

BETWEEN **PIERA HUDSON**

 Appellant

AND **SNOW SPORTS NEW ZEALAND**

 Respondent

AND **NEW ZEALAND OLYMPIC COMMITTEE**

 Interested Party

**REASONS FOR DECISION OF SPORTS TRIBUNAL
01 FEBRUARY 2022**

Tribunal Sir Bruce Robertson (Chairman)
 Warwick Smith
 Pippa Hayward

Present Peira Hudson, Appellant
 Tim Castle, counsel for Appellant
 Fiona and John Hudson, Appellant's parents
 Simon Wi Rutene, Appellant's witness
 Nic Cavanagh, CEO of the Respondent
 Aaron Lloyd and Reid Hastie, counsel for Snow Sports NZ
 Tara Pryor, New Zealand Olympic Committee

Registrar Neela Clinton

1. Piera Hudson appealed against her non-nomination for the 2022 Beijing Winter Olympic Games due to commence in February 2022.
2. The Tribunal heard the appeal under urgency by teleconference on 28 January 2022. Due to the time constraints, the Tribunal issued its decision dismissing the appeal on 28 January and advised that the reasons would be provided as soon as possible. These are the Tribunal's reasons for its Decision on the basis of extensive written material and the submissions at the oral hearing.

Background

3. Piera Hudson was advised by SSNZ on 12 January of its decision not to nominate her for selection. The appellant exercised her right to appeal and provided additional information in support of her nomination. Following the internal appeal process, SSNZ confirmed its position not to nominate her for the Games.
4. On 26 January an appeal for non-nomination was filed with the Tribunal, with a teleconference convened on 27 January at 4.30pm. Prior to the teleconference, there was ongoing dialogue between the parties and concern that any delays hearing the appeal may compromise the appellant's travel arrangements and event preparation if her appeal was successful.
5. The urgency to determine the appeal arose because the appellant, based in Europe, would have to travel to Beijing and comply with Covid-19 requirements to ensure she had sufficient preparation time as the course opened on 31 January, with her event scheduled on 7 February. Given these time constraints, the Tribunal undertook to determine the appeal the following morning at 9.00am on Friday 28 January.
6. Despite the limited time between the appeal being filed on Wednesday and the hearing on Friday a substantial amount of material was filed by the parties. The oral submissions were also very comprehensive. Information considered by the Tribunal included:
 - Statements filed by Piera Hudson, Simon Wi Rutene, Erika Harris, Dieter Bartsch
 - Various emails between the parties
 - SSNZ Nomination Criteria
 - Appellants racing results and additional supporting information
 - International Ski Federation Qualification System for Beijing 2022
7. The appellant who competes in alpine skiing slalom and giant slalom events argued that she should have been nominated because she had satisfied the criteria. She submitted that she was treated unfairly by selectors who lacked alpine expertise particularly when compared with other selected athletes, and their failure to consider her extenuating circumstances relating to covid disruption and injuries meant she was capable of a competitive performance at the Games.

8. SSNZ argued the appellant had failed to satisfy the requisite criteria and was therefore ineligible to be nominated. SSNZ referred to the nomination criteria outlined in its policy, which the selectors assessed against the appellant's results from key events during the qualifying period of 2020/22. Having assessed all the information provided by the appellant, SSNZ said it was unable to support the appellant's nomination because she had not demonstrated her capability to achieve a top 16 placing.

Nomination Criteria

9. The core document at issue is Beijing 2022 Olympic Winter Games Nomination Criteria for Snow Sports Events. The relevant clauses state:

Over-Riding Nomination Criteria and Specific Discipline Nomination Factors

6.1 Over-Riding Nomination Criteria: In determining whether or not to nominate an Athlete (or team of Athletes) to a Snow Sports Event, the Selectors must be satisfied overall that the Athlete (or team of Athletes):

(a) has demonstrated they are capable of achieving a top 16 placing at the Games in the Snow Sports Event, with the potential to win an Olympic Diploma (top 8 placing); and

(b) has (or have) a track record of consistent performance improvement, which Snow Sports NZ believes is of sufficient quality and depth such that the Athlete or (team of Athletes) will be competitive at the Games and will perform creditably in the Snow Sports Event

6.2 Specific Discipline Nomination Criteria: In determining evidence whether or not the Athlete (or team of Athletes) satisfies the Over-Riding Nomination Criteria in clause 6.1 above, the Athlete (or team of Athletes) must achieve the following:

(a) Specific Discipline Nomination Criteria for Alpine Skiing Events (Individual)

i. be ranked in the World Top 40 in the Discipline they are seeking nomination, according to at least one of the Discipline FIS Points Lists at www.fis-ski.com published between 1 October 2021 and 16 January 2022; **and**

ii. have achieved a top 16 placing (in an Olympic Context) in the Alpine Skiing event they are seeking nomination, in at least two Key Events during the Qualification Period;

Discussion

10. The issues for consideration were whether SSNZ had correctly applied the criteria, acted reasonably and fairly in assessing the appellant's results and other relevant circumstances. In other words, was the selectors' decision not to nominate the appellant reasonable based on the information provided.

11. Selectors determine if an athlete meets the overriding criteria in clause 6.1 by assessing specific criteria for alpine skiing events based on two factors in clause 6.2:
 - Is the athlete ranked in the World Top 40 of their event; **and**
 - Have they delivered two Top 16 performances in Key Events during the Qualification Period.
12. It was accepted that the appellant satisfied the first limb as she has a world ranking of 33rd in Giant Slalom but the focus became whether she satisfied the second limb which required two top 16 results at either a FIS World Ski Championships or FIS World Cup event.
13. As to whether the appellant had satisfied this second limb, issues were raised regarding her results such as 12th placing in 2021 Parallel Slalom FIS World Champs, and extenuating circumstances which if taken into account proved her performances were tracking upwards and she was top 16 capable. The appellant referred to selected athletes in different disciplines and their nomination criteria and her disadvantage in the application of the “Clean List”. The appellant argued that the selectors’ ability to review her performances and assess her results was compromised because the selectors didn’t have the relevant alpine expertise. She felt disadvantaged by fellow athletes who had been selected by their coaches when they had comparable performances levels to her. The appellant said the selectors failed to fully canvass her performances or make enquiries regarding her extenuating circumstances. She said covid related disruptions, injuries and issues concerning lack of access and support for training which impacted her performances were not adequately taken into account by the selectors.
14. SSNZ said based on the appellant’s results, she did not satisfy the criteria because she failed to achieve the requisite top 16 placing in two key events. Although it had considered the appellant’s additional information regarding covid related challenges and injuries when the selectors reassessed her results and performances, they were not satisfied she met the criteria of being top 16 capable at the Games.
15. The appellant’s results showed she had competed in 16 key events during the 2020/2022 qualification period but had either finished outside the top 30 or wasn’t able to finish. The appellant was advised of the selectors’ non-nomination decision on 16 January and following her advice that she wish to appeal, provided information in support of her nomination on 17 January. The Tribunal notes the discussion whether it could be considered “extenuating circumstances” under the policy or was in fact “new information”. Nonetheless, the Tribunal accepts this additional material was considered by the selectors on 17 – 18 January when it reassessed her nomination. The selectors having reviewed this information in support of her nomination were not compelled to change their view that she satisfied the criteria, and the matter came before the Tribunal for determination.
16. At the hearing it was accepted the appellant’s performances were consistent, but SSNZ said there was no basis to suggest they demonstrated an upward trajectory as submitted by the appellant to prove top 16 capability. There was no top 16 placing or

even a top 30 performance in any of the 16 events attended during the qualifying period. The information relating to covid-related disruptions, impacts on training, and injuries which caused the appellant to miss other key events was reviewed by the selectors but did not demonstrate she could have achieved results at the top 16 level. The Tribunal is not satisfied the selectors were unreasonable in their assessment or there was any bias or unfairness in assessing the appellant's information.

17. The Tribunal notes the selectors were not persuaded by the appellant's evidence that her 12th placing at the 2021 Parallel Slalom FIS World Champs demonstrated her capability. Mr Wi Rutene argued that this was a comparative result for consideration because the field of competitors would be the same as giant slalom or slalom events. Nor were the selectors convinced by the appellant's recent World Cup result where she tied with 2018 Olympic bronze medalist or her results from Continental Cup and Far East Cups, events outside the "Key Event" detailed in the criteria. These results it was said demonstrated she could perform at the highest level and showed an upward trend in performances.
18. The Tribunal accepts that the selectors were not swayed by this comparative analysis given the criteria does not provide scope for subjective opinions of an athlete's potential capability but requires an objective assessment of the appellant's performance at the key alpine skiing events during the qualification period. The selectors were not required to consider other events outside key events or outside the qualifying period. The Tribunal accepts an objective assessment of the appellant's information by the selectors did not demonstrate that she was capable of top 16 placing.
19. The Tribunal notes the appellant's contention she is disadvantaged by SSNZ implementation of the "clean list" and she should have been nominated as athletes with comparable performances to her own had been selected. As advised these athletes were competing in different disciplines, subject to different criteria, under a differing governing body, and not SSNZ. The Tribunal accepts this was not a relevant consideration. The appellant also raised the point that as a number of athletes were not vaccinated and would not be able to attend the Games, she could place within top 30 competitors with a chance of a top 16 result. While the Tribunal acknowledges the context provided by the appellant and those advocating on her behalf, the Tribunal considers these factors were not relevant considerations in implementing the criteria.
20. The Tribunal is sympathetic to the appellant's position and notes her dedication to a sport that comes down to the finest of margins, where a mere hundredth of a second can be the difference of finishing in the top 30. It has no reason to doubt her contention and that of her witnesses in support that she is capable of success with the right conditions on any given day. However, the nomination criteria provides little subjective discretion in this regard and requires the athlete to demonstrate their ability by producing top 16 results at key events.
21. The Tribunal finds the criteria are clear and that the SSNZ selectors had not erred in their assessment or were unfair in reviewing the appellant's performances and results. While the Tribunal found the appellant submissions articulate and acknowledge her

dedication ultimately, she was unable to prove her capability to satisfy the nomination criteria. Neither the appellant's results nor additional information persuaded the selectors that she was top 16 capable. The Tribunal finds this assessment was reasonably available based on the evidence. Accordingly, it had no option but to dismiss the appeal.

Dated: 01 February 2022

A handwritten signature in black ink, appearing to read 'Bruce Robertson', with a long horizontal stroke extending to the right.

Sir Bruce Robertson
Chairman