

Case number: NST-E24-11998

Case Title: Jackson Roberts-Young v Australian Weightlifting Federation

Determination

National Sports Tribunal General Division

sitting in the following composition:

Panel Member

Ms Bridie Nolan

in the arbitration between

Jackson Roberts-Young

(Appellant)

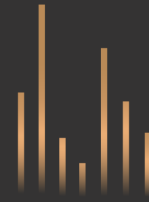
Represented by Mr Peter Upham, authorised representative

And

Australia Weightlifting Federation (AWF)

(Respondent)

Represented by Mrs Lilly Coffa, Chair of AWF High Performance Commission



PARTIES

1. The Appellant, Jackson Roberts-Young is an international representative athlete in weightlifting for the Respondent since 2016, who recently competed at the Birmingham Commonwealth Games in 2022.
2. The Respondent, Australian Weightlifting Federation (**AWF**), is the governing body for the sport of Weightlifting in Australia.

INTRODUCTION

3. Pursuant to clause 8.1 of the 2024 Oceania Senior Championships Event Specific Selection Criteria (**the Event Criteria**), the Appellant appeals his non-selection to the 2024 AWF Oceania Senior Team.
4. The date for the Event, the 2024 Oceania Championships in Auckland, New Zealand, was set and published on 28 October 2022 at the OWF Congress for 23 - 25 February 2024.
5. In his application, the Appellant described the dispute as follows:

I was not afforded a fair and reasonable opportunity to meet selection criteria for 2024 Oceania Senior Championships.

An event specific Selection Policy was only published 19 weeks into a 26 week qualification period.

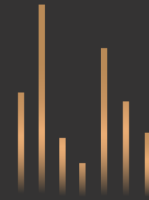
The minimum qualification total required for that level of event that had been in effect for five years was increased by 7.7% for my weight class – more than any other weight class

I was advised of the change at Senior Worlds in Saudi Arabia, two days before competing.

No reason has been published why the new Selection Policy was published so late. No external factors have been stated for why any change in qualification was necessary.

The only reason given for the change in qualification occurred, verbally at High...[text cut off]

6. For each year from 2019 through 2023 inclusive, the Minimum Qualifying Standard for the Appellant's category of "Male - 109kg" was 325kg, which corresponds to the 'B grade' on the AWF Grading Scale.
7. The qualifying periods for Senior Oceania Championships 2019 through 2023 were consistently between 26 – 28 weeks, ending 15 weeks prior to the competition in the case of Olympic qualifiers (Tokyo 2020 and Paris 2024). In 2024, the Event is a Paris Olympic Qualifier.
8. As at 30 April 2023, no event specific qualification policy was published for the Event. Accordingly, the Appellant says that he assumed that his B grade performance would

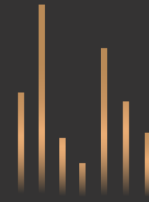


be included in the qualification period to meet the Minimum Qualifying Standard. The Appellant competed at a State weightlifting competition, totalling 344 kg, which was enough, sufficient to place him in the higher grade. Thereafter, together with, and under the guidance of his coach, he planned his training for the remainder of the year to include achieving a B grade again at the AWF Senior Nationals Competition in August, the Appellant successfully made all six lifts at the Senior Nationals on 6 August and totalled 345 kg.

9. On 21 August 2023, an “Information Bulletin” was published that disclosed the retroactive qualification dates for the Event of 5 May to 5 November 2023. The effect of which was that the Appellant’s performance of 30 April 2023 did not fall within the qualification period but the performance on 6 August 2023 did.
10. On 14 September 2023, the Appellant was informed verbally by the AWF coach, while in Saudi Arabia at the IWF Senior World Championships, that the AWF qualifying grades were changing. Notably, the 325 kg Minimum Qualifying Standard for the previous five years was now 350 kg, meaning that the Appellant had retroactively not qualified for the Event. It also meant that the retrospectively approved Minimum Qualifying Standard, for the Event was higher than the next higher grade under the previous AWF, grading system of 343 kg. The Appellant’s previous perfect six for 6 performance at the Senior Nationals of 345 kg, no longer qualified him for the Event.
11. On 15 September 2023, the Appellant’s coach was emailed information by AWF CEO advising the publication of the new AWF grading scale to be used for “the selection of athletes for Australian Weightlifting Federation teams from 2024 onwards” and the “2024 Oceania Senior Championships Event Specific Selection Criteria”. The email claimed that the retrospective minimum qualifying standard was calculated on averages, but did not offer a justification as to why the change was necessary. There was no acknowledgement that it meant the qualifying period for the 2024 Oceania Championships have been ongoing for 19 weeks by that point, and that only seven weeks remained to qualify. The AWF did not reply to the response email sent by the appellant’s coach in respect of this change.
12. On 16 September 2023, the Appellant competed at the 2023 World Championships and, with one exception, attempted the weights that he and his coach had pre-determined:

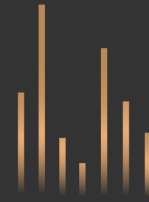
Lift	Snatch			Clean & Jerk		
	1 st	2 nd	3 rd	1 st	2 nd	3 rd
Pre-comp Plan	144	148	152	194	200	207
In competition	144	144	152	194	200	207

13. The retroactive changes to the Minimum Qualifying Standard for the Event were not equally applied to all athlete weight classes. Of the 10 male and 10 female weight classes in weightlifting, the appellant’s class (male, 109 kg), had increased more than any other – namely, from 325 kg to 350 kg, constituting a 7.7% increase – so large that



it exceeded not just the previous B grade of the 325 kg, but also the previous grade of 343 kg. The increase was inconsistent with the "Sinclair coefficient" being the mathematical tool employed to measure athletes in different bodyweight classes in order to establish comparative performances. The Sinclair co-efficient for weight classes under the new grading scale meant that the Appellant's class (male, 109 kg) had the highest Sinclair number, and therefore the most relatively difficult category for which to qualify. In this way, the Appellant was uniquely and disproportionately disadvantaged by the late publication and retroactivity of the Event Criteria.

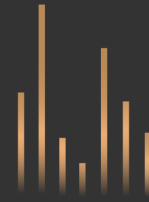
14. The result being that the Appellant did not meet the Athlete Eligibility criteria specified in the Event Criteria. Specifically, in relation to clause 2.9 and clause 4.1, he did not achieve a Total that was equal to or greater than the Minimum Qualifying Standard within the specified qualifying period.
15. The Respondent explained that Event Criteria were promulgated and published in the circumstances which follow.
16. Following the Australian Institute of Sport's decision not to provide general High Performance funding to the AWF for the period of July 2022 – June 2024, the Respondent engaged in collaborative discussions with the Australian Institute of Sport to redefine Australian Weightlifting's Performance Pathway and commence a new phase of High Performance planning to achieve better results in international competitions.
17. On 3 August 2023, the AWF Board of Directors appointed a new High Performance Commission (**HPC**). At its first meeting on 3 September 2023, the HPC decided to recommend a new set of Minimum Qualifying Standards to apply to AWF Team selections for events conducted in 2024. The HPC determined that the new standards would be based on actual weightlifting competition performances to ensure their relevance to the bodyweight categories and events in which Australian athletes will compete.
18. The Senior International Standard Totals were derived from the average of the following results recorded to June 2023, adjusted where necessary to achieve a rounded figure:
 - a. 2nd place Australian National Senior Rankings;
 - b. 3rd place Oceania Senior Rankings;
 - c. 5th place Commonwealth Senior Rankings; and
 - d. 11th Place World Rankings.
19. Application of the above method returned a figure of 351.25 for the men's 109kg category. This was rounded down to 350 kg.
20. The same method was used to determine the Senior International Standard for each bodyweight category.



21. The HPC finalised the table of Elite Standards and International Standards for presentation to the Board and the standards were endorsed by the Board on 14 September.
22. The AWF has consistently set the duration of qualifying periods for selection to Australian Teams at six months, with an end date approximately two weeks prior to the expected Preliminary Entry deadline of the relevant event. For the 2024 Oceania Championships, the qualifying period set by the AWF was 5 May 2023 to 5 November 2023.

NST JURISDICTION

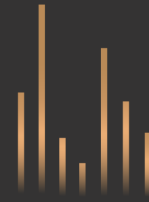
23. Pursuant to section 13 of the *National Sports Tribunal Act 2019 (NST Act)*, the presiding member has been appointed by the Minister by written instrument as a Member of the Tribunal, and pursuant to section 24 of the *National Sports Tribunal (Practice and Procedure) Determination* was appointed by the CEO of the Tribunal to conduct this arbitration under section 23 of the NST Act in the General Division of the Tribunal.
24. Pursuant to section 16(1) of the NST Act and rule 6 of the *National Sports Tribunal Rule 2020*, a Tribunal member is obliged to notify the CEO of the Tribunal of any conflict of interest in a matter to which he or she is appointed. There is no such interest to be notified in this case.
25. Section 40 of the NST Act sets out general principles applicable to arbitration as follows:
 - (1) In the arbitration:
 - (a) the procedure of the Tribunal is, subject to this Act, within the discretion of the Tribunal; and
 - (b) the arbitration must be conducted with as little formality and technicality, with as much expedition and at the least cost to the parties as a proper consideration of the matters before the Tribunal permit; and
 - (c) the Tribunal is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks appropriate.
 - (2) The parties must act in good faith in relation to the conduct of the arbitration.
26. In addition, s 28 of the *National Sports Tribunal (Practice and Procedure) Determination 2021* provides that the Tribunal may inform itself in arbitration in a variety of ways. Most importantly, the Tribunal is not bound by the rules of evidence and evidence is not required to be given on oath, although the Tribunal may require the administration of an oath in its discretion.



27. No party requested any evidence be given on oath, and the Tribunal did not consider sworn testimony to be necessary for the proper disposition of this arbitration. No party objected to this course of conduct.
28. No party objected to the procedure adopted by the Tribunal during the Arbitration.
29. There was no objection to the Tribunal hearing and determining the outcome of the Appeal.
30. The jurisdiction of the National Sports Tribunal to hear and determine the present dispute arises pursuant to s 23 of the NST Act which provides that where a dispute arises between a person bound by one or more constituent documents by which a sporting body (in this case the AWF) is constituted, and one or more of those documents permit the dispute to be heard in the General Division of the National Sports Tribunal, the person (in this case the appellant) may apply to the Tribunal for arbitration of the dispute.
31. Under clause 8.1 of the Event Criteria “an athlete who is eligible for selection pursuant to the criteria set out in this policy and/or the *Australian Weightlifting Federation Athlete Selection Policy – General* who is not selected may appeal against their non-selection in accordance with Australian Weightlifting Federation *Athlete Selection Appeals Policy*.”
32. Under the Athlete Selection Appeals Policy, clause 5.2(a), a Selection Appeal must be heard in the General Division of the NST in the first instance.
33. Under clause 5.2 (b), Non—Selected Athlete may bring a Selection Appeal to the General Division of the NST, for hearing on one or more of the following grounds, stated thereunder, in which the non-selected athlete (here, the appellant), bears the onus of making out. Relevantly, the appellant relies on clause 5.2 (b) (ii), “the Non-Selected Athlete was not afforded a reasonable opportunity by the AWF to satisfy the Selection Policy.

PROCEEDINGS BEFORE THE NST

34. By Application Form to the NST dated 10 January 2024, the Appellant commenced this Selection Appeal.
35. The parties filed submissions as follows:
 - a. The Appellant on 15 January 2024 filed a document entitled “NST submissions and evidence”;
 - b. The Respondent on 17 January 2024, filed a document entitled “AWF, submission and evidence”, which contained 5 appendices, together with a Statement of Facts (as requested by the Tribunal);
 - c. The Appellant on 18 January 2024 filed a document referred to as a second submission, entitled “Responses to AWF submission and evidence of 17/01/24” together with a document entitled “Responses to AWF “Statement of Facts” submission of 17/01/24.



36. In an email to the parties conveyed by the NST, the Tribunal asked the parties to address the following questions, which the Tribunal perceived to arise on the facts and issues in the Appeal:
- a. What does the appellant say constitutes a reasonable opportunity to satisfy the selection policy document for the Event?
 - b. What are the facts and circumstances relied upon to substantiate the contention advanced in response to (1)?
 - c. When does the Appellant say that he would probably have been able to satisfy the policy assuming reasonable notice as contended for in (1) had been given?
 - d. Upon what evidence does the appellant rely to substantiate the probability contended for in (3)?
37. The parties provided responses to those questions in their submissions.
38. The Tribunal also offered the parties an opportunity for a short oral hearing which it conducted on 19 January 2024 by Webex at 10 am. No objection was made at the outset of the hearing to the composition of the Tribunal. At the conclusion of the hearing, the parties confirmed that their procedural rights had been fully respected.
39. On 19 January 2024, the Tribunal made the following determination, which was notified to the parties that day:

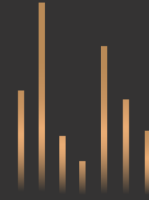
NOTICE OF DETERMINATION – NST-E24-11998 – Jackson Roberts-Young v Australian Weightlifting Federation (AWF)

I refer to the captioned Selection Appeal made pursuant clause 5.2(a) of the AWF Selection Appeals Policy (the AWFSFA Policy) on grounds stipulated in clause 5.2(b)(ii) the AWFSFA Policy, referred to me, sitting in the General Division of the National Sports Tribunal (the NST) under section 23 of the National Sport Tribunal Act 2019 (NST Act).

Further to the oral hearing held in accordance with clause 5.2(f) (i) of the AWFSFA Policy at 10.00am today, which concluded at 11.00am, please be advised that in accordance with both clause 5.2(f) of the AWFSFA Policy and section 27 the NST Act, the NST is satisfied that the Appellant has discharged the onus of making out the ground of appeal, in that the Appellant, viz., the Non-Selected Athlete, was not afforded a reasonable opportunity by the AWF to satisfy the relevant Selection Policy being the 2024 Oceania Senior Championships Event Specific Selection Criteria.

In accordance with section 27(3) of the NST Act and clause 5.2(h) of the AWFSFA Policy, this email provides written notice of the NST's determination, as follows:

- 1. The Appeal is upheld.*
- 2. The original selection decision is overturned.*



3. *Subject to cl. 5.2(j) of the AWFSA Policy, the NST refers any subsequent decision regarding the Appellant's non-selection or if required, any broader decision regarding selection of the Team for the Event back to the AWF for reconsideration and redetermination.*

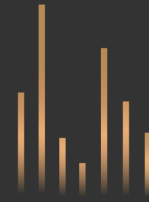
The NST's determination is to take effect today, 19 January 2024.

FACTUAL BACKGROUND

40. While the Tribunal has considered all the facts, allegations, legal arguments, and evidence submitted by the parties, it has referred in this Determination only to the submissions and evidence it considers material to explain its reasoning in the Introduction and immediately below.

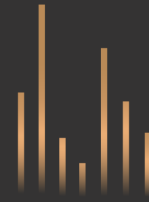
MAIN SUBMISSIONS OF THE PARTIES

41. The Appellant submits that he did not have a reasonable opportunity to satisfy the Minimum Qualifying Standard because the Respondent has not met the policy standards of:
 - a. the Australian Sports Commission (**ASC**), in not publishing selection policy in a timely way;
 - b. clause 8.1 'Appeals' of the 'Event Specific Selection criteria' for the Event;
 - c. the processes of 5.1 of AWF Selection Appeals Policy – General; and
 - d. its own education material on competition preparation.
42. The Appellant maintains it is not reasonable:
 - a. to be informed in the 19th week of a 26-week Selection of retrospective Minimum Qualifying Standards.
 - b. to be informed 2 days before competition at World Championships of new Minimum Qualifying Standards;
 - c. to bare an increase in Minimum Qualifying Standards based on ranking that is not relevant to the Event;
 - d. to not be eligible to compete at the Event when he had ranked 2nd in the class; and
 - e. that the Respondent expects athletes to compete interstate immediately after their yearly competition peak overseas.
43. In his submissions, the Appellant set out the sports science relevant to meaningful changes in weightlifting athletes' performance. Relevantly, he submits that an annual training plan is based upon the major competitive schedule that is established for the athlete, and is integrated into the multi-year plan, and its overall objectives. It is subdivided into multiple macrocycles dependent upon the competitions' schedule selected. Of note, athletes competing in weightlifting need to be careful not to



participate in too many competitions, which can impede development and to reduce the amount of training that is done for preparation. Training schedules in competitions are organised in a manner so as to achieve main targets, minor targets and training targets. The exigencies of managing an increase in strength while still maintaining a weight specific category (here, 109 kg) requires a careful weightlifting program which affords an athlete, the opportunity to reach their performance peak at the important qualifying events.

44. The Appellant is asking for the Respondent to exercise its discretion to administratively name him in the Team as he was not afforded a reasonable opportunity to meet the selection criteria.
45. In its written submissions the Respondent submitted that the Appellant had many opportunities to participate in qualifying competitions during the six-month qualifying period, including nine (9) Open Competitions held within his home state of NSW, and achieve qualification by recording a result equal to or greater than the Minimum Qualifying Standard.
46. It submits that the Appellant had many opportunities to participate in qualifying competitions in the seven weeks after the publication of the Minimum Qualifying Standard, including three (3) Open Competitions held within his home state of NSW, and achieve qualification by recording a result equal to or greater than the Minimum Qualifying Standard.
47. It submits that the pre-competition information provided by the Appellant and his coach to the Australian Team Coach approximately one month before the 2023 World Senior Championships indicated an expectation to achieve a Total at that event that would be in excess of the Minimum Qualifying Standard. Being informed prior to competing at the World Championships that the Minimum Qualifying Standard was lower than the result he planned to achieve cannot be considered as a disadvantage.
48. It submits that the 2024 Minimum Qualifying Standards are based on actual category-specific competition results. Comparisons across categories and/or references to the application of the Sinclair formula, are not relevant.
49. It submits that at the completion of his competition at the World Championships on 16 September 2023, the Appellant knew that he had not met the criteria for selection but did not raise any questions or concerns with the AWF or seek any advice from the AWF in this regard.
50. It submits that another athlete member of the Australian Team at the 2023 World Senior Championships who was in the exact same situation, i.e. had not achieved the relevant Minimum Qualifying Standard on or after 5 May 2023, sought the advice of the Respondent and subsequently chose to travel interstate to compete in a qualifying competition on 21 October 2023 where she achieved the Minimum Qualifying Standard and eligibility for selection.
51. It submits that the Olympic qualification status of the event is not relevant to the Appellant's non-selection. The International Weightlifting Federation Paris 2024 Olympic Qualification System requires athletes to participate in at least three of the



Additional Events specified at clause C3 (1a)(ii). The Appellant was selected for the 2022 World Championships (an Additional Event) but declined the selection. The Appellant was selected for the 2023 Pacific Games & Oceania Senior Championships (an Additional Event) and accepted selection but withdrew from the Team approximately one month prior to the competition. The Appellant has participated in no Additional Events and cannot meet the eligibility requirements of the Paris 2024 Olympic Qualification System.

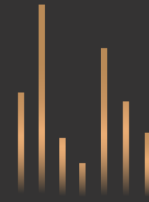
52. Finally, it submits the International Weightlifting Federation Technical and Competition Rules & Regulations clause 3.4.2.3 prohibits the addition of athletes to the Event's final entries who were not included in the Preliminary Entries. The Appellant was not included in the Preliminary Entries for the 2024 Oceania Senior Championships because he did not meet the applicable AWF selection criteria and therefore cannot compete in the Event under any circumstances.
53. This final matter was discussed at the hearing of the Appeal. I raised with the parties whether this meant that the Appeal was futile. The parties agreed that it was not, and that determination would, nonetheless be of assistance, if not only to clarify this issue for the further steps that the Appellant may make beyond this Tribunal's remit.

MERITS

54. The ASC publication "Getting it Right: Guidelines for Selection" sets out best practice "to help sporting organisations and selectors 'get it right' when choosing individuals and representative teams for sporting events."
55. Under Obligations of the Sporting Organisations which appears on page 12 it provides, relevantly:

Natural justice imposes an obligation for fair procedures to be put in place and decisions to be made in accordance with those procedures. An essential element of natural justice is that an athlete has received **knowledge of the issue**, it is critical that individuals have been made aware of the selection policy and criteria and that the policy has been communicated to the members. For example, a published selection policy should be adopted, communicated to members in a timely manner and then the selection decision made in accordance with that policy. There are two aspects to the concept of natural justice:

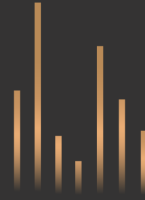
1. The opportunity to be heard — in selection terms, this translates into the opportunity for an athlete to meet published selection criteria. This means criteria must be made available to athletes in enough time for them to meet all criteria. This aspect of natural justice is obviously also of great relevance to appeals and will be discussed in section D. This requirement may also impose an obligation on sports to ensure selection criteria are capable of being met by all appropriate athletes and are not unreasonable.



2. ...

[emphasis in the original]

56. It is uncontroversial, as was made apparent at the oral hearing of this Appeal, that the Respondent accepts that the Event Criteria were published in a manner, which was untimely, and unfair to the Appellant. To a very large extent, this graciously made concession, is dispositive of the Appeal.
57. While it has been contended by the Respondent that the Appellant was treated consistently with the treatment of other athletes under its scope, transparently, and impartially throughout the selection process, that does not mean that the Appellant has been afforded a reasonable opportunity to satisfy the Event Criteria.
58. The opportunity afforded to satisfy selection criteria depends on the complexity of the training and preparation required to meet the criteria for the particular sport. Inherent in the Event Criteria is an acceptance that this period constitutes 6 months. Publication of this criteria, retroactively, effectively halved the opportunity, which the Respondent inherently considered reasonable to comply with the Event Criteria, such that on any view, the opportunity to qualify under them cannot be considered “reasonable”. The fact that other athletes may have, nonetheless successfully satisfied the criteria does not derogate from this proposition. Any consideration of reasonableness is an objective one.
59. What can be considered a “reasonable opportunity” to satisfy the criteria depends on the relevant circumstances, including the importance of the criteria to the athlete, and the capacity of a reasonable athlete to respond to a change in criteria. As the Appellant submits, the increase for his weight category, was disproportionate to that of other categories. This disproportion had a uniquely adverse effect on his ability to qualify such that his “reasonable opportunity” was further impacted. Despite the Respondent’s submission that the Sinclair coefficient is irrelevant. Objectively viewed, this mathematical tool is relevant when considering what constitutes reasonableness, as it informs the accepted standards, and legitimate expectations of candidates for selection, participating in the sport.
60. Weightlifting, like all sports, involves unique and staged training regimes, which are not amenable to expedited revision. This proposition was, again, graciously, accepted by the Respondent at hearing as being a relevant factor, informing the reasonableness of the publication of the Event Criteria and opportunity to comply with it.
61. Importantly, the Respondent conceded that it was its expectation that the Appellant could easily satisfy the Event Criteria, and indeed expected him to. This satisfies the necessary element of natural justice, or procedural fairness, inherent in the concept of “reasonable opportunity”. An opportunity can only be reasonable, in circumstances where there is a realistic prospect that an athlete could satisfy the criteria, if given the requisite “reasonable opportunity”.
62. Moreover, as the Appellant, submitted in oral submissions at hearing, the psychological burden imposed by the late publication of the Event Criteria cannot be understated. The psychology of sport, and the effects that it has on athletes, and their



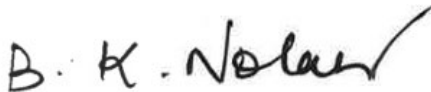
performance, is relevant to the natural justice, which is inherent to the reasonableness of the opportunity to satisfy the Event Criteria.

63. In these premises, the Tribunal considers that the Appellant has satisfied the evidentiary burden of making out the relevant ground of appeal. And, it is for these reasons, that the Tribunal determined that the Appeal be upheld.
64. The Tribunal made the following determination, of which it already notified the parties on 19 January 2024.

THE TRIBUNAL THEREFORE DETERMINES:

1. The Appeal is upheld.
2. The original selection decision is overturned.
3. Subject to cl. 5.2(j) of the AWFS Policy, the NST refers any subsequent decision regarding the Appellant's non-selection or if required, any broader decision regarding selection of the Team for the Event back to the AWF for reconsideration and redetermination.

Date: 9 February 2024



Ms Bridie Nolan