

BETWEEN ROSE TIME-TAOTUA

Appellant

**AND NEW ZEALAND SECONDARY SCHOOL SPORTS COUNCIL
INCORPORATED (SCHOOL SPORT NEW ZEALAND
'SSNZ')**

Respondent

**DECISION OF SPORTS TRIBUNAL ON STANDING AND JURISDICTION
22 August 2024**

Tribunal John Macdonald (Chair)
Sam Fellows
Harete Hipango

Parties Rose Time-Taotua, Appellant
Ngahiwi Meroiti (QSM) representative of Appellant
Sarah Wroe and Maria Clarke, counsel for the Respondent

Registrar Helen Gould

1. Ngahiwi Meroiti QSM on behalf of Rose Time-Taotua (the appellant) filed an appeal against the decision of SSNZ not to grant Tawa College a special exemption to allow the appellant to play netball for Tawa College in both the Lower North Island Secondary Schools (LNISS) netball tournament and the National Secondary Schools netball tournament if Tawa College qualifies.
2. Tawa College accepted the decision of SSNZ and said in an email from the principal to its Sports Co-ordinator on or about 5 August 2024 that it would not appeal against the decision but that Rose was welcome to appeal to the Tribunal herself.¹
3. The appellant duly filed the Notice of Appeal (Form 3) and Appeal Brief (Form 4) together. The Tribunal panel has read those documents.
4. The grounds of appeal on which the appellant relies are that natural justice was denied and that the decision-maker or decision-making body acted outside its powers and/or jurisdiction.
5. There is urgency to this matter being resolved as the LNISS competition begins on 1 September 2024.
6. With that in mind, the Tribunal abridged the time frame for the respondent to file its Form 5 statement of defence.
7. On 19 August 2024, counsel for the respondent, Ms Wroe, filed a memorandum raising issues as to standing and jurisdiction and invited the Tribunal to dismiss the appeal.
8. The Tribunal requested the appellant to respond to the memorandum and a response was filed on 20 August 2024.
9. The Tribunal indicated to the parties that it would consider the issues of standing and jurisdiction based on the material received as preliminary issues before considering the merits of the appeal.

¹ [18] in Rose Tima-Taotua's Annexure to Appeal Brief

Standing

10. Counsel for the respondent submitted that the Rules of New Zealand Secondary Schools Sports Council Incorporated (provided to the Tribunal) and the School Sport NZ Integrity Framework Code of Conduct and Disputes Procedures (provided)² do not provide a process for a student, such as the appellant, to challenge a discretionary decision of SSNZ in relation to her participation in events.
11. Instead, it is submitted that the rules and regulations create a legal framework between SSNZ and the schools represented by principals or their delegates but not between SSNZ and students.³
12. The appellant, in her response dated 20 August 2024, did not submit that she had standing to bring the appeal but rather submitted that the Tribunal, under Rule 13 of its rules, could allow Porirua College to either join the appeal as a co-appellant or as a substitute appellant to cure any deficiency in the appellant's standing.

Jurisdiction

13. In the notice of appeal, the appellant cites sections 38(aa) and 38(c) of the Sports Tribunal Act 2006 as being the basis on which the Tribunal has jurisdiction to hear this appeal.
14. The respondent contests that these provisions provide the Tribunal with jurisdiction to hear the appeal and submits that the Tribunal, if it considers the appellant has standing, should dismiss the appeal on the basis that it is not within the Tribunal's jurisdiction.
15. The respondent submits that section 38(aa) refers to an integrity code made by the Sport and Integrity Commission pursuant to section 19 of the Integrity and Sport and Recreation Act 2023. It further submits that the SSNZ eligibility criteria are not an integrity code.

² Though counsel for the respondent points out that the Code does not apply to disputes in relation to Eligibility Requirements.

³ Rule 7.1 of the NZSSSC Inc Rules lists the type of members, which are School, Life and Honorary and Rule 7.4 states that it is the Principal (or nominee) who is the delegate of the school with voting rights.

16. The respondent further submits that while section 38(c) provides that the Tribunal can hear an appeal if the constitution, rules or regulations of the national sporting organisation 'specifically provide for an appeal to the Tribunal' there are no such provisions in SSNZ's rules and regulations for a right of appeal to the Tribunal. The respondent notes that the dispute process set out in the SSNZ Integrity Framework Code of Conduct and Disputes Procedures does allow an appeal to the Tribunal but that is in the context of allegations of breaches of the Code of Conduct which is not the case here.
17. The appellant in response submits that the Tribunal does have jurisdiction on the basis that the SSNZ Integrity Framework Code of Conduct and Disputes Procedures apply to the SSNZ Eligibility Regulations.
18. This is because the Code of Conduct imposes obligations on schools to comply with eligibility rules (rule 3.1) and therefore the disputes process should apply to a dispute about the eligibility rule.

Discussion

Standing

19. The Tribunal has considered the submissions of both parties.
20. The Tribunal is of the view that the regulations which govern the relationship between SSNZ and its members would bar the appellant, a student and not a school or principal, from bringing this appeal to the Tribunal.
21. The Tribunal notes that Tawa College invited the appellant to bring the appeal to the Tribunal, but there is nothing in the regulations or other documents filed which allows a school to confer its appeal rights to another party. The appellant relied on rule 13 of the Tribunal's rules but that has no application as the rule relates to interested parties rather than an appellant.
22. The appellant's attempt to correct the issue of standing by inviting the Tribunal to accept Porirua College as a joint appellant or as a substitute appellant is understandable but, unfortunately, the appeal rights belong to Tawa College as the school seeking the exemption but not to Porirua College.

Jurisdiction

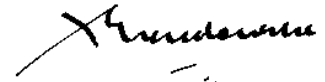
23. Section 38(aa) clearly applies to disputes arising from an integrity code made by the Sport Integrity Commission, which the Code of Conduct of SSNZ is not. The Tribunal therefore does not accept that s 38(aa) provides the basis for jurisdiction for the Tribunal to hear this appeal.
24. As for section 38(c) it requires the constitution, rules or regulations of the national sporting organisation to provide for a right of appeal to the Tribunal but those of SSNZ do not provide for such right of appeal against a refusal to allow an exemption.
25. The Tribunal has considered the argument made by the appellant that Rule 3.1 of the Code of Conduct means that the Disputes Procedure applies to this appeal and that therefore Rule 8 of the Disputes Procedure means that the appeal can be brought to the Tribunal.
26. The Tribunal does not accept that the Code of Conduct applies to the refusal to grant an exemption as was sought here. This is because rule 3.1 of the Code of Conduct requires the principal to ensure that all players representing the school meet the eligibility rules of SSNZ. The appellant's absence in the Tawa College team does not mean they will have ineligible players (unless it ignores the SSNZ decision and selects the appellant). The Code of Conduct does not, therefore, cover disputes about exemption decisions.
27. In addition, the Tribunal notes that the dispute process allows an appeal to the Tribunal only after the dispute process has been fully invoked and an SSNZ appeal panel has determined the matter.
28. This appeal does not come under the provisions of section 38(c).

Decision

29. Having considered the arguments of both parties, the Tribunal accepts that the appellant does not have standing to bring the appeal to the Tribunal and neither does the Tribunal have jurisdiction to hear the appeal.

30. The Tribunal recognises that this decision will be hugely disappointing to the appellant, but her appeal is dismissed.

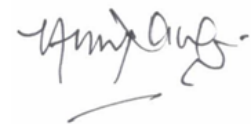
Dated: 23 August 2024



John Macdonald
Chair



Sam Fellows
Member



Harete Hipango
Member