

**BEFORE THE SPORTS TRIBUNAL
OF NEW ZEALAND**

**ST 04/21
ST 05/21**

BETWEEN **OLIVIA HODGSON (ST 04/21)**

 Appellant

AND **ARCHERY NEW ZEALAND**

 Respondent

AND **NEW ZEALAND OLYMPIC COMMITTEE**

BETWEEN **OLIVIA SLOAN (ST 05/21)**

 Appellant

AND **ARCHERY NEW ZEALAND**

 Respondent

AND **NEW ZEALAND OLYMPIC COMMITTEE**

DECISION OF SPORTS TRIBUNAL

24 June 2021

Hearing 23 June 2021 by teleconference

Tribunal Sir Bruce Robertson (Chairman)
 Rob Hart
 Pippa Hayward

Present Olivia Hodgson, Appellant and Andrew McCormick, counsel
 Olivia Sloan, Appellant and Bevan Sloan, in support
 Dale Lightfoot and Alison Storey, for Archery NZ
 Tara Pryor, for New Zealand Olympic Committee
 Petra Baker, coach to both appellants in attendance

Registrar Neela Clinton

BACKGROUND

1. Olivia Hodgson and Olivia Sloan (the Appellants) separately filed appeals against Archery New Zealand's (ANZ) decision of 25 May 2021 not to nominate either of them for selection to the New Zealand team to participate at the Tokyo Olympic Games.
2. An internal appeal process was subsequently undertaken between the appellants and ANZ. On 11 June ANZ confirmed its position and advised the appellants they would not be nominated as they had failed to satisfy the essential New Zealand Olympic Committee (NZOC) criteria.
3. On 14 June Olivia Hodgson filed an appeal for non-nomination with the Tribunal. This was copied to Ms Olivia Sloan as a potential interested party, who in turn filed her own appeal with the Tribunal on 15 June. On 16 June, the Tribunal Chairman convened a teleconference and aware of the urgency made timetabling orders so the appeals could be heard without delay.
4. ANZ won a quota place in the "mixed doubles event" which provided two individual spots one male and one female, subject to a successful nomination and selection process. The individuals must qualify first to progress to the mixed doubles event. It is only the top 16 male and female combinations that compete in the mixed doubles event. The one female quota spot is contested by both appellants. No female archers have been nominated by ANZ to the NZOC for selection.
5. NZOC advised there was pressure from the international body to confirm the quotas places. World Archery seeks the return of the unused quota places to reallocate following an upcoming final Games qualification event if the places are not filled by New Zealand archers.
6. The hearing of the appeals took place by teleconference. The Tribunal heard from both Appellants, and for the Respondent, from Dale Lightfoot and Alison Storey and Tara Pryor, for NZOC.
7. In addition, the Tribunal considered the material filed by the parties, including:
 - Statements filed by Olivia Hodgson, Olivia Sloan, Petra Baker, Karen Moffatt-McLeod, Laval Falks, ANZ and NZOC
 - Various emails between the parties

- NZOC Nomination and Selection Policy
- Archery NZ Nomination Criteria
- World Archery Qualification System
- Archery scores for the appellants for 2019/2021.

GROUNDINGS OF APPEAL

8. The appeal was advanced upon the following grounds:
- a. the applicable nomination criteria were not properly followed and/or implemented; and
 - b. there was no material on which the nomination decision could reasonably be based.

THE SELECTION CRITERIA

9. The core document in making nomination decisions is ANZ's "Nomination Criteria" approved by the NZOC. Clause 4 outlines the nomination criteria which is made up of two parts. The relevant part "over-riding nomination criteria" is detailed in clause 4.2:
- (a) In determining whether or not to nominate an athlete to an archery event the selectors must be satisfied overall that the athlete:
 - (i) Is capable of achieving a top 16 placing at the Games in the archery event, with the potential to win an Olympic Diploma (top 8 placing).
 - (ii) Has a track record of sufficient quality and depth that Archery NZ believes demonstrates the Athlete will be competitive at the Games and will perform creditably in the Archery Event.
10. Clause 4.2 (b) sets out the key events during the period of 2019/2021 the selectors will assess the athletes' performance and results to determine if they have met the over-riding nomination criteria in cl 4.2(a) above. These were:
- Pacific Games, Apia Samoa 2019
 - World University Games, Napoli 2019
 - World Cup Stage 4, Berlin, Germany 2019
 - World Championships, 's-Hertogenbosch, Netherlands, 2019
 - Ready Steady Tokyo Olympic Test Event 2019
 - Archery NZ National Championships, Hamilton, 2021.
11. Clause 4.2 (c) refers to a schedule of world event scores in 2019/ 2021. The two tables summarise the scores of top 16 and top 8 ranked archers for each event and the

average score overall for top 16 and top 8 archers. These scores reflect the results and performances expected in order to satisfy the criteria set out in cl 4.2 (a).

12. Clause 4.3 provides that the selectors may take into account a range of factors when considering the over-riding nomination criteria, including other event performances and results.
13. If the selectors considered an athlete fulfilled the criteria, they could be nominated to the NZOC, but this does not guarantee selection. It is the sole discretion of the NZOC as to whether an athlete should be selected for any New Zealand Olympic Games team.

DISCUSSION

14. The issue for consideration is whether ANZ applied the nomination criteria correctly. If not which, if either, appellant should have been nominated by ANZ?
15. Both appellants argued that, if ANZ correctly applied the Nomination Criteria, their results showed they were both capable of a top 16 ranking because ANZ's method was flawed. In support the appellants proposed an alternative assessment of their performances they had attained both in New Zealand and internationally over the 2019/2021 period. There was no dispute the appellants are dedicated capable archers.
16. For the respondent, Mr Lightfoot replied that the appellants failed to satisfy the nomination criteria and were therefore ineligible to be nominated. ANZ referred to its over-riding nomination criteria outlined in its policy including the summary of ranking scores from key world events in 2019/2021.
17. In its view the appellants had failed to produce the results required to support a nomination. ANZ had collated all athlete scores from events held both domestically and internationally for 2019/2021, not just the key world events. This data showed an average score of 580 for Ms Hodgson's and 587 for Ms Sloan. While these scores fell below the standard required to satisfy the nomination criteria in ANZ's view, they were one factor considered in the athlete's overall performance in implementing the criteria.
18. While ANZ sought to advocate on behalf of its athletes, it is constrained by the criteria. ANZ noted that some of Ms Sloan's scores were not included as she was a junior

athlete at the time, and only qualifying results as a senior were relevant. Further that the trend data provided by the athletes while valuable failed to demonstrate the nomination criteria had been satisfied.

19. The Tribunal notes the additional information provided by the appellants and their supporters, including at the hearing. The first part of the criteria leaves little room for subjective opinions of athlete performances by the selection panel but rather an objective calculation of relevant archers' competition scores during the 2019 – 2021 period.
20. Both appellants provided detailed context to their performances and results at various events, including a revised a schedule of scores. The Tribunal considered these factors but concludes ANZ correctly implemented the criteria. The evidence produced by the appellants including the predicted performance information and statistics provided by the coach of both appellants was subjective and outside the stipulated objective criteria of clause 4.2.
21. The suggestion that the athletes scores were not an appropriate or sufficient indicator of performance alone fails to understand the role of the selectors in assessing the appellants scores against the criteria. The alternative assessment of the appellants results that is whether an athlete's performance in match play rounds of events and arrow average scores is more appropriate are outside the interpretation and assessment of criteria factors permitted.
22. The nomination criteria is clear in order to nominate either appellant they must be capable of achieving a top 16 place demonstrated at a key world event in 2019/2021. Neither appellant has produced evidence that they satisfied this criteria. The ultimate responsibility to know and understand the nomination criteria is with the athletes. Sporting bodies should do all they can to ensure that athletes, especially young athletes, fully understand the level of performance and results required to avoid confusion or athletes becoming disillusioned.
23. The Tribunal accepts the frustration of the athletes, coaches and supporters that the potential opportunity to compete at the Games for the first since 2004 may have been undermined by a criteria which does not align with their understanding and expertise of the sport. It also accepts difficulties regarding communication and the impact of Covid 19 may have been additional aggravating factors in this matter.

24. Ultimately, while acknowledging the appellants dedication, the Tribunal cannot conclude that ANZ's assessment was wrong. ANZ applied the appellants information against the criteria set and there is no material to suggest that ANZ failed to consider the appellants relevant scores and experience. Ultimately, the appellants' scores fall below the required level outlined in the nomination policy.

CONCLUSION

25. Having carefully assessed the available evidence and the written and oral submissions of all parties, the Tribunal concludes neither appeal can succeed.

Dated 24 June 2021



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Sir Bruce Robertson
Chairman