

BETWEEN **IVAN ABELE**

 Appellant

AND **TRIATHLON NEW ZEALAND**

 Respondent

AND **MICHAEL PHILLIPS**

 Interested Party

**DECISION OF SPORTS TRIBUNAL
30 JUNE 2026**

Hearing 24 June 2026 – by Microsoft Teams

Present Marcel Abele, father and representative for Appellant
Mike King, Tri NZ Board Member for Respondent
Pete de Wet, Tri NZ CEO for Respondent
Michael Phillips, Interested Party

Tribunal John Macdonald (Chair)
Andrea Twaddle (Deputy Chair)
Ruth Aikten DMNZ

Registrar Luke Macris

INTRODUCTION

1. Ivan Abele (Mr Abele) is a triathlete who competed in the Tauranga Half Triathlon on 17 January 2026 and was part of a lead group of triathletes which deviated from the prescribed course.
2. Triathlon New Zealand (Tri NZ) imposed a time penalty against Mr Abele (and the other lead riders) for the course deviation, and it is against that decision that he appeals to the Sports Tribunal.
3. The issues for the Tribunal are whether it has jurisdiction to hear the appeal and, if it does, whether there remained a breach of natural justice and the penalty imposed was excessive and/or inappropriate.

BACKGROUND

4. Near the start of the cycling stage of the race, Mr Abele was in a lead group of triathletes who deviated from the course by following the lead motorbike through a roundabout, instead of making a left turn into Prince Avenue. They did not make the left turn because the street was blocked off by course markings – being an orange “No Entry” sign and cones.¹ The lead group continued to follow the lead motorbike for a distance before re-entering the course. While they had taken a shorter route and encountered live traffic, the rest of the field followed the prescribed course, as the road closure was corrected shortly after the lead group had passed through.
5. Mr Abele finished the race in second place with a time of 03:40:24. Michael Phillips (Mr Phillips), an Interested Party to this proceeding, followed the prescribed course behind the lead group and finished in third place with a time of 03:42:17 – a gap of 113 seconds behind Mr Abele.
6. After the race, Mr Phillips lodged a protest against the lead group for not following the prescribed bike course. The protest was heard by a Competition Jury, which after hearing from Mr Phillips, the lead riders, and independent witnesses (including the rider of the lead motorbike), dismissed the protest, as the “lead motorbike had taken a different course, and the athletes had followed believing the course had changed. The jury did not feel that this justified disqualification.”²
7. On 19 January 2026, dissatisfied with that outcome, Mr Phillips appealed to the Tri NZ Board as permitted under cl. 12.5 of the Triathlon NZ Competition Rules (Competition Rules).

¹ As described by the lead motorbike rider at page 2 of the Competition Jury Minutes.

² Page 4 of the Competition Jury Minutes.

8. On 30 January 2026, the Tri NZ Board reached a decision on the papers, having heard only from Mr Phillips, but not from Mr Abele or any of the other lead riders. The Board allowed the appeal and referred the matter back to the Competition Jury to impose a penalty, given the additional Race Ranger data they had obtained, which showed the lead riders by taking a shorter route had gained an advantage of somewhere between 76-96 seconds.³
9. However, the Competition Jury refused to determine/impose a penalty as directed. Therefore, on 4 February 2026, the Board issued a decision of its own (the “Level 2 Decision”) and imposed on the lead riders a penalty of 86 seconds (being the Race Ranger calculation as a ‘neutralisation adjustment’ of time)⁴ together with an additional 60-second penalty for the course deviation.
10. This resulted in Mr Abele being relegated from second place to third place, behind Mr Phillips.
11. On 14 February 2026, Mr Abele was notified by email of the Tri NZ Level 2 Decision and the penalty imposed upon him (and the other lead riders). Prior to that he had been totally unaware that an appeal had even been filed by Mr Phillips.
12. On 16 February 2026, Mr Abele made a formal complaint under the Tri NZ Constitution seeking an internal resolution, but he was subsequently advised by Tri NZ that the matter was closed.

TRIBUNAL PROCEDURE

13. On 22 February 2026, Mr Abele filed his Notice of Appeal (Form 3) with the Tribunal, citing grounds of appeal of a breach of natural justice/procedural unfairness, substantial new evidence, and that the penalty (being the 60 second penalty only)⁵ was excessive or inappropriate.⁶
14. On 3 March 2026, a pre-hearing conference was held by the Tribunal Chair with Marcel Abele (Mr Abele’s father and representative), and Tri NZ representatives (Mr King and Mr de Wet). During this conference, Tri NZ made its position clear that the Tribunal had no jurisdiction to hear the appeal, as there was no explicit right of appeal to the Tribunal under the Competition Rules. However, once the Chair pointed out that the

³ Race Ranger is an electronic sensor system that tracks course position and distance from other riders and is designed for triathlons and bike races to detect and prevent illegal drafting.

⁴ 86 seconds represents the midpoint of the 76-96 second range.

⁵ Mr Abele accepted, in his Notice of Appeal, the imposition of the 86 second neutralisation advantage calculated by Race Ranger.

⁶ Mr Abele also sought to rely on the grounds of “error of law / failure to properly apply the rules in a blocked course scenario” and “reliance on incomplete factual picture” but neither of these grounds appear in the Tri NZ Constitution.

procedure it had adopted in relation to Mr Phillips' appeal appeared to involve clear breaches of natural justice – being a failure by Tri NZ to include the lead riders in the Level 2 appeal and hear from them as to the appropriate penalty – Tri NZ confirmed, shortly after the conference, that they would reconsider their Level 2 Decision and start the process afresh, with the inclusion of Mr Abele and the other lead riders.

15. On 17 April 2026, Tri NZ issued its reconsidered decision (“Reconsideration Decision”). This was a decision by the same Board that made the Level 2 Decision, relegating Mr Abele to third and elevating Mr Phillips into second place. In the Reconsideration Decision the Board maintained the 86-second time penalty for the Race Ranger adjustment but reduced the additional penalty to 30 seconds (down from 60 seconds) on the lead riders.
16. Unlike the Level 2 Decision, the Board now justified the additional 30-second time penalty on the basis that the course deviation by the lead riders deprived Mr Phillips of engaging in race dynamics, as in a head-to-head race. Clearly, the Board rejected the submissions of Mr Abele and the other lead riders that such reasoning was highly speculative, given that even if they had followed the prescribed course there was no guarantee that Mr Phillips would have caught them, fared better in a head-to-head race, or beaten Mr Abele to the finish line. There was also no mention or allowance in the decision for the confusion at the left turn into Prince Avenue, the blame for which must rest fairly and squarely with the event organisers, or the irreconcilable conflict of rules scenario in play for the lead riders at that time.
17. Furthermore, in arriving at the additional time penalty of 30 seconds there was a comparison with a yellow card issued to a rider during a race, but it is unclear whether that would be a comparison of equals as it would seem that a yellow card would be issued for a deliberate infringement, as opposed to an inadvertent or unintentional breach, as occurred with Mr Abele and the lead riders. Of course, there is the further difference with respect to Mr Abele in that the 30 seconds time penalty is being added to the 86 seconds.
18. Although the additional time penalty was reduced from 60 seconds to 30 seconds, it did not alter the placings as determined in the Level 2 Decision. Mr Abele remained in third place behind Mr Phillips by the slimmest of margins; a time differential of a mere three seconds. Disappointed with that outcome, Mr Abele re-filed his appeal with the Tribunal on that same day.

19. The Tribunal invited Mr Phillips and the other lead riders to join the proceeding as interested parties, but only Mr Phillips accepted the invitation.⁷
20. The Tribunal heard the appeal on 24 June 2026 with each party addressing the issues of jurisdiction and the substantive merits of the appeal.

THE RELEVANT RULES

21. The Level 2 Appeal Procedure set out at cl. 12.5 of the Tri NZ Competition Rules states:

2 CONDUCT OF ATHLETES

2.1. General Conduct:

- a) Triathlon and Tri NZ's other related Multisports involve many athletes. Race tactics are part of the interaction between athletes. Athletes will:

....

- (iv) Obey traffic regulations and instructions from race officials (including both Technical Officials and Race Marshals) (Penalty: Disqualification);

....

- (ix) Follow the prescribed course. If, having left the race course of any reason during the competition the athlete should re-join the competition at the place they originally left the course. (Penalty: if unintentional and advantage gained is minor, then Time Penalty; otherwise, if deliberate and advantage gained is significant, Disqualification; if advantage is not gained – no penalty)

....

5 CYCLING CONDUCT

....

- b) Dangerous behaviour

....

- (ii) Athletes must obey the specific traffic regulations for the event, unless Technical Official advises otherwise (Penalty: Disqualification).

....

12.5 Level 2 Appeal Procedures:

- a) The following procedure will be followed in the event of an appeal to the Triathlon New Zealand Board:
- b) Appeals will be filed in writing to Tri NZ, signed by the appellant, within the time limits specified above.
- c) The President of Tri NZ shall convene the Tri NZ Board as soon as it is practical to do so.
- d) The Tri NZ Board shall assemble such information as it deems necessary in order to make a decision on the appeal. As a minimum this shall include the information listed in 12.3.b above, along with the written report from the Competition Jury which heard the Level 1 appeal.
- e) The Tri NZ may choose to hear oral submissions from any parties involved in the appeal or may make a decision based only on the written material.

⁷ Though the Tribunal was provided with copies of the statements/submissions made by the other lead riders to the Tri NZ Board for the Reconsideration Decision.

- f) The hearing will not be open to the public;
- g) The Board Chairperson will read the appeal;
- h) The Board will render a decision, by simple majority;
- i) The decision will be posted immediately, and delivered in writing to the parties upon request.

22. The relevant clauses of the Tri NZ Constitution state:

2.0 Definitions:

2.1 In this Constitution:

....

Appeal Board means a board appointed by the Board pursuant to Rule 13.3.2 of this Constitution.

....

Board means the Officers of the Association elected, appointed or co-opted in terms of this Constitution.

....

13.0 Powers of the Board

Subject to the provisions of this Constitution and without limiting the generality of this paragraph the prime objective of the Board shall be to administer the rules of Tri NZ and the rules of Events and manage the affairs of Tri NZ, and in particular to exercise the following powers:

....

13.3 Disciplinary Commission;

....

13.3.2 The Board shall have the further powers as and when required to appoint an Appeal Board of three suitable persons, one of whom shall be a barrister and solicitor of the High Court of New Zealand, with none of those three persons being members of the relevant Disciplinary Commission, to hear and decide upon any appeal arising out of any decisions made by the Disciplinary Commission, or of a race referee.

....

13.3.4 In respect of any appeal that is based on one or more of the grounds of appeal set out in Rule 19, the Board in its discretion, instead of referring the appeal to the Appeal Board, may refer such appeal to the Sports Tribunal of New Zealand to be determined in accordance with its rules.

....

13.16 To determine or vary regulations for all national competitions provided such regulations do not infringe upon the rules and regulations of WT.

....

19.0 Disciplinary Procedures

....

19.9 The athlete or Member may appeal the decision of the Appeal Board to the Tribunal. An appeal may only be made to the Tribunal on one or more of the following grounds:

- (a) That natural justice was denied.
- (b) That the Appeal Board acted outside of its powers and/or jurisdiction.
- (c) That substantially new evidence has become available after the decision which is being appealed, was made.
- (d) That any penalty imposed by the Appeal Board was either excessive or inappropriate.

....

The decision of the Tribunal (including one in respect of an appeal referred to it under Rule 13.3) shall be final and there shall be no further right of appeal.

23. The World Triathlon Competition Rules 2026 have the following relevant clause:

2 CONDUCT OF ATHLETES

2.1. General Conduct:

a) Triathlon and World Triathlon's other related multisports involve many athletes. Competition tactics are part of the interaction between athletes. Athletes will:

....

(xiii) Follow the prescribed course; Exceptions will be applied:

- When it happens because of safety reasons if advantage is not gained;
- When it happens following the instructions of a Technical Official;
- When it happens accidentally if advantage is not gained.

SUBMISSIONS

Jurisdiction

24. Tri NZ submits that the Tribunal lacks jurisdiction to hear the appeal because the Level 2 Decision and Reconsideration Decision were not disciplinary matters. Instead, they were decisions determined by the Tri NZ Board pursuant to the Competition Rules, which they claim is not subject to any further right of appeal, and is not determined, pursuant to cl. 13.3.2, by an "Appeal Board" as defined in the Constitution. Accordingly, cl 19.9 of the Constitution does not confer jurisdiction, as it applies only to appeals from disciplinary appeal boards or an "Appeal Board" constituted under rule 13.3.2, which is not the case here.

25. Mr Phillips supports and adopts the position of Tri NZ. He contends the Constitution deliberately separates the two pathways: where disciplinary appeals proceed via an "Appeal Board" under rule 13.3; whereas the Competition Rules establish a self-contained protest and appeal framework in respect of a Level 2 appeal. The right of appeal to the Tribunal in cl. 19.9 of the Constitution is expressly confined to decisions of an "Appeal Board" and therefore is not engaged in this case. He argues that Mr Abele's attempt to treat the Tri NZ Board decisions as if it were an "Appeal Board" would collapse this intended distinction and distort the scheme of the rules. Clause 13.3.4 of the Constitution gives the Board a discretion to refer a matter to the Tribunal but creates no right for a triathlete to insist on such a referral. He emphasises that the Competition Rules establish a protest and appeal structure designed to resolve competition disputes within the sport with speed and finality.

26. Mr Abele submits that jurisdiction is established under the Tri NZ Constitution as clauses 13.3 and 19.9 together create a pathway to the Tribunal, including in respect of appeals from “race referee”⁸ decisions on grounds such as excessive or inappropriate penalty. He contends that the Tribunal should reject a formalistic construction which would allow internal structuring or labelling choices by Tri NZ (e.g., “Board” vs “Appeal Board”) to defeat the Tribunal’s independent oversight, in circumstances where the decision challenged is, in substance, an NSO-level appeal. He contends that should be avoided because otherwise the “race referee” limb and “excessive/inappropriate penalty” ground would be rendered hollow, in the very category of disputes it is plainly intended to cover. He further submits that the Competition Rules do not explicitly exclude an appeal to the Tribunal; there is no express “finality” clause displacing the Constitution’s appeal mechanism and, in any event, any such clause in the Competition Rules would render the constitutional provisions ineffective.

DISCUSSION

Jurisdiction

27. The first issue for the Tribunal to determine is whether it has jurisdiction, under the Tri NZ Constitution and/or Competition Rules, to hear the proceeding. There are two competing interpretations. The first establishes jurisdiction via clauses 13.3.2 and 19.9 of the Tri NZ Constitution, as suggested by Mr Abele. The second says that the Competition Rules are a self-contained pathway with no right of appeal to the Tribunal and that the jurisdiction under the Constitution was not activated here because the Tri NZ Board is not an “Appeal Board”, as submitted by Tri NZ and supported by Mr Phillips.
28. Having carefully considered the competing interpretations the Tribunal has determined that it does not have jurisdiction for the following reasons:
- a. The procedure for the Tri NZ Board to appoint an Appeal Board under cl 13.3.2 of the Constitution to hear an appeal arising out of a Disciplinary Commission or of a race referee, is clearly a separate and distinct pathway. Importantly, it is not a pathway that the Tri NZ Board intended to follow. That it is a separate pathway is reinforced by cl 13.3.4 of the Constitution, which grants the Board the power to refer the matter to the Tribunal “instead of referring the appeal to the Appeal Board” [emphasis added].

⁸ Referring to clause 13.3.2 of the Tri NZ Constitution.

- b. Clause 12.5 of the Competition Rules refers only to the decision-making ability of the Tri NZ Board – and makes no reference to an Appeal Board. While there are no definitions in the Competition Rules themselves, we acknowledge and accept that this distinction is important and exists within the Tri NZ Constitution, such that Tri NZ Board members were both aware of these definitions and the different appeal pathways.
29. We understand the concerns of Mr Abele, but these are not mere ‘labels’; they are separate and distinct appeal pathways and powers that can be exercised by the Tri NZ Board. The Tribunal would have needed to see far more evidence that Tri NZ had intended to establish an Appeal Board, before the rights of appeal to the Tribunal set out in the Tri NZ Constitution under cl. 19.9 would apply.
30. Accordingly, the appeal must be dismissed for want of jurisdiction.

Observations

31. The Tribunal makes some observations about this case because it has raised important matters that may be relevant or of use to other sports faced with similar situations.
32. In oral submissions, Tri NZ claimed that there were good policy reasons for not granting the Tribunal jurisdiction over the Competition Rules, related to the fact that it meant that decisions after a race could be made promptly by the Tri NZ Board and would provide finality to athletes. The Tribunal appreciates that there can be valid policy reasons why not all decisions by NSOs should be subject to a right of appeal to the Tribunal.
33. In this case, however, the Tribunal was sympathetic to Mr Abele’s argument that there was jurisdiction because of the ambiguity in the language of the Constitution. In particular, it would have been helpful if the Competition Rules had contained explicit “no further right of appeal” wording.⁹ This highlights the importance of an NSO being clear in its Constitution, rules, regulations and policies as to when jurisdiction to the Tribunal is (or is not) granted.
34. This case also serves as a reminder, especially to Tri NZ, of the importance of having rights of appeal to an independent decision-making body, such as the Tribunal. Had Mr Abele not filed his appeal with the Tribunal, then the clear and obvious breaches of natural justice, arising from how the Tri NZ Board conducted the initial appeal by Mr

⁹ As contained in the Tri NZ Constitution at cl. 19.9 in relation to the right of appeal to the Tribunal.

Phillips, might not have been acknowledged, let alone remedied.¹⁰ Mr Abele had complained to Tri NZ prior to this and pointed out the breaches, but was told that the matter was closed.

35. Having rights of appeal to an independent appeal body, such as the Tribunal, are likely to enhance an NSOs ability to foster and retain the trust and confidence of its athletes/members. It provides an avenue for proper resolution of disputes in situations where the sport itself might have made fundamental procedural errors; recognising that mistakes can and will be made, even by experienced and well-qualified Boards. While Tri NZ was entitled to argue there was no jurisdiction, the Tribunal panel was surprised that they did not consent to jurisdiction in circumstances where it was the Tri NZ Board themselves that had made the fundamental procedural errors. We would have thought that this was precisely the type of situation that cl. 13.3.4 was intended to cover and remedy.
36. As to when or in what circumstances an NSO might consider the policy question as to whether to grant jurisdiction to the Tribunal, NSOs are reminded that the choice is not necessarily a binary one i.e., jurisdiction versus no jurisdiction. NSOs can grant more (or less) jurisdiction based on the grounds of appeal they choose to be available to athletes. Taking the Tri NZ Competition Rules as an example, Tri NZ could provide a right of appeal with limited grounds of appeal, such as for breaches of natural justice or errors of law only. That would mean that significant procedural defects could still be remedied, without requiring the Tribunal (or the athlete) to delve into the merits of each and every decision made by the NSO.
37. Finally, rule 2.1(xiii) of the World Triathlon Competition Rules¹¹ contains exceptions to the 'Follow the prescribed course' rule, which are (for some unknown reason) not included in the Tri NZ Competition Rules. We consider it would be prudent for Tri NZ to adopt these exceptions into their own Competition Rules given cl. 13.16 of the Tri NZ Constitution¹² requires that their own rules and regulations do not infringe upon those of World Triathlon.

¹⁰ Noting, however, that Mr Abele argues that the Reconsidered Decision did not remedy those breaches of natural justice because the Tri NZ Board were the same decision-making body that initially made those breaches and then never truly opened their minds to the arguments made by the lead riders.


¹¹ Refer para [23] above.

¹² Refer para [22] above.

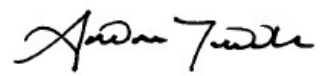
DECISION

38. As the Tribunal has determined that it has no jurisdiction hear the appeal, it is dismissed for want of jurisdiction.

Dated: 30 June 2026



**John Macdonald
Chair**



**Andrea Twaddle
Deputy Chair**



**Ruth Aitken DMNZ
Tribunal Member**