

INTRODUCTION

1. On the 12th of March last this Tribunal issued a provisional jurisdictional decision in Ms Wealleans' appeal against the decision of Basketball New Zealand Inc (BBNZ) not to select her for the 2007 FIBA Candidates' Camp.
2. The provisional decision, which should be read in conjunction with this decision, determined:
 - (a) Ms Wealleans had a right of appeal under the constitution of BBNZ.
 - (b) Under Rule 12.1.3 of this Tribunal's rules, the only grounds available to Ms Wealleans are:
 - (i) That natural justice was denied; or
 - (ii) BBNZ acted outside of its powers and/or jurisdiction (i.e. acted ultra vires).
 - (c) Ms Wealleans' appeal was not brought within the time limit imposed by Rule 12.2 of the Tribunal's rules.
 - (d) There was power to extend the time in which to bring the appeal.
3. The Tribunal was prepared to extend the time to bring an appeal subject to Ms Wealleans satisfying it that she did have valid grounds for the appeal. She was invited to make further submissions as the Tribunal's provisional view was that Ms Wealleans was attempting to appeal the decision on its merits and not on the grounds of breach of natural justice or that BBNZ had acted ultra vires. This was notwithstanding her appeal ground that "natural justice had been denied".

Ms Wealleans' Submissions

4. In her further submissions Ms Wealleans contended that there had been a breach of natural justice because her "non-selection was based on some sort of bias action by members of the grading committee of BBNZ". She particularised her basis for the bias allegations which in effect amounted to an allegation that she had proved the merits of her selection and had demonstrated that she was superior to another person selected to attend at the camp. She submitted that because she was superior to the other applicant it followed that her selection was

not based on refereeing or unacceptable behaviour, and bias must therefore be the reason for her non-selection.

5. It is not necessary to go into Ms Wealleans' submissions in depth. She is in effect saying that there was no rational explanation for the decision other than bias. This is in effect a challenge to the merits of the decision. There is a high onus on an applicant to prove actual bias which is what Ms Wealleans is alleging. The Tribunal is of the view that Ms Wealleans, on the information she has provided, cannot discharge that onus.
6. In the circumstances the Tribunal does not intend to exercise the discretion it has to extend the time for bringing the appeal. There is no point in putting the parties to additional expense, and requiring Ms Wealleans to pay the appeal fee which has not yet been paid, by prolonging this matter further. Ms Wealleans cannot bring her appeal within the rules of this Tribunal. In the circumstances, including Ms Wealleans' personal circumstances, the filing fee is waived under Rule 12.3.2.
7. We add that, in coming to the view that Ms Wealleans should not be given leave to bring her appeal out of time, we have not overlooked and do not condone BBNZ's failure to respond to her several requests for information about the decision. Although, as we said in our 12 March decision on jurisdiction, BBNZ was not obliged to give reasons for its decision, Ms Wealleans ought to have received responses to her letters to the Chief Executive.

DECISION

8. The Appeal is dismissed as it was not brought within the time required by Rule 12.2 of the Tribunal rules.

Dated the 27th day of March 2007



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Hon B J Paterson QC
Chairman