

NST-E23-2401

The Applicant v National Sporting Organisation

## Determination

### National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Ms Eugénie Buckley

**in the arbitration between**

**The Applicant**

*(Applicant)*

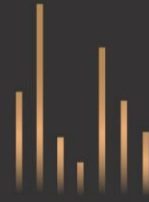
Represented by Carina Ford, legal representative

And

**National Sporting Organisation**

*(Respondent)*

Represented by Ian Fullagar, legal representative



## PARTIES

1. Applicant is an athlete, represented by Ms Carina Ford.
2. Respondent is the National Sporting Organisation (NSO), represented by Mr Ian Fullagar.

## INTRODUCTION

3. This matter was a dispute relating to the non-selection of the Applicant to compete in upcoming international events.
4. The main issue was whether the Respondent erred in determining that the Applicant had not met the relevant criteria of the Respondent's National Team Athlete Policy (**Selection Policy**), namely the clause relating to the demonstration of a planned and committed approach to training and competition.

## NST JURISDICTION

5. The jurisdiction of the NST is engaged by section 23(1)(a) and section 23(1)(b)(i) of the *National Sports Tribunal Act 2019* (**NST Act**) and clause 6 of the Selection Policy.
6. The parties agreed in writing that the matter be referred to the NST to resolve the issues in dispute.

## FACTUAL BACKGROUND

7. The Respondent is the national governing body for the sport in Australia. The Applicant is a member of the Respondent and a member of the Respondent's Australian Team.
8. The dispute between the parties relates to the non-selection of the Applicant to compete in three upcoming events. The Respondent had registered the Applicant to compete in two of those events. The Applicant wished to be selected to compete in all three and claims all the selection criteria for these events has been met.
9. The Respondent states that the Applicant did not meet the requirements as part of the National Team as designated team camps were not attended. It believes that the Applicant had been given sufficient opportunity to join the team and meet obligations, but did not do so, and thus is not eligible to compete in the three events.
10. While the Member has considered all the facts, allegations, legal arguments and evidence submitted by the parties, she refers in her Determination only to the submissions and evidence she considers necessary to explain her reasoning.

## PROCEEDINGS BEFORE THE NST

11. The Applicant filed submissions with the NST Registry on 20 January 2023.
12. The Respondent filed submissions with the NST Registry on 27 January 2023.
13. The Applicant filed submissions in reply with the NST Registry on 30 January 2023.
14. The arbitration took place at 2pm AEDT on 2 February 2023.
15. No objection was made at the outset of the hearing to the composition of the Panel and at its conclusion the parties confirmed that their procedural rights had been fully respected.

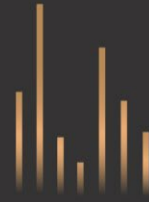


## APPLICABLE RULES

16. The arbitration was conducted in accordance with the Selection Policy and the Respondent's International Events Selection Criteria and was governed by the NST Act.

## SUBMISSIONS AND MERITS

17. There were a number of matters that were not in dispute between the parties, including that the Applicant:
- was bound by the Selection Policy;
  - had been invited to join the Respondent's National Junior Team;
  - had signed the Invitation to Join the Respondent's National Junior Team (Jot Form);
  - had signed and was bound by the Athlete Agreement; and
  - had met the performance selection criteria of the Selection Policy.
18. The Respondent issued the Selection Policy and it contained clause 3.10 as follows:
- An athlete must demonstrate planned and committed approach to training and competition, including: Competing at Australian Championships and other designated selection events*
  - Commitment to attend post selection training camps designated as National Team training camps*
  - Debrief/report as is required with the Selection Committee chair and / or Coaching Committee member(s) excluding their own coaches, and member(s) of the Athlete Experience and Programs Committee.*
18. In July 2022, the Respondent issued the International Events Selection Criteria to parents and athletes by email. It states, inter alia, that to be selected to compete in the international team to compete in the relevant events, the athlete must "satisfactorily complete and meet the requirements of the Athlete Agreement and Selection Policy".
19. In its essence, the dispute between the parties related to whether or not the Applicant had met the conditions of clause 3.10(b) of the Selection Policy.
20. On 30 July 2022, the Respondent Board advised athletes and parents of a meeting to be held in August where information would be provided regarding pathways for development and representing Australia.
21. In August 2022, the teams meeting discussed requirements around national team selection. It is noted that the Applicant's parents had limited reception and so could not hear the discussion.
22. Following this meeting a PowerPoint document was distributed named "Athlete Pathway and 2022-23 OS Update". That update noted the overseas program with approximate dates, locations and costs. It did recognise that not all athletes would be able to be away for the full program of three to four months and so set minimum times, namely "ideally 8 weeks for the Junior Team athletes."
23. In September 2022, the Respondent's President emailed an offer to accept application to join the Respondent's Junior National Team with acceptances due 14 September.



24. A Respondent letter of later in September 2022, was emailed to all athletes and parents. It noted the concerns around the changes to the Selection Policy and explained the rationale as being critical for the Respondent's unification and governance reform, recognition by the International Federation and Sport Australia and for the Respondent to achieve its aim of direct country entry to International events. Of most relevance, the letter stated:

*"The NSO National Team Selection Policy, Invitation (jotform) to join a National Team and the Athlete Agreement, collectively require a commitment to NSO, including demonstration of a professional attitude, a commitment to attend training and competitions, and post selection, to attend training camps designated as National Team training camps."*

*"7. Athletes wishing to be entered into International Federation events and as part of National Team membership, must attend Australian Team(s) training programs when provided."*

*"8. Athletes wishing to obtain additional training or having an additional coach are most welcome and encouraged, but when National Team programs are being held, athletes are required to attend."*

25. The next day in September 2022, the Applicant signed the Jotform and attached the signed Athlete Agreement. At the front of the Jotform it states:

*"This form should be used to apply to accept your invitation to join the National Junior Team and includes meeting the Eligibility and Demonstrated Commitment to Attendance at Training and Events."*

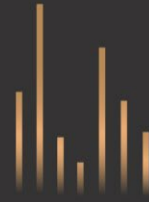
26. The Applicant checked the box stating that "I am able to demonstrate a committed approach to training and competition including attending training camps I am invited to, unless there are extenuating circumstances which are accepted by the NSO Board." The "extenuating circumstances" here referred to are additional to those referred to in the Selection Policy (which references extenuating circumstances only for the performance criteria component: clause 4.1). Whilst there was significant correspondence between the Applicant's parents and counsel and the Respondent, there was no specific request for an exemption from training camps based on extenuating circumstances. Nothing on the facts before this Tribunal indicated any extenuating circumstances warranting an exemption from well stated requirements.

27. Under "Is there anything else to tell us for planning purposes?", the Applicant advised he "would like to train with person X, person Y and person Z in international region ZZ." Earlier correspondence from the Respondent was clear that whilst additional training was welcome, athletes still needed to attend national team camps.

28. On 13 October 2022, the Respondent's Executive Officer emailed the Applicant's family and stated, inter alia,

*"[Hence] you should base your preliminary program for Applicant on the National Junior Team program from X November to X March 2023, which will include attending the National Junior Team training camp at region A from mid-December to late Jan which is in-between two events."*

29. On 20 October 2022, the Respondent's President emailed the Applicant's family to offer the Applicant an opportunity to join the Respondent's National Junior Team European Training and Competition Camp due to an athlete cancellation. A deadline was provided of 22 October and subsequently extended to 24 October. The offer lapsed.



30. On 6 December 2022, the Respondent responded to emails from the Applicant's family noting the Applicant wanted to be selected for the third event (24 November 2022). That response reminded the Applicant's family of the selection requirements under the Selection Policy and other documents as noted above. The Respondent did repeat its offer to the Applicant to join the Respondent's training camp on the 26 December until 15 March, which would allow the Applicant to be entered for the first two events and to be the 5<sup>th</sup> member of the third event team. A deadline was provided of 8 December to meet International Federation and organisational requirements and subsequently extended to 10 December noting the Applicant's family requested an extension to 12 December. This offer lapsed.
31. The Applicant has not attended any National Team training camps. He was given ample opportunity, but has not met the conditions of clause 3.10(b) of the Selection Policy.

**THE TRIBUNAL THEREFORE DETERMINES:**

The Tribunal notes that given the urgency of the matter a verbal decision was provided on the evening of 2 February 2023, with these reasons to follow later.

1. The Respondent did not err in determining that the Applicant had not met the relevant criteria of the Selection Policy and the application is dismissed.

Date: 9 February 2023



Eugénie Buckley