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Tribunal dismisses appeal against non-selection for NZ U20 Water Polo team

The Sports Tribunal dismissed an appeal by Kate Henderson against a decision of New Zealand Water Polo (NZWP) to not select her for the New Zealand Women's Under 20 World Championship team to compete in Greece.

Ms Henderson was in a squad of 14, from which a final team of 11 was to be selected. She was one of those not selected. She appealed on a number of grounds including: she was not afforded a reasonable opportunity to satisfy the selection criteria; the selection criteria were not properly followed or implemented; natural justice had not been followed through the process; and there may have been bias.

The Tribunal considered the procedure followed by the Selection Panel and concluded that on the evidence the selectors had approached the matter in a rational way and had brought their own experience to bear in a manner that was open to them. The Tribunal stated it did not feel able to challenge the reasoning of the Selection Panel as to its decision. The Tribunal then considered other matters including the manner in which the non-selection decision had been communicated, which the Tribunal considered unfortunate but did not think provided grounds for setting aside the decision.

The Tribunal found that there were deficiencies in relation to the appointment of the Selection Panel and in the decision-making process that was followed. Specifically:

- There was no evidence that the Panel was selected, as required, after the last AGM, which was held in March 2015.
- Only three and not four, as required, selectors were appointed.
- The Panel made and announced the selection decision before it was ratified by the Board.

It was argued that the deficiencies were technical or not material. The Tribunal stated it took a more serious view. NZWP laid down rules, relating to appointment of selectors and processes leading to the final selection decision, which are published and known or available to players seeking selection. They are entitled to expect that NZWP will follow and abide by its own rules.

All Tribunal members acknowledged there was force in the submission made by NZWP that the three selectors had consulted with others who had knowledge of the U20 players and that the views expressed by those persons were consistent with the views of the Panel so that the outcome of deliberations by any new expanded panel (if the matter were referred back) was likely to be the same. A previous Tribunal decision (*Sarah Her-Lee v Table Tennis New Zealand*, ST 08/14, 2 July 2014) was cited where the Tribunal said on its view *on the facts of that case* the fact that the decision was made by a quorum of two selectors, rather than the three prescribed, did not affect the validity of the selection decision because the Tribunal was not persuaded "that the appointment of a third selector would have altered the decision which was ultimately made".

A majority of the Tribunal, while acknowledging that the two cases are different, were content to follow this pragmatic approach in the present case, principally because they were satisfied that if a new Panel were convened it would in all likelihood be comprised of the existing

members and a fourth member and would arrive at the same decision. The dissenting member of the Tribunal in this issue was of the view that the issues raised were jurisdictional in nature and that the failure to appoint the selection panel correctly was a defect that could not be overcome so that the selection decisions were invalid.

The Tribunal by a majority decision dismissed the appeal.

The Tribunal made a number of concluding observations including:

This appeal was properly brought and Kate was entitled to have the decision not to select her to be considered by this Tribunal.

It is important that NZWP has clear, unambiguous selection rules and processes and properly and faithfully implements those selection rules and processes, both as to the establishment of selection panels and as to the decision-making processes and requirements.

Irrespective of the decision not to select Kate for the team that goes to the World Championships this year, the evidence is that she is a talented and dedicated water polo competitor with a future in the game and it is to be earnestly hoped that she will continue to pursue her ambitions in the sport.

The decision in this case is available from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Kate Henderson v New Zealand Water Polo* (ST 12/15). Copies can also be obtained directly from Brent Ellis, Registrar, Sports Tribunal of New Zealand (telephone: 0800 55 66 80; e-mail: info@sportstribunal.org.nz).