

**BEFORE THE SPORTS DISPUTES TRIBUNAL
OF NEW ZEALAND**

SDT/5/04

Selection appeal

BETWEEN BRANT IAN WOODWARD

Appellant

A N D THE NEW ZEALAND SHOOTING FEDERATION INCORPORATED

Respondent

Tribunal: C H Toogood QC (presiding member)
 N R W Davidson QC
 A Greenwood

Representation: Appellant in person
 Graeme Hudson for respondent
 Barry Maister for New Zealand Olympic Committee

Pre-hearing conference: 8 and 11 April 2004; 13 May 2004 (by telephone)

Decision: 9 June 2004

DECISION OF TRIBUNAL

Introduction and background

[1] On 7 April 2004, Brant Ian Woodward appealed to the Tribunal against a decision of the New Zealand Shooting Federation Appeals Committee ("the Appeals Committee") dated 5 April 2004 declining his appeal against, in effect, the failure of the New Zealand Shooting Federation ("the Federation") to provide him with a reasonable opportunity to be nominated for selection for the New Zealand team for the 2004 Olympic Games in Athens.

[2] It was acknowledged by Mr Woodward that he had not met the qualifying criteria for selection for Athens 2004, but he complained about the way in which the Federation conducted designated shooting matches at which competitors were provided with the

opportunity to qualify for selection. In particular, Mr Woodward alleged that the Federation failed to adhere to published Shoot Formats. He claimed that, as a result, he was not given an equitable or fair opportunity to qualify.

[3] The matter was then extremely urgent, having regard to the impending departure overseas, during Easter, of the Federation's Chief Executive, Mr Graeme Hudson. Mr Hudson was intending to attend a meeting of the International Shooting Sport Federation ("the International Federation") in Athens the following week.

The return of the third New Zealand quota position

[4] The particular concern expressed by Mr Woodward was that, as a result of only two New Zealand shooters qualifying for Olympic selection, a third quota position allocated to New Zealand for competition at the Athens games would be "returned" to the International Federation for allocation to another competing nation. Mr Woodward's concern was that unless his appeal could be dealt with urgently, irrevocable steps would be taken either by the New Zealand Federation or the International Federation to reallocate the quota thereby depriving him, or any other New Zealand shooter, of an opportunity to qualify for the third spot initially allocated to New Zealand.

Pre-hearing conference 8 April 2004

[5] In accordance with the Tribunal's rules, a pre-hearing conference was convened and conducted by telephone conference on 8 April. The Acting Chairperson and Deputy Chairperson conducted the conference on behalf of the Tribunal; Mr Woodward represented himself; the respondent Federation was represented by Mr Hudson; and Mr Barry Maister represented the New Zealand Olympic Committee, which had been named as an Interested Party.

[6] In the course of discussing Mr Woodward's application for an urgent hearing, it became apparent that steps had already been taken by the New Zealand Federation to return the quota to the International Federation for redistribution. The Chairperson and Deputy Chairperson raised with Mr Woodward the difficulty which would confront him, in pursuing the appeal, if the Tribunal was unable to grant him any effective remedy.

[7] It was indicated by Mr Hudson that, although he believed the third position in the quota was not recoverable, the meeting of the International Federation in Athens which he was due to attend may have been in a position to defer redistribution of the quota, so preserving the possibility that it might be reallocated to New Zealand. After discussion, it was agreed that the pre-hearing conference would be adjourned to 11 April 2004 while Mr Hudson, on behalf of the New Zealand Federation, made enquiries of the International Federation to determine the status of the quota.

Inquiry of International Federation

[8] Consistently with his undertaking to the Tribunal, Mr Hudson immediately sent an email message to the Secretary General of the International Federation, Mr Horst Schreiber, in the following terms:

Horst Schreiber
Secretary General
ISSF

Dear Horst,

You will recall New Zealand relinquished one Trap 125 Men's quota, confirmed by Annex C that was counter signed by the New Zealand Olympic Committee.

One of our shooters appealed against the selection process and that hearing was heard and dismissed on Monday 5th April.

On the morning of the 6th, I advised Franz of this decision and said the quota which was being held could now be released.

The shooter has today lodged an appeal to the Sports Disputes Tribunal of New Zealand against the decision of the Federation Board of Appeal.

In a preliminary hearing this afternoon I was asked by the Chairman of the Tribunal, if I would contact the ISSF to investigate the possibility that this quota could be held open for New Zealand until the Tribunal could hear the appeal and make a decision, which could require some additional form of selection process.

I am aware the Secretariat will be working on a proposal for re-allocation of the returned and wild card quota's for presentation at the Executive meeting on the 15th and then to the Council on the 16th.

Can you please advise if the ISSF will stick rigidly with these dates or is there a possibility for a Trap 125 Men's quota to be held open. If it can be held open, could you please advise what time frame would apply.

I will phone you tonight to further discuss this matter.

Regards

Graeme Hudson
CEO
New Zealand Shooting Federation

[9] Mr Schreiber responded promptly on Good Friday, 9 April as follows:

Dear Graeme [sic],

thank you for your emails.

We were so happy and received with great gratitude and delight the release of your quota place because as you know we have 36 countries without any quotas and only 20 wild cards

and returned quotas for redistributions. Therefore we redistributed your quota as a wild card and made one country extremely happy to send at least one athlete to the Olympic Games in Athens to participate in the shooting events. We took a country from Eastern Asia since the three countries from Oceania that do have MQS shooters have already a quota place.

It is therefore not possible to hold the quota open for New Zealand anymore since it was released according to our rules by the NOC of New Zealand.

I applogize [sic] that I can not help you anymore in this case. Looking forward seeing you in Athens, I remain

with best regards

Horst G. Schreiber

ISSF Secretary General

Pre-hearing conference 11 April 2004

[10] The pre-hearing conference was reconvened at 11.00 am on Easter Sunday, 11 April. Mr Woodward acknowledged, in view of the response from the International Federation, that the third quota position was no longer available for reallocation to New Zealand. He also fairly and properly acknowledged that the nominations which the New Zealand Federation had made to the New Zealand Olympic Committee for the two quota places which remained available to New Zealand would not be the subject of challenge. He confirmed that he would not seek the reallocation of these two places in the event of a successful appeal on his part.

[11] In effect, therefore, Mr Woodward recognised, reluctantly but realistically, that the Tribunal would not be in a position, even if his appeal were successful, to grant him any effective remedy which would entitle him to, or provide him with an opportunity to, qualify for nomination/selection for the New Zealand Olympic team for Athens 2004. It followed that, at the very least, his application for an urgent hearing would not be pursued.

[12] Nevertheless, Mr Woodward maintained that there were issues arising in the appeal in respect of which he maintained a genuine sense of grievance. He said that if his appeal was upheld, even in part, the Tribunal's views would be instructive and helpful for the conduct of nomination/selection procedures in respect of future Commonwealth and Olympic Games. He considered, therefore, that he should be entitled to pursue his appeal, although not on an urgent basis.

[13] Mr Hudson argued on behalf of the Federation that the Tribunal ought not to hear an appeal in the circumstances, given that the process would be time-consuming and arguably expensive and of little practical value. In particular, Mr Hudson pointed out that the nomination/selection processes for future Games may not be identical to those adopted for Athens 2004 and that there may not in fact be any value in receiving the Tribunal's views on what had happened in the processes followed for Athens 2004.

[14] Mr Hudson helpfully suggested, however, that Mr Woodward should take the opportunity to address his concerns informally with the Federation with a view to his being provided with a measure of comfort that future procedures would be followed in a manner consistently with appropriate requirements.

[15] On the basis that Mr Woodward would be provided with an opportunity to address the Federation's executive meeting scheduled to be held on 4 May 2004, the pre-hearing conference was adjourned tentatively to 8.30 am on Thursday 13 May 2004.

Email exchanges after 11 April

[16] There were subsequent exchanges of emails between Mr Woodward, the New Zealand Federation and other interested persons. A number of these were copied to the Acting Chairperson. It appeared that Mr Woodward was not convinced that there was any realistic prospect of an informal resolution of his grievances and he indicated some reluctance to attend the executive meeting on 4 May.

[17] As a result, on 21 April the Acting Chairperson sent an email message to the parties (including NZOC) and other interested persons who had recently received copies of email exchanges between Mr Woodward and Mr Hudson in the following terms:

Good afternoon

I have received copies of the recent email exchanges between Graeme and Brant, set out below. I am not sure that it is strictly appropriate for the Tribunal, through me, to be copied in on what are essentially internal exchanges. Further, it would not be proper for the Tribunal to be giving any directions on this matter at this stage. However, the following observations may assist.

Now that it is clear, and is acknowledged on all sides, that the Tribunal would not be in a position to provide any effective remedy for Brant, even if the appeal was upheld, there is strictly speaking no live issue upon which the Tribunal could adjudicate. In an effort to assist, however, we mentioned during the second pre-hearing conference on Easter Sunday that the Tribunal did have a discretion, in appropriate cases, to make recommendations to sports organisations or the NZOC in relation to appeals, in order to assist future conduct. This is a purely discretionary power and I have no doubt the Tribunal would exercise it sparingly. It is likely also that it would be exercised only in a case where it was found that the parties themselves had made genuine and serious efforts to resolve their differences but had failed to do so, and where there were compelling reasons for the Tribunal to act. It is not the Tribunal's function to pass comment on every complaint a person may have about his or her sports organisation, no matter how justified the complaint might be.

There is a further consideration which should not be overlooked. Although the Tribunal provides a cost-effective forum for the resolution of sports disputes, the presentation of any case before the Tribunal requires the participants (and, in particular, the sport whose procedures are in question) to be put to considerable inconvenience and possibly some expense. Unless the issues to be presented are important, and unless the Tribunal was in a position to provide effective assistance (as opposed to merely expressing a view) the proceedings before the Tribunal could amount to a substantial and unwarranted drain on resources which would be far better directed by the sport to the wider benefit of its members. For these reasons, although the Tribunal would normally not make any award of costs as

between parties, there is provision within the Tribunal's rules to make an award of costs where a party is considered to have acted unreasonably in bringing, pursuing, or resisting any proceedings before the Tribunal.

I mention these matters in order to reinforce the expectation of the Tribunal, as expressed at the pre-hearing conference on Easter Sunday, that with a full and frank discussion between the interested parties in an atmosphere of goodwill, the issues which have arisen in respect of the Athens 2004 nominations ought to be capable of resolution with a view to ensuring an effective nomination process for the 2006 Commonwealth Games.

Resumption of pre-hearing conference on 13 May 2004

[18] The Registrar of the Tribunal received an informal indication that the parties did not appear to have resolved their differences. Accordingly, the pre-hearing conference resumed on 13 May 2004.

[19] Following discussion, it was agreed that the hearing of Mr Woodward's appeal would be adjourned indefinitely, to be brought on again for consideration, by notice, if necessary. Mr Woodward undertook to indicate to the Registrar of the Tribunal, by 5.00 pm on Friday 28 May 2004, whether he wished to pursue his appeal. It was agreed, and confirmed in Minute No 2 of the Tribunal dated 13 May 2004, that if Mr Woodward did not provide that notification by then, or if he indicated before then that he did not wish to pursue his appeal, the Tribunal would formally dismiss the appeal.

No notification appeal to be pursued – appeal dismissed

[20] The Tribunal did not receive from Mr Woodward within the time specified any notice that he wished to continue with the appeal.

[21] Accordingly, the appeal is dismissed. There will be no order as to costs.



Acting Chairperson, for the Tribunal