

BETWEEN **SCOTT WILSON (ST 05/14)**

Appellant

AND **NEW ZEALAND SHOOTING FEDERATION
INCORPORATED**

Respondent

BETWEEN **PAUL WILSON (ST 06/14)**

Appellant

AND **NEW ZEALAND SHOOTING FEDERATION
INCORPORATED**

Respondent

**INTERIM DECISION OF SPORTS TRIBUNAL ON JURISDICTION
Dated 21 May 2014**

Tribunal: Sir Bruce Robertson (Chairperson)
 Alan Galbraith QC (Deputy Chairperson)
 Rob Hart

Hearing: By telephone conference on 20 May 2014

Present: Scott Wilson
 Andrew McCormick, counsel for Scott Wilson
 Anna Kissick, assisting Andrew McCormick
 Paul Wilson
 Clark Pirie, counsel for New Zealand Shooting
 Federation
 Gavin Paton, New Zealand Shooting Federation
 Bevan Mehrrens, New Zealand Shooting
 Federation

Registrar: Brent Ellis

1. On 10 May 2014, Scott Wilson filed a Notice of Appeal with the Sports Tribunal against his non-nomination by the New Zealand Shooting Federation (NZSF) for selection in the New Zealand Shooting team for the 2014 Commonwealth Games in Glasgow.
2. On 13 May 2014, Paul Wilson similarly appealed to the Sports Tribunal.
3. These situations have some factors in common but in each case the NZSF has challenged their proceedings and argued that the appeals were out of time and thus the Sports Tribunal had no jurisdiction. Given this, the Tribunal decided to hear both appeals together on whether the Tribunal had jurisdiction.
4. The crux of the issue before us in this hastily convened hearing is the effect of clause 10 of an agreement between the New Zealand Olympic Committee (NZOC) and all national sports organisations (NSOs).
5. Clause 10 as relevant provides:

10.1 Nomination and Selection Appeals:

(a) Any Athlete who has completed and returned the Athlete Application to the NSO by the Application Date and an Athlete Agreement to the NSO by the Nomination Date may appeal against their nomination or non-nomination by the NSO in accordance with the procedures set out in this Agreement ("Nomination Appeal").

(b) Any Nominated Athlete may appeal against their selection or non-selection by the NZOC in accordance with the procedures set out in this Agreement ("Selection Appeal").

NOMINATION APPEALS

10.2 Grounds of Appeal: *A Nomination Appeal may only be made on any one or more of the following grounds:*

(a) That the applicable Nomination Criteria were not properly followed and/or implemented; or

(b) The Athlete was not afforded a reasonable opportunity by the NSO to satisfy the applicable Nomination Criteria; or

(c) The nomination decision was affected by apparent bias; or

(d) There was no material on which the nomination decision could reasonably be based.

10.3 Procedure for Nomination Appeals: *Subject to clause 10.4, the procedure for a Nomination Appeal shall be as follows:*

(a) An Athlete wishing to appeal must give written notice of appeal ("Notice of Nomination Appeal") to the Chief Executive of the NSO within 2 days of the Nomination Date.

(b) Within 2 days of receipt of the Notice of Nomination Appeal, the NSO may, in consultation with the Athlete, arrange a meeting between the NSO and the Athlete and their representatives (if any) at which meeting the parties shall endeavour to resolve the Nomination Appeal by discussion. Such a meeting, which may be held in person or by telephone, shall be held as soon as possible and, in any event, no later than 10 days after the date the Notice of Nomination Appeal is received by the NSO.

(c) Any meeting conducted in accordance with clause 10.3(b) shall be held on a confidential and without prejudice basis. In particular, the content of any matters discussed during such meeting may not be used by either party in the hearing of the Nomination Appeal.

(d) If the Nomination Appeal is not resolved at the meeting referred to in clause 10.3(b) or otherwise and the Athlete wishes

to proceed, the Athlete must file a Notice of Appeal with the Sports Tribunal and serve a copy of such Notice of Appeal upon the Chief Executive of the NSO within:

i. 5 days of the date of the meeting referred to in clause 10.3(b) (if held); or

ii. 10 days of the Nomination Date,

whichever is the later.

(e) A copy of such Notice of Appeal shall, at the same time as it is filed with the Sports Tribunal and served upon the NSO, be served upon the Secretary General of the NZOC.

(f) Nomination Appeals shall be determined by the Sports Tribunal in accordance with its rules.

(g) Any party to any decision of the Sports Tribunal under clause 10.3(f) may appeal such decision to CAS in accordance with its rules.

(h) The decision of CAS shall be final and binding on the parties.

(i) No party to a Nomination Appeal may institute or maintain proceedings in any Court or Tribunal other than as specified in this Agreement.

6. Nomination date is defined in Clause 1.1 as follows:

"Nomination Date" means the date the NSO submits particulars of each Athlete to the NZOC for consideration for selection to the Games Team or the date by which the NSO notifies the Athlete that he or she has not been nominated to the NZOC.

7. Each of these appellants filled out and signed an "Athlete Application Form For Nomination / Selection" which specifically provided:

(a) I have been provided with access to a copy of the Agreement between the NZOC and my NSO ("NZOC/NSO Agreement"), the NZOC Selection Policy and, once confirmed, the Nomination Criteria for my sport for the Games, via the NZOC website www.olympic.org.nz, and I agree to comply with and be bound by the terms outlined in these documents.

8. The respondent's position is simple. By correspondence of 13 April 2014 each appellant was advised of non-nomination. They had to give written notice of appeal within two days and this had not occurred. Accordingly the appeal process had not activated and the matter was at an end. Reference was made to the decision of this Tribunal in *Mudford v NZSF* (SDT 05/06, 28 February 2006).
9. The appellants contend that they were misinformed and misled as to the relevant triggering date for an appeal, NZSF had always known they would appeal if not nominated, there was reasonable grounds for them to believe that the relevant date would be 15 May 2014 and that it would be inequitable and unconscionable in the circumstances for them to be denied "a day in court".
10. The matter could have been entirely avoided if the NZSF had included in the communication of 13 April the simple statement that there was a right of appeal against non-nomination notice of which must be given within 48 hours. Rights of appeal are a crucial part of the applicable arrangements. They should not be viewed as an undesirable adjunct to be avoided if at all possible.
11. We have scrutinised the charge and counter charge alluded to in this matter, some of it expressed in unfortunately acrimonious tones. It is unnecessary and would be unhelpful to catalogue it

all unless this issue is to be taken further in which case we will provide detailed reasons for our decision.

12. Both of these men wanted concessional treatment so that they could be nominated for Glasgow. They were not kept properly informed of all the relevant steps including a vital step in the nomination process as early as February 2014. They were left with a reasonable expectation that 15 May was the crucial date. Paul Wilson was specifically assured that there was no immediacy requirement which could affect him. They have each suffered real and substantial detriment if their appeals are not considered.
13. Justice, equity and common sense demand that they are not denied the opportunity to pursue appeals. An unacceptable position has emerged which with sensible communication could, and should, have been avoided.
14. The history of dealings, particularly a number of positive representations on behalf of NZSF, has prejudiced each of the appellants such that NZSF is estopped from asserting expiry of the appeal period at midnight on 15 April. That necessarily distinguishes the present facts from those considered in Mudford.
15. The integrity of the agreement between NZOC and NZSF is important but so also is the fairness and integrity of the relationship between NZSF and its own members.
16. We are satisfied the only proper way forward is to treat today as the nomination date and the date on which the Notice of Nomination Appeal has been received under clause 10.3(a).
17. In light of the history we would expect that a meeting should now take place as allowed for under clause 10.3(b). If that does not resolve matters a hearing on the merits can proceed as allowed for in a timely manner.

Dated 21 May 2014



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Sir Bruce Robertson
Chairperson