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MEDIA RELEASE 25 July 2014

Appeal against non-selection for women's 4x400m relay team unsuccessful

Monique Dell unsuccessfully appealed her non-selection for the women's 4x400m relay team in the Commonwealth Games commencing on 23 July 2014. The Sports Tribunal held an urgent hearing on 18 July. The Tribunal advised the parties later that day that the appeal was not successful and that it would issue its reasons for this decision later. The Tribunal issued its reasons for its decision to the parties on 23 July. These are being publicly released today.

Ms Dell was in the forefront of New Zealand women's 400 metre running for a number of years. In 2009 she ran a personal best of 51.88 seconds. However, she didn't compete as much in 400m over the next years but ran more in the 2013 season. She recorded creditable 400m times in July 2013 but these were outside the individual qualifying criteria, so her opportunity to compete at the Commonwealth Games was limited to the 400m relay.

A New Zealand women's 4x400m relay team, that Ms Dell was not part of, achieved a qualifying time allowing New Zealand to enter a relay team in the Games (the members of which were to be determined).

Athletics New Zealand (ANZ) nominated Ms Dell as one of six members of the Games relay team subject to her "proving form and fitness". ANZ nominated Kristie Baillie as first reserve.

On 4 June, The New Zealand Olympic Committee (NZOC) announced that Ms Dell will be confirmed as selected as the sixth member in the relay squad subject to form and fitness requirements being met. The NZOC also confirmed their selection of Ms Baillie as first reserve. On 4 June, ANZ advised Ms Dell she was required to meet a performance standard of running 400 metres in 54.25 seconds by 30 June 2014 to be confirmed as selected. However she failed to meet that standard. NZOC subsequently didn't select her and on 4 July announced that Kristie Baillie would be the sixth member selected for the relay team.

The Tribunal rejected arguments on behalf of Ms Dell that: she had been prejudiced because of uncertainty over whether she had been nominated; there was no power to impose a performance standard; imposing a performance standard was unreasonable; and the selection process was biased.

The Tribunal considered Ms Dell was nominated by ANZ with, what was in effect, a recommendation that her selection should be subject to a condition. The NZOC selectors weren't bound to select Ms Dell because she had been nominated, nor were they bound by any performance recommendation by ANZ selectors, nor were they prevented from imposing a performance requirement of their own. In the Tribunal's view the NZOC selectors selected Ms Dell, as a consequence of the ANZ nomination, but adopted as a condition a performance requirement, which they were entitled to do under the terms of the NZOC/ANZ agreement (dealing with nomination and selection). The NZOC selectors were entitled to adopt as the performance requirement a time specified by the ANZ selectors who had particular expertise and knowledge. The Tribunal considered the NZOC selectors made a conditional selection of Ms Dell subject to her achieving the specific performance standard by 30 June 2014 which she did not do.

The Tribunal was also satisfied that ANZ's communications to Ms Dell on 4 June fairly informed her. While it would have been preferable if ANZ's advice had been accompanied by written advice by NZOC of Ms Dell's conditional selection, the Tribunal's view is that the communications fairly informed Ms Dell of what was expected of her if she was to be confirmed as a member of the relay squad. Ms Dell didn't voice any disagreement at the time about the imposition of that requirement.

There was no bias in Ms Baillie's selection. Her selection as first reserve was not conditional as she had run the sixth fastest recent 400m time which in the selectors' view justified her selection as first reserve. Ms Baillie was correctly nominated and selected as first reserve and then, by Ms Dell's non-selection, correctly selected as the sixth member of the team.

The Tribunal didn't accept NZOC's argument that Ms Dell had not given NZOC valid notice of her appeal and that she was out of time to appeal.

However, the Tribunal was satisfied that Ms Dell was not prejudiced by the processes followed and decisions made by ANZ and the NZOC which in fact allowed her an extension of time to prove her fitness. Ms Dell's appeal against her non-selection therefore did not succeed.

The decision in this case is available from the website of the Sports Tribunal (www.sportstribunal.org.nz). See *Monique Dell v New Zealand Olympic Committee* (ST 09/14). 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).