

BETWEEN **X, Y & Z**

 Appellants

AND **FENCING NEW ZEALAND**

 Respondent

**DECISION OF SPORTS TRIBUNAL
OF 18 MARCH 2025**

Hearing 13 March 2025 (via Teams)

Virtual attendance Father of X and representative for Appellants
 Father of Y
 Mother of Z
 Ben Upton, counsel for Fencing New Zealand
 David Elder, President for Fencing New Zealand
 Kyle Macdonald, Head of Selectors for Fencing New Zealand

Tribunal John Macdonald, Chair
 Andrea Twaddle, Deputy Chair
 Harete Hipango

Registrar Luke Macris

1. On 11 February 2025, the appellants filed appeals to the Sports Tribunal (the Tribunal) against the decision of Fencing New Zealand (FENZ) not to select them for the 2025 World Junior and Cadet Championships (Junior Worlds) to be held in Wuxi, China from 7-15 April 2025.

Background

2. Junior Worlds is a high-level international tournament attended by the world's best junior fencers. FENZ indicated that the selection criteria applied to this tournament is necessarily high as New Zealand fencers who have previously met the criteria and attended the tournament have struggled at this level, with few making it past the qualifying rounds
3. The three appellants are highly talented youth fencers in the foil class, not only within their respective age categories but also in the adult division in New Zealand. They undoubtedly have a bright future in the sport.
4. The parties agreed that all three appeals could be heard together given that they arise from the same selection process and the issues on each appeal are the same.
5. The grounds of appeal are that:
 - (i) The applicable Selection Criteria had not been properly followed and/or implemented;
 - (ii) There was no material on which the selection decisions could reasonably be based;
 - (iii) The selection decisions were affected by actual bias.
6. At a pre-hearing conference on 10 March 2025 the parties agreed that the appeals could be determined on the basis of the written material presented by the parties, with the hearing to be held on 15 March 2025 being limited to oral submissions.
7. The Tribunal considered all the submissions and written material filed by the parties, including:
 - FENZ Selection Criteria 2020
 - Results of the appellants

- Results of four other youth athletes who, unlike the appellants, were selected by FENZ to attend the Junior Worlds – referred to throughout this decision as “Athletes A, B, C & D”
- FENZ appeal decision by the Complaints Assessment Subcommittee dated 7 February 2025
- Correspondence between the parties

Selection Criteria

8. The *FENZ Selection Criteria 2020* details the selection criteria for individuals and teams attending specified tournaments or events.

Individual selection

9. The selection criteria applicable to the appellants for the Junior Worlds were set out at para 2.4. The criteria contains both aspirational and minimum criteria for individual selection.
10. The minimum criteria, for fencers residing in New Zealand, which applied to the appellants, were at least:
 - a. two qualifying results for domestic tournaments with an asterisk (*) in their chosen weapon – to be referred to as the “Domestic Threshold”; and
 - b. two qualifying results for international tournaments marked with a hashtag (#) – to be referred to as the “International Threshold”.
11. To be considered for selection for an event in a specific weapon class, a fencer must meet both the Domestic Threshold and the International Threshold.
12. A balancing consideration is provided to selectors where “For fencers competing outside or resident outside NZ, equivalent results should be submitted with any nomination”. FENZ selectors then have an opportunity to examine and compare equivalent results across international tournaments. This consideration did not apply to the appellants themselves, as they were New Zealand based, but was raised by the appellants as a matter of inconsistency regarding the selection of Athlete D.

Team selection

13. The *FENZ Selection Criteria 2020* also obliquely refers to the possibility of being selected as a member of a team event.

14. We say “obliquely” because at page 10, the policy refers to a “Selection Direction” for “selection of a team based on the following order of priority” and lists the tiers of criteria. However, this section is formatted in such a way that it creates ambiguity as it appears to be under the “2.5 Commonwealth Juniors” section rather than being applicable across the entire “2. Juniors” section.
15. FENZ sought to clarify this point by indicating that when there are sufficient qualified individual fencers selected to attend a particular tournament, then additional fencers may be selected by FENZ to make up a team (or to cover a team in case of injury). Although these additional team members might not otherwise meet the individual threshold requirements, they can be selected in accordance with the team Selection Direction. In these circumstances, athletes that attend as part of a team can then also participate in his or her respective individual weapon class event.
16. FENZ indicated that this policy was created many years ago by a decision of the FENZ Board, but it had yet to be formalised within the selection criteria, despite being common practice. FENZ is seeking to rectify this omission by way of a review of its selection criteria that is currently underway.
17. Given those circumstances, the appellants submitted that FENZ had inconsistently applied a previously undisclosed “team selection rule” to justify the selection of Athlete D.
18. In response, FENZ pointed out that unlike Athlete D who was able to be selected to make up a four-person team as other members of this team had each met the individual selection criteria, this was not an option for any of the appellants as none had met the individual selection criteria. And so, the circumstances of Athlete D’s selection was of no relevance to the position of the appellants.

Preliminary issues

Did the appellants meet the individual selection criteria for Junior Worlds?

19. The starting point is that all three appellants accepted that, while they had met the Domestic Threshold, none had met the International Threshold. It therefore follows that having failed to meet the International Threshold none of the appellants were eligible to be considered for selection.

So are these non-selection appeals or appeals against selection of others?

20. While critical of the ambiguity of the selection policy and the consistency with which FENZ applied its selection criteria, the appellants made it clear that they did not oppose the selections of Athletes A, B, C & D.
21. The Tribunal viewed this as an appropriate concession considering the established principles set out in *Yachting NZ v Murdoch & Ors* (CAS, 2 April 2004). Essentially an athlete is precluded from appealing against the nomination (or, in this case, selection) of another athlete. An athlete can only appeal against his or her own non-selection – as opposed to the selection of others – as otherwise the Tribunal would not have jurisdiction to hear the appeal under *Murdoch*.

The appeals

First ground: Selection criteria not properly followed and/or implemented

22. This ground became the main focus of the appeals with the appellants submitting that:
 - a. the selection policy was ambiguous and unclear;
 - b. FENZ applied the selection criteria inconsistently to the disadvantage of the appellants – both when comparing Athletes A, B, C & D to the appellants for the 2024 qualifying period and with respect to previous selection decisions over the years; and
 - c. there were refusals by FENZ to disclose information about selections that created issues of transparency and undermined both the confidence and fairness of the selection process.
23. Mr Upton, counsel for FENZ, referred to the appellant's position at the pre-hearing conference as effectively one of "legitimate expectation" which he submitted, while open to argument before the Tribunal, was not made out.
24. FENZ accepted that there had been irregularities and inconsistencies in selection decisions in previous years justified by the impact of the Covid-19 pandemic. However, FENZ argued that there could have been no such legitimate expectation in the present case as the pandemic was at an end. In any event, the appellants had not submitted any evidence that they had relied on such an expectation.
25. The Tribunal, at the pre-hearing conference, had indicated a reluctance to embark on a wide-ranging examination of past selection decisions but had welcomed further

information on the selection of Athletes A, B, C & D to assist in any comparison with the appellants.

26. As a result, FENZ filed additional submissions prior to the hearing which provided a complete account of the selectors' decision-making process and how:
 - a. the appellants did not meet the individual or team selection criteria;
 - b. Athletes A, B, & C met the individual selection criteria; and
 - c. Athlete D met the team selection criteria.
27. In the face of those additional submissions, the Tribunal did not understand the appellants to be still maintaining their position that Athletes A, B, C & D had been selected in a manner inconsistent with the selection criteria.

Second ground: No material on which the selection decisions could reasonably be based

28. The appellants submitted that FENZ's selection decisions lacked any reasonable or justifiable basis when assessed against the selection criteria. While not abandoned, this ground was not strongly advanced at the hearing.
29. FENZ submitted that there was material on which the selection was reasonably based, being the selection material and results submitted by the appellants. Furthermore, the selectors had taken into account the appellants' results at the Commonwealth Juniors and Cadets for the International Threshold, but they did not achieve qualifying results.

Third ground: Selection decision was affected by actual bias

30. The appellants submitted that the selection decisions of FENZ demonstrated clear bias against the appellants. Again, while not abandoned, this ground was not strongly advanced at the hearing as it appeared to have been subsumed or bound up with the first ground of appeal that the selection criteria had not been properly followed and/or implemented.
31. FENZ submitted that there was no evidence of actual or apparent bias and that there is nothing to suggest that the selectors did not apply an impartial mind to their decisions. This was further supported by the fact that there was no inconsistency between the selection decisions regarding the appellants when compared with Athletes A, B, C & D. Furthermore, the appellants were simply not selected because they did not meet the International Threshold, a position which they themselves accepted.

Assessment

32. The Tribunal takes the view that the determination of the appeals turns on a relatively straightforward application of the selection criteria.
33. While all three appellants met the Domestic Threshold (and indeed had performed admirably in that regard), they unfortunately had not met the criteria for the International Threshold. As previously mentioned, it therefore follows that they failed to meet the threshold to even be eligible to be considered for selection.
34. As for any suggestion that the appellants relied upon some legitimate expectation of being selected, despite not meeting the International Threshold, the Tribunal rejects that as being without merit. It might have been different during the Covid 19 pandemic but not by the time of the 2024 qualifying period.
35. The Tribunal is also satisfied that, although FENZ readily accepts that the wording of the selection criteria needs to be clearer to avoid any ambiguity, the appellants understood the criteria and what was required of them in terms of results.
36. In respect of the appellants' complaints that FENZ had refused to disclose information about selections which created issues of transparency and undermined the confidence and fairness of the selection process, the Tribunal understood those concerns had dissipated by the time of the hearing after the additional submissions from FENZ set out the selection process in respect of the appellants and Athletes A, B, C & D.
37. As to FENZ applying its selection criteria inconsistently in selecting Athletes A, B, C & D for the Junior Worlds (which is where the appeal would, at times, blur the lines between non-selection appeals versus a selection of others), the Tribunal, having carefully assessed the evidence presented by FENZ for Athletes A, B, C & D, is satisfied that there was no inconsistency in its application of the selection criteria. Athletes A, B and C met the Domestic and International Threshold for individual selection on merit. It was also open to the selectors to select Athlete D to make up a team under the team selection criteria.
38. In contrast, there was no basis on which FENZ could select one (or more) of the appellants based on the team selection criteria because none of them had met the individual selection criteria for the Junior Worlds. In other words, there was no team to make up.

39. In respect of whether there was material on which the selection decisions could reasonably be based, the Tribunal is satisfied there was ample material available to the selectors, primarily in the form of the appellants' results, which was sufficient for the selectors to be able to conclude that the appellants did not meet the International Threshold, a conclusion which the appellants accepted.
40. As to the appeal ground of actual bias, the Tribunal is not satisfied that has been made out. There was no evidence of bias let alone actual bias. Instead, the Tribunal is satisfied the selectors acted impartially and properly applied the selection criteria.

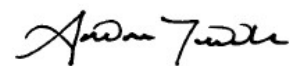
Result

41. Having assessed the evidence and the submissions of the parties, the Tribunal is not satisfied that any of the grounds of appeal have been made out.
42. The appeals are therefore dismissed.

Dated: 18 March 2025



John Macdonald
Chair



Andrea Twaddle
Deputy Chair



Harete Hipango
Member