

BETWEEN

HANNAH THOMAS

Appellant

AND

CANOE SLALOM NEW ZEALAND

Respondent

AND

NEW ZEALAND OLYMPIC COMMITTEE

Interested Party

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

Hearing

By agreement of the parties this matter was decided on the papers.

Parties

Hannah Thomas, Appellant
Michael Smyth, counsel for Respondent
Tara Pryor, NZOC

Tribunal

John Macdonald, Chair

Registrar

Helen Gould

Background

1. Hannah Thomas (the appellant), now aged 22, has been a member of the New Zealand Canoe Slalom team since 2018. She competes in the C1W event and had hoped to be nominated in that event by Canoe Slalom New Zealand (the respondent) for selection by the New Zealand Olympic Committee (NZOC) at the Paris Olympics.
2. Prior to the nomination date of 18 June 2024, the respondent asked its Selection Panel to consider whether the appellant should be nominated, if a quota place became available before entries closed on 8 July.
3. The Selection Panel decided that the appellant did not meet the Over-Riding Nomination Criteria based on her performances and country ranking at events during the qualification period. It also decided that the appellant did not meet the Secondary Nomination Criteria either which was based on her history of world rankings (that is, no indication of a trajectory towards a top 8 placing at the 2028 Los Angeles Olympics); and comparing her history of competition with the performance history and trajectory of the top 10 athletes at the 2024 World Champs; and at the Tokyo Olympics 2020/21.
4. On 18 June 2024 the respondent notified the appellant of its decision that she had not been nominated and the following day the appellant filed a notice of appeal to the Sports Tribunal against that decision on the grounds that:
 - (i) the applicable nomination criteria were not properly followed and/or implemented;
 - (ii) she was not afforded a reasonable opportunity to satisfy the nomination criteria; and/or
 - (iii) there was no material on which the nomination decision could reasonably be based.
5. The respondent denied that any of the grounds were made out and in general terms submitted that there was no proper basis for the Tribunal to overturn the decision of the Selection Panel.
6. A pre-hearing conference with the parties was held on 4 July 2024 where it was agreed that if a quota place did become available the Chair would consider the appeal on the papers as a matter of urgency, given that entries closed on 8 July 2024.
7. On 5 July 2024 a quota place became available and, after considering all the written material filed by the parties, the Chair reached a decision to dismiss the appeal.

8. The parties were advised of the result and the Chair's reasons for that decision are now set out below.

Jurisdictional issue

9. The respondent, in its written submissions, raised a jurisdictional issue. It submitted that as the appellant was ineligible for nomination as at the nomination date of 18 June 2024 because no quota place was available, it meant that she had no right of appeal.
10. I dismissed the appeal on the substantive issues and so, in the circumstances, I have put the jurisdictional issue to one side.

Nomination Criteria for Canoe Slalom Events at Paris 2024 Olympics Games

11. The Nomination Criteria took effect from 1 January 2023. Several clauses are of particular relevance to this appeal.
12. Clause 4.2 provides that the selectors "may determine the relevance and weight that they may wish to place on any Specific Nomination Factor/s and any Extenuating Circumstance/s as they consider appropriate ..."
13. Clause 4.4 states that, "In considering any results and performances of an Athlete at any Key Events and Trials, the Selectors may, but do not have to, take into account the conditions in which the results and performances were obtained such as, but not limited to, the weather conditions and the field of competition."
14. Clause 5.1 sets out the Over-Riding Nomination Criteria, which required the selectors to be satisfied that the appellant:
 - (i) Is competing in a Canoe Slalom event where a quota place at the Games has been qualified in accordance with the ICF Qualification System;
 - (ii) Is capable of achieving a top 16 placing at the Games in the Canoe Slalom Event, with the potential to win an Olympic Diploma (top 8 placing); and
 - (iii) Has a track record of sufficient quality and depth that the selectors believe the Nominated Athlete will be competitive at the Games and will perform to the level specified in clause 5.1(b) in that Canoe Slalom Event".
15. Clause 5.2 sets out the Secondary Nomination Criteria for Canoe Slalom Events, which provide that where a quota place has been qualified but where no athlete has met the Over-Riding Nomination Criteria in clause 5.1(b) and (c) then the Selectors may consider nominating an athlete to a Canoe Slalom Event provided that they are satisfied overall that the athlete has demonstrated they are capable of achieving an Olympic Diploma (top 8 placing) at the Los Angeles Olympics in 2028. The athlete

must also have a strong record of international competition of such quality and depth that demonstrates the nominated athlete will be competitive in the Canoe Slalom Event at the Games.

16. Clause 5.3 sets out the Canoe and Kayak Key Events.
17. Clause 5.4 sets out Specific Nomination Factors from (a) to (k) which the selectors may take into account. Clause 5.4(a) refers to any other performances or results in competitions/events in addition to the Key Events.

Selection panel

18. The respondent appointed three people to make up the Selection Panel for the Paris Olympics. Malcom Gibb was appointed as Chair, with the other two selectors being Sandra Paterson and Ian Mercer. Their names appear at clause 2.1 of the Nomination Criteria.
19. As set out in a written statement from Mr Gibb, all three selectors have extensive experience in canoe slalom racing, and on the face of it would appear to be well-qualified to act as selectors.

Grounds of Appeal

Nomination Criteria was not properly followed and/or implemented.

20. The appellant raises various matters in support of this first ground of appeal. She contends that the selectors lacked the necessary expertise in canoe slalom racing and consequently they failed to properly follow and implement the nomination criteria. This was reflected in several ways including the following:
 - They failed to consult with others who did have the necessary expertise in canoe slalom racing, including coaches.
 - They failed to inform the appellant that a 5% performance benchmark would be applied to assess her future potential.
 - Such a benchmark was too stringent in any event, and it reflected the selectors' lack of understanding of the performance standards required to satisfy the nomination criteria accurately.
 - They failed to consider the appellant's performances at World Cup 3 (2024) as it was outside the qualification period, which meant that they did not have an accurate picture of her ability.
 - They failed to properly compare the appellant's results and performances with other New Zealand canoe slalom athletes (such as Luuka Jones, Finn Butcher and Callum Gilbert) when at similar stages of their careers.
 - They failed to take reasonably available steps to follow events in which the appellant competed.

21. In reply, the respondent denied that the selectors lacked the necessary expertise in canoe slalom racing.
22. As to the 5% performance benchmark, the respondent says that was only used in respect of the Over-Riding Nomination Criteria at a time when no quota place was available. It was used as a measure to determine how far adrift the appellant was of a top 8 placing in the events in which she competed. In any event the 5% performance benchmark was not part of the nomination criteria.
23. In considering clause 5.2 of the Secondary Nomination Criteria, the selectors had to first decide whether the appellant was capable of achieving a top 8 placing at the 2028 Los Angeles Olympics. Second, they had to decide whether she had a strong record of international competition of such quality and depth that demonstrated she would be competitive at the Paris Olympics.
24. On the first matter the selectors considered the appellant's rankings which revealed that her World Senior Ranking was 67 in 2021, 60 in 2022, 54 in 2023 and 55 in 2024. Her U23 World Ranking was 29 in 2021, 24 in 2022, 25 in 2023 and 19 in 2024. The selectors expected that her current World Senior Ranking would be at or near 30, in order to demonstrate that she had the potential for a top 8 placing at the 2028 Los Angeles Olympics.
25. As to the second matter the selectors compared the appellant's history of competition with the performance history and trajectory of the top 10 athletes at the 2024 World Champs and the Tokyo Olympics in 2020/21. Having made that comparison the selectors did not consider that the appellant had a strong record of international competition, of such quality and depth, that demonstrated that she would be competitive at the Paris Olympics.
26. While it was accepted that the selectors did not travel to events to watch the appellant compete (in part due to the resources of the respondent) they say they were able to view the races online (generally on YouTube).
27. The selectors further say that they did consider the appellant's performances at World Cup 3 (2024) even though it fell outside the qualification period. However, they placed less weight on those results as it was a reduced or lower quality field compared to other World Cup Events.

Analysis of first ground of appeal

28. The appellant questions the competence of the selectors and asserts that they do not have the necessary expertise in canoe slalom racing. For my part I concede that I have no expertise in canoe slalom racing or on the attributes that might make a good selector. And so, while in terms of the grounds of appeal I am able to assess whether the selectors have followed and implemented the relevant nomination criteria, whether the appellant was afforded a reasonable opportunity to satisfy the applicable nomination criteria and whether there was material upon which the nomination decision could be reasonably based, I do not have the expertise to comment on the competence of the selectors.
29. However, I can say that if the appellant had concerns about the competence or expertise of the selectors, then she should have raised them with the respondent when the appointments were made or at least prior to the qualification period.
30. The selectors' decision to apply a 5% performance benchmark came in for much criticism. Mr Gibb says it was used by the selectors as part of their subjective decision-making process and they had no obligation to disclose it to the appellant (or other athletes). While I accept that and I appreciate that the methodology they used has not been elevated to a selection criterion, I do wonder whether it should have been disclosed to the athletes so that they knew how the Selection Panel was approaching its task. It might also have allowed for some feedback and avoided the criticisms that have now emerged.
31. As to whether a 5% performance benchmark was reasonable or too stringent, I acknowledge the detailed argument presented by the appellant, supported as it is with various performance and placing analyses, but again I have no expertise in such matters, and it would be quite wrong for me to be drawn into the merits of the case in that regard.
32. Ultimately the position I adopt is that whatever the 5% performance benchmark revealed to the Selection Panel, plainly there were other factors that needed to be considered. Indeed, it seems to me that the appellant's world rankings, and how her results compared to the history and trajectory of the top 10 athletes at the 2024 World Champs and the Tokyo Olympics in 2020/21, were more reliable indicators as to future performance. I also strongly suspect that they would have carried more weight with the selectors.

33. Questions as to the weight to be attached to such factors were, of course, entirely a matter for the selectors.
34. In my assessment, even if the selectors were wrong to apply a 5% performance benchmark it is difficult to see that it made any material difference to the decision not to nominate the appellant. As just mentioned, there were other factors which clearly pointed to her not being on a trajectory towards a top 8 placing at the 2028 Olympics. That was the view the selectors took, and it was one that was reasonably available to them.
35. Furthermore, the selectors were entitled to take the view that the appellant did not have a strong record of international competition of such quality and depth that demonstrated she would be competitive at the Paris Olympics. There was in that context, mention of a single result in the top 16 with no result close to a top 8 finish.
36. As to the selectors failing to travel to events to watch the appellant compete, that was not part of the nomination criteria. It was also probably unnecessary given the ability to watch the events online.
37. As to whether the selectors properly compared past performances of other New Zealand canoe racers, I am sure they did but having said that it was still very much a matter for the selectors.
38. In the end, I cannot find any material error in how the selectors followed and/or implemented the nomination criteria, which means that the first ground of appeal fails.

The appellant was not afforded a reasonable opportunity to satisfy the applicable criteria.

39. I understood that what was being relied upon here was the failure of the selectors to inform the appellant that a 5% performance benchmark was to be applied, which meant that there was no opportunity for feedback, either from the appellant, her coach or other experts. That, in turn, it was argued, resulted in her not being afforded a reasonable opportunity to satisfy the applicable criteria.
40. Having considered that argument I am not persuaded that is necessarily the case because it still comes back to the applicable criteria. The 5% performance benchmark the selectors chose is not part of the nomination criteria. It was simply the methodology they chose to apply to assist them in deciding whether the criteria were met.

41. The appellant also complains that she had only had the one opportunity to qualify an Olympic quota for the C1W event, due to the 2024 Oceania Championships having insufficient entries to enable it to be used as a qualifying event to obtain quota for the Olympics. However, I do not regard that as being relevant to this ground of appeal because qualifying an Olympic quota for New Zealand is quite different to the appellant being able to satisfy the nomination criteria.
42. The most significant factor here is that the qualifying period was between 1 January 2023 and 11 June 2024. There were 11 Key Events in which the appellant could have competed during that period. In accordance with clause 5.4 the selectors could also have regard to her results in events outside the Key Events. It meant that there were numerous events in which the appellant could compete and satisfy the applicable criteria.
43. I am therefore satisfied that the appellant was afforded a reasonable opportunity to satisfy the applicable criteria.
44. This second ground of appeal fails.

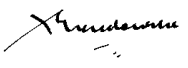
There was no material upon which the nomination decision could reasonably be based.

45. I am unsure what is being relied upon here. Nonetheless in my view the appellant's performances, her world rankings and how she compared with other athletes, as already discussed, provided ample material upon which the non-nomination decision could reasonably be based.
46. This third ground of appeal also fails.

Result

47. For the reasons outlined above the appeal against non-nomination was dismissed.

Dated: 23 July 2024


John Macdonald
Chair