

**BETWEEN**                      **LUCAS MURPHY**  
  
   **Appellant**

**AND**                              **CYCLING NEW ZEALAND**  
  
   **Respondent**

**AND**                              **FINNEGAN MURPHY**  
   **JACK DRAGE**  
   **JONTY HARRIS**  
  
   **Interested Parties**

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**REASONS DECISION OF SPORTS TRIBUNAL  
24 JULY 2024**

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**Hearing**                      9 July 2024 via Teams

**Present**                      Lucas Murphy, Appellant  
   Mark Hammond, counsel for Appellant  
   Paul David KC and Maria Clarke, counsel for Respondent  
   Ryan Hollows, Cycling New Zealand  
   Richard Murphy for Finnegan Murphy  
   Jonty Harris

**Tribunal**                      John Macdonald, Chair  
   Pippa Hayward

**Registrar**                    Helen Gould

1. Mr Murphy (the Appellant) filed an appeal against the decision of Cycling New Zealand (CNZ, the respondent) not to nominate him for selection to the U23 Individual Time Trial (ITT) event at the 2024 UCI World Championships to be held in Switzerland in September 2024.
2. The decision was made by the Cycling New Zealand Olympic Nomination Panel which was convened by Mr Hunn, who has had 18 years' experience as a CNZ selector and convenor of its selection panels. The selectors on the Panel were Mr Thomson, a former international road and track racer; Mr Geater who had a lifelong career in professional cycling at World Tour level as a road cycling mechanic and is Director Sportif and Mr Peterken who represented New Zealand at the Barcelona Olympics in the road race and is a former New Zealand Elite Road race champion.
3. In respect of the appeal the issues for determination were whether:
  - (i) CNZ had properly followed and/or implemented the General Selection Regulation and/or the applicable Schedule;
  - (ii) The rider was not afforded a reasonable opportunity to satisfy the requirements of the General Selection Regulation and/or the applicable Schedule; and
  - (iii) There was no material on which the non-selection decision could reasonably be based.
4. A virtual hearing was held on 9 July 2024 under urgency.
5. The Tribunal assessed the evidence and the oral submission of all parties and concluded that none of the grounds of appeal were made out. The Tribunal therefore dismissed the appeal and notified the parties.
6. What follows are the reasons for that decision.

### **First ground of appeal**

*Failure to properly follow or implement the General Selection Regulation and Schedule 2*

#### Appellant:

7. The appellant submitted that under s 4.2.1 of the Schedule, the respondent failed to consider all the appellant's performances in the competitions referred to in Table A, specifically the Oceania Champs (which was his strongest performance). The

appellant pointed to the lack of any mention of the Oceania result in the minutes of the selection meeting or in the Selection Matrix. The appellant argues that the selectors only considered the National Champs when they should also have considered the Oceania result.

8. The appellant further submitted that under s 2.1 of the Schedule the selectors failed to properly implement their selection objectives for the World Champs, one of which was to provide riders with the opportunity to show their potential for medal success in Elite classes for future World Champs and other international competitions.
9. Finally, the appellant submitted that the selectors failed to comply with clause 8 of the General Selection Regulation as regards injury/illness. This stemmed from a high-speed crash that the appellant had in a race three weeks prior to the Nationals. It was a crash witnessed by one of the selectors.

Respondent's reply:

10. The respondent submitted that the selectors did consider the appellant's performance at the Oceania's and properly implemented the selection objectives.
11. It also submitted that the selectors were not obligated to enquire about the appellant's injury. Following the wording of clause 8, the obligation to enquire only arose if in their discretion they decided to take any injury affecting the rider into account in considering selection.

Analysis:

12. In the written statements of both Mr Geater and Mr Peterken it was stated that the appellant's Oceania results had been taken into account when going through the selection process. The Tribunal accepts that, given that each selector gave evidence of constantly following the results of all riders, and this is despite there being no mention of the Oceania results in the minutes of the selection meeting or in the Selection Matrix.
13. The selection objectives in Schedule 2.1 were to obtain as many medals as possible **and** (in 2.1.3) to provide riders with the opportunity to show their potential for medal success in Elite classes for future World Championships and other International Competitions.

14. The word 'and' in clause 2 when read together with clause 4 (which refers to priority issues) means that the selected riders must first be able to obtain medals at the 2024 World Road Championships and ,if they can do that, then they can be provided with the opportunity to show their potential in future World Championships and other International Competitions. This reading means the consideration of medaling in the 2024 World Championships is the more important criterion.
15. The Tribunal notes that in clause 2.1 that the objectives jump from 2.1.1 to 2.1.3 and it wonders whether an objective of clause 2.1.2 has been removed without correcting clause 2.1.1 to ensure that clauses 2.1.1 and 2.1.3 are read as alternatives (that is, clause 2.1.1 finishes with the word 'or'). The Tribunal is of the view that this would make more sense of clause 2.1.
16. Mr Geater's evidence that being 'competitive' meant placing in the top 5 at World Championships is surprising to the Tribunal given the analysis provided by the appellant that results at the World Championships over the past 20 years showed the average placing being 23rd with only three finishing in the top 5. That analysis also showed that of those who had previously gone to the World Championships, most had finished either first or second at the Nationals; the appellant finished second but was not selected.
17. As it is, given that the selectors had decided that the appellant was unable to show that he had the potential to obtain a medal at the World Champs it would seem they did not need to consider the second selection objective.
18. The Tribunal is of the view that the respondent is correct in respect to clause 8. One of the selectors saw the accident and noted that the appellant got up and there were no broken bones. It was therefore probably reasonable for them to assume that there were unlikely to be any lasting consequences and if there had been they would have expected the appellant to tell them or make a claim for extenuating circumstances. However, having witnessed what was described as a high-speed crash at 65kph it is very surprising that a simple enquiry or communication was not made by the selector to see if he had recovered from the crash or whether it had affected his training for the Nationals. That is what the Heron Report might have expected.

19. Notwithstanding that the Tribunal is not persuaded that there has been any failure to properly follow or implement the General Selection Regulation or the Schedule.

### **Second ground of appeal**

*Not afforded a reasonable opportunity to satisfy the requirements of the regulations and the schedule*

#### Appellant:

20. The appellant submitted that the failure of CNZ to have its 'rider's submission link' operating meant the appellant did not have the opportunity to provide further information to CNZ which was relevant to his application for selection. He submitted this had a direct link to the Heron Report as to the requirement to be transparent and communicative with riders.

#### Respondent's reply:

21. The respondent submitted that the selectors acknowledged that there was an administrative error that meant the link was not working.
22. However, it was submitted, that the rider submission process was not part of the selection criteria. It had simply been established to enable riders to provide additional information to CNZ.

#### Analysis

23. The Tribunal accepts the respondent's submission that the link was not part of the selection criteria. Nonetheless, not having the link working was poor, given that the next communication the appellant received from CNZ was the letter from Mr Hollows saying he was not selected. In addition, it would have expected Mr Hunn to contact the appellant once he knew the link was not operating, to check if there was any further information he wanted to provide to the selectors.
24. At the same time the Tribunal notes that the appellant had provided various information to CNZ in his email of 18 April 2024, and it is unclear whether he had any additional information that might have made a difference to the selection outcome. Of course, once he saw that the link was not working, he could have contacted CNZ himself to find out why or to provide any other information he felt was important.

25. While unsatisfactory that the link was not working, it was not an integral element of the selection criteria. It is also unlikely it had any material impact on the non-selection decision.
26. This second ground of appeal is not made out.

### **Third ground of appeal**

*No material on which the decision not to select the appellant could be reasonably based*

#### Appellant:

27. The appellant submitted that CNZ had relied on inaccurate information in making its decision. He submitted there were errors in the Selection Matrix in wrongly recording a Did Not Finish in a road race at the Nationals when he came second and there was an incomplete entry regarding the New Zealand Cycle Classic.
28. The appellant further submitted there was no evidence from the minutes to indicate his second placing at the Nationals was taken into account, and there was also a failure to properly consider his performance at the Oceania's, especially as it showed a substantial improvement between the Nationals and the Oceania's.

#### Respondent's reply:

29. The respondent submitted that the selectors were aware of the errors in the Matrix and therefore the errors had no material impact.
30. It further submitted that the selectors did consider the appellant's performances at the Nationals and the Oceania's and what weight they placed on them was for the selectors to determine in accordance with their discretion.

#### Analysis

31. The Tribunal has already accepted that the selectors were aware of the errors in the Selection Matrix and that they did consider the appellant's results in the Nationals and the Oceania's.

32. The Tribunal therefore considers that there was sufficient material on which the decision could reasonably be based.

33. This final ground of appeal is not made out.

#### **General observations based on the evidence and submissions**

34. The Tribunal observes that the reasons for selecting the appellant appeared stronger than for not selecting him and it acknowledges the appellant's disappointment at not being selected. He was the top ranked U23 ITT rider in New Zealand, he finished second at the Nationals after a high-speed crash three weeks before, there were two quota places available, this was his last year in the U23's, the World Champs were largely self-funded, and the selectors were well aware that a good performance at the World Champs could lead to the offer of a professional contract.

35. Added to that were the unsatisfactory features of the selection process already discussed, namely the failure of the rider's submission link and the failure of the selectors to ascertain whether the appellant had fully recovered from the high-speed crash.

36. The Tribunal notes that there should have been more regard given to the appellant's high-speed crash prior to the Nationals (particularly as allowance was apparently made for Aaron Gate). It is arguable that, but for the crash, there was a good chance the appellant would have won that race and under cross-examination Mr Geater conceded that if he had won that race then he might well have been selected.

37. The selectors did not think the appellant would be able to provide meaningful support to Lewis Bower in the road race and this was a factor in his non-selection. That was a matter for the selectors but by not selecting him there is no support for Lewis Bower at all. The Tribunal notes that Mr Geater as Director Sportif had a discretion at clause 3.2.6 to consider future development potential and/or ability to perform in the specialist road race event as well as whether he had demonstrated an ability to perform as a support rider. So the decision that he would not be able to provide support need not have been the end of the enquiry.

## **Conclusion**

38. Despite the observations just made, the Tribunal finds that there were no material errors made by the selectors.

## **Decision**

39. The appeal was dismissed.

Dated: 24 July 2024



**John Macdonald, Chair**



**Pippa Hayward**