

BETWEEN JOY WILLIAMS

Appellant

AND JUDO NEW ZEALAND

Respondent

**DECISION OF SPORTS TRIBUNAL
4 June 2014**

Tribunal: Sir Bruce Robertson (Chairperson)
Dr Jim Farmer QC (Deputy Chairperson)
Chantal Brunner

Hearing: Tuesday 3 June 2014 by teleconference

Present: Joy Williams, Appellant
John Wayne Howell, counsel for Appellant
Matt Cairn, in support of Appellant
Graeme Downing, Judo New Zealand
David Brown, Judo New Zealand
Brent Cooper, Judo New Zealand

Registrar: Brent Ellis

Introduction

1. Joy Williams appealed to the Sports Tribunal against a decision of Judo New Zealand (JNZ) to decline her application for nomination to the New Zealand Olympic Committee (NZOC) for selection for the 2014 Commonwealth Games.
2. On 8 May 2014, JNZ advised Ms Williams by email of her non-nomination.
3. On 10 May, Ms Williams advised JNZ of her appeal by email.
4. On 19 May, a without prejudice meeting was held between JNZ and Ms Williams.
5. On 20 May, JNZ advised Ms Williams that even after the meeting it would not be nominating her.
6. On 23 May, Ms Williams filed her notice of appeal with the Sports Tribunal.
7. Ms Williams requested that her appeal was heard and decided urgently due to tight time frames for selection for the Commonwealth Games. Names of athletes competing at the Games must be with the Commonwealth Games Federation by 11 June 2014. Further the NZOC, upon receiving an athlete's name for selection, requires at least three working days to decide whether that athlete is suitable for selection.
8. Ms Williams' grounds of appeal are:
 - That the applicable nomination criteria was not properly followed and/or implemented by the respondent; and/or
 - That the appellant was not afforded a reasonable opportunity by the respondent to satisfy the applicable nomination criteria; and/or
 - That there was no material on which the selection decision could reasonably be based.

Nomination criteria

9. The relevant nomination criteria are set out in Schedule B1 of the "2014 Glasgow Commonwealth Games Nomination Criteria for Individual Events New Zealand Judo Federation Incorporated" as follows:

4.1 Nomination Criteria: *The Judo New Zealand Nomination Criteria for nomination to the Games Team is made up of two parts:*

(a) the Over-Riding Nomination Criteria specified in clause 4.2; and

(b) the Specific Nomination Factors specified in clause 4.3.

4.2 Over-Riding Nomination Criteria:

(a) In determining whether or not to nominate an Athlete to a weight category in a Judo event(s) at the Games ("Individual Event(s)"), the NSO Selectors must be satisfied overall that:

i. the athlete is or are capable of achieving a top 6 placing in the Games in the Individual Event(s); and

ii. the Athlete has a track record of sufficient quality and depth that the NSO Selectors believes demonstrates the Athlete will be competitive at the Games and will perform credibly in the Individual Event(s).

*(b) **Evidence:** In determining whether or not the Athlete has met the Over-Riding Nomination Criteria for Individual Event(s) in clause 4.2(a) above, the NSO Selectors shall consider the Athlete if the Athlete:*

*i. is ranked in the top 6 on the International Judo Federation World Ranking List (the first version published after the 2014 Oceania Championships) for the relevant weight category (the top 6 places shall be determined by excluding athlete(s) from non-Commonwealth countries and where a Commonwealth country already has two athlete(s) in the top 6 excluding any additional athlete(s) from that country); **and***

*ii. during the period 1 December 2012 to 30 April 2014, placed in the top 5 in one of the Commonwealth countries International Opens (the top 5 places shall be determined by excluding athlete(s) from non-Commonwealth countries and where a Commonwealth country already has two athlete(s) in the top 5 excluding any additional athlete(s) from that country); **or***

iii. during the period 1 December 2012 to 30 April 2014, placed in the top 3 in any Oceania Judo Union event provided that if the Athlete placed 3rd, he/she did not lose to the 2nd place getter in the semi-finals in that event.

(c) If more than two Athletes meet the Over-Riding Nomination Criteria in clause 4.2, the NSO Selectors may elect to hold trials.

4.3 Specific Nomination Factors: *When considering the Over-Riding Nomination Criteria above, the NSO Selectors may also take into account any one or more of the following factors about an Athlete:*

(a) any other performances or results in competitions / events in addition to any events in clause 4.2(b);

(b) adequate fitness and a commitment to maintain a fitness and training programme as agreed with the applicable coach(es);

(c) demonstrated good behaviour, including a commitment to training and attendance at training camps;

(d) demonstrated compatibility with others in a team environment;

(e) demonstrated compliance with the rules of events and competitions;

(f) understanding and respect for the obligations that accompany being a member of a New Zealand team when competing at the Games, including respect for team members and support staff;

(g) willingness to promote Judo New Zealand in a positive manner;

(h) demonstrated ability to take personal responsibility for self and their results;

(i) proven ability to be reliable;

(j) any other factor(s) the NSO Selectors consider relevant.

...

Facts asserted by Ms Williams in support of her appeal

10. Ms Williams competes in judo in the under 63 kg weight class. At 12 May 2014 she was ranked 6th in the Commonwealth and 58th in the world in her weight class.
11. In 2012, Ms Williams set a personal goal to compete at the Games in judo and applied for nomination accordingly. She made plans to satisfy the criteria for nomination for selection to the judo team to compete at the Games.
12. Ms Williams says she understood clause 4.2(b) of the nomination criteria and understood clause 4.2(a) of the criteria in-so-far as:
 - She was required to prove to the selectors she could achieve a top six placing at the Games; and
 - Her entire track record would be considered to determine her ability to achieve a top six placing at the Games.
13. Between 2012 and April 2014 she trained and competed in national and international judo competitions in order to satisfy the criteria.
14. At various times she sought clarification and advice on the nomination criteria. On 7 January 2014 she contacted the selectors for advice on steps to take, and competitions to enter, to satisfy the criteria.
15. Between 8 and 14 January, three of the selectors provided advice in response to her request. This advice included competing in competitions outside Oceania and proving a top six ranking in the Commonwealth. Ms

Williams understood this advice to mean it was important she compete in competitions outside Oceania and she says she relied on this advice.

Issues

16. Both Ms Williams and her advisors and JNZ provided extensive, detailed and comprehensive material. At the telephone hearing there was some cross questioning (including fairly extensive questioning in the nature of cross examination by counsel for Ms Williams of one of the JNZ selectors) although this tended to become enmeshed in minutiae.
17. There were three critical issues requiring urgent assessment and consideration.
18. First the primacy of Clause 4.2(a) - the capability of achieving a top six placing and a track record of sufficient quality and depth that demonstrates the athlete will be competitive and perform credibly. This is the crucial test.
19. Clause 4.2(b) sets out evidence that the selectors will consider. But the fulfilment of these criteria in (i), (ii) and (iii) are not of and in themselves sufficient or conclusive. Ultimately, the selectors must still make a judgment based on the over-riding criteria set out in clause 4.2(a).
20. That priority assessment is acknowledged but complaint is made that substantial consideration was given by the selectors to the quality and strength of opposition in various contests and that the importance of this aspect was not properly communicated to her. The appellant argued this was given great emphasis if not priority but we are not persuaded that was the case. It was part of the total package of factors weighed but was not predominant. Having said that, we would add that in our view it was open to the selectors to consider the quality and strength of opposition as an important factor in determining the competitiveness of a candidate. Clause 4.3(j) specifically permits the selectors to consider any other factors they consider relevant when assessing the Over-Riding Nomination Criteria.

21. The second substantive issue is whether this factor was sufficiently communicated to athletes. We are not unsympathetic to the plea that athletes want and need to know what is expected and required. How in practice the degree of specificity is provided is not always easy to deliver in what must be a qualitative and not just a quantitative exercise.
22. We are satisfied that in the emails between various officials of JNZ and Ms Williams in January 2014 it was sufficiently signalled that the quality of her opponents in head to head results would be taken into account. It is a sensible and reasonable factor to be evaluated and we are persuaded that no detriment arose when an independent and objective assessment is made of all the circumstances. Full and open communication is critical but what occurred here was sufficient. Whether in future cases it would be good practice for a nominating sports organisation to attempt to provide a more extensive list of potential factors that might be taken into account is an issue that is beyond the legitimate scope of this Judgment. For present purposes, as indicated above, we limit ourselves to a finding that Ms Williams was on notice that the quality of the opponents that she fought was a factor that could well be taken into account when she determined which events to participate in.
23. There was an issue of equality of treatment. This is a valid point of principle. A process must be seen to be objective, independent and consistent. We have had detailed information about an athlete who has been nominated. We are clearly of the view however that the records and history are significantly different but even more importantly there were valid and compelling extenuating circumstances which were properly taken into account in his case and which do not exist in the present case.
24. Ms Williams raised an issue that the information the selectors relied upon to make their decision was incomplete and/or contained errors. We are satisfied that the selectors had available to them all relevant information and that the athlete was not disadvantaged in any way.
25. Games nomination is a demanding exercise carried out by expert panels. We have carefully scrutinised the operational approach and the various

complaints which are levelled at what occurred. We have no doubt that the thrust and effect was fair and judicious. It is not hard to suggest minor lapses or how things could have been done differently but none of the points raised had relevance or substance.

26. We found quite unhelpful comments from various participants about what was said over the last weekend. This is a highly charged matter which invariably dominates in a small sporting group.
27. Non-selection is a bitter blow for any athlete who has set their heart on going to a Games. However, we are not satisfied that there was any fundamental failure in the process, that the selectors did not have available to them all relevant information necessary to make their decision or that the decision reached was not reasonably available to the selection body on that evidence.

Decision

28. The appeal must be dismissed. We make no order as to costs.

Dated 4 June 2014



.....
Sir Bruce Robertson (Chair)