence of Athletics NZ was provided by Graham Seatter, the convenor of selectors. Supporting statements were also provided by Mr Pfitzinger and Dr Brendan O'Neill.
18. In his written statement, Mr Seatter discussed the basis on which the 'A' and 'B' Performance Standards for the Games were formulated. In short, the 'A' Standards reflect the average over the last three years of the annual world rankings of 12-14<sup>th</sup> and the 'B' Standards the average over the last three years of the annual world rankings of 16<sup>th</sup> -18<sup>th</sup> (based on 3 athletes per country). The 'A' and 'B' Standards were then eased by a margin of around 1.5% with a greater margin having been allowed for the Marathon due to its greater unpredictability.

19. In addition to not meeting the 'A' or 'B' Performance Standards, Mr Seatter also referred to the following factors in support of Athletics NZ's decision not to nominate Mr Martelletti:
- (a) In his experience, athletes in, or close to the top 30 world rankings (based on three athletes per country) for the current year have a good possibility of placing in the top 16, if performing at their best. Mr Martelletti's current world ranking in relation to the Rio Games Marathon starting field was 132<sup>nd</sup> as at 22 July 2016.
  - (b) Mr Martelletti's personal best time for a marathon is 2:16:49 and was set in 2011. Statistically, it is very unlikely that athletes better personal best times at the Olympics. Only one athlete from the 2012 London Olympic Games Marathon field achieved a personal best time. A time of 2:14:10 was required to come within the top 16 at the 2012 Olympic Games. Whether Mr Martelletti would have achieved a time of 2:14 at the 2016 London Marathon had he been fully well was entirely speculative.
  - (c) Looking at the field for the 2016 Rio Olympics Men's Marathon event, 69 runners have run under the ANZ-B standard of 2:14 during the qualifying period. Mr Martelletti's best marathon time during the qualifying period of 2:17:26 ranks him 132<sup>nd</sup> in the Rio field (as at 22 July 2016) and even his personal best time of 2:16:49 ranks him over 100<sup>th</sup> place.
  - (d) Considering other marathons, half marathon and 10km events in which Mr Martelletti has competed during the qualifying period, there was no overall trend of significant improvement that indicated a significant performance lift in the Marathon event. This was challenged by Mr Martelletti's counsel during the hearing based on personal best times he had achieved during the qualification period.
  - (e) Statistically, it is easier to achieve a top 16 placing in the London Marathon than at a World Championship or Olympic Games Event. For example, 16<sup>th</sup> place in those events are usually around 6 minutes behind the winner in those global events, whereas 16<sup>th</sup> place was 12 minutes behind the winner at the 2016 London Marathon. Mr Martelletti explained that the reason for this was that marathons at Major Global Games (such as the Olympics) are run much slower than Major Marathon Events (such as the London Marathon) due to the conditions, strategy, and absence of pacemakers.

- (f) It was impossible to quantify with any certainty the affect that Mr Martelletti's ill health had on his performances at the London and Gold Coast marathons and this would be the case even if the exact nature of his illnesses had been documented at the time by a medical practitioner. In any event, even if Mr Martelletti were to have improved his personal best by 2 minutes and 49 seconds to meet the 'B'-standard, there would still be 69 athletes ranked ahead of him in the Rio Olympic starting field.

## **SUBMISSIONS**

20. Mr Kalderimis proceeded on the basis of four propositions to establish the grounds for appeal:
- (1) Athletics NZ did not look beyond Mr Martelletti's failure to achieve the 'A' or 'B' Performance Standards prescribed in the Nomination Criteria in making its non-nomination decision and failed to undertake a wider ranging consideration and evaluation of other factors relating to Mr Martelletti's form, training regime, and illness at the London and Gold Coast marathon events to put his performances and results into context. Athletics NZ had failed to make proper enquiries of Mr Martelletti to obtain such information.
  - (2) Although Mr Martelletti did not achieve the ANZ 'A' or 'B' Performance Standards for the marathon event, his personal best performances achieved during the qualification period in the 10km (road), 10,000m (track) and half-marathon distances and correlation between his IAAF points for each of these distances and the marathon indicated he was peaking for the 2016 London Marathon and capable of achieving the ANZ 'B' Standard of 2:14.
  - (3) If adjustments are quantified and deducted from Mr Martelletti's time for the 2016 London Marathon for his illness and effects of not starting in the elite group, this would also show that he was capable of achieving the ANZ 'B' Standard of 2:14.
  - (4) The Marathon at the Rio Games will be run in hot and humid conditions and like previous Olympic Games will be run at much slower times than the London Marathon. There will be greater unpredictability and runners who are capable of running a 2:14 marathon time have a greater chance of a top 16 placing at such events. Mr Martelletti has prepared for the conditions at Rio (weather conditions and absence of pace makers).

21. Mr Kalderimis submitted that if Mr Martelletti's record, form, and illness had been properly taken into account and the extrapolations requested made, there was no reasonable basis for the non nomination decision.
22. The position taken by Athletics NZ was that the Nomination Criteria was properly followed and implemented and that there was sufficient material on which its non-nomination decision could be reasonably based.
23. The key criterion of relevance to this appeal is whether Mr Martelletti is capable of a top 16 placing at the Games. The A and B Standards are guides to the performances required to be used as a tool for the benefit of athletes. However, the attainment of a 'B' standard does not in and of itself indicate capability of a top 16 placing at the Games.
24. In Mr Martelletti's case, Athletics NZ could find no evidence that could be relied upon to say that he was capable of a top 16 placing. Mr Martelletti had not achieved an 'A' or 'B' standard, and his claims that he would have been able to take 2 minutes and 49 seconds off his personal best time achieved in 2011 to meet the 'B' Standard is speculative. Even if he had achieved the 'B' Standard of 2:14, 69 other runners in the Games field have achieved personal best times in the qualification period better than that.

## **DECISION**

25. Mr Martelletti's counsel invited the Tribunal to make a theoretical assessment of the time he could have run for the London marathon based on his form at the time over shorter distances, and taking into account the effects of a common cold he was suffering from at the time and the fact he did not have the benefit of a pace maker. We have considered the evidence of Dr Macey-Dare and Mr Anderson in this regard but even then we find it extremely difficult and inappropriate to make such a theoretical extrapolation which would override the judgement and experience of the Athletics NZ selectors. Mr Martelletti, to achieve the 'B' Standard, would have had to reduce the time he achieved at the London Marathon by 3 minutes and 26 seconds and his personal best time achieved in 2011 by 2 minutes and 49 seconds. That is not a close margin.
26. It is unfortunate that Mr Martelletti suffered from a cold in both the London and Gold Coast events but it would be impossible for us to give credit to every athlete who has suffered from this common illness at key qualification events, much less calculate how much time allowance should be provided for this. The Athletics NZ selectors have the discretion to consider extenuating factors such as illness in the Nomination Criteria.

They have considered Mr Martelletti's illness and decided not to give credit for it and we do not see that as unreasonable in the circumstances.

27. It is also clear that there is a rational basis for Athletics NZ's decision not to nominate Mr Martelletti. Mr Martelletti was ranked 132<sup>nd</sup> (as at 22 July 2016) in relation to the marathon starting field for the Games based on his time achieved at the London Marathon this year. Even if he were to achieve a 2:14 time, which he has not done previously, he would still be ranked 69<sup>th</sup> amongst the Rio starting field. Again, we have considered Professor Hazelton's evidence as to the unpredictability of the top 16 placings based on rankings, but consider that the selectors are entitled to place weight on Mr Martelletti's world ranking in making its nomination decision.
28. Mr Seatter, in our opinion, displayed credible knowledge and experience and together with the other selectors is in a better position than us to make a determination as to nomination for this event. His evidence was corroborated by Mr Pfitzinger, himself an experienced and accomplished marathon runner.
29. For the above reasons, we unanimously agreed that the appeal cannot succeed and was accordingly dismissed.

Dated 28 July 2016



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**Sir Bruce Robertson**  
**Chairperson**