

ACC 2016/A/007

OFFICE OF THE ATHLETICS CANADA COMMISSIONER
IN THE MATTER OF AN APPEAL

between

RACHEL CLIFF

as Appellant

and

ATHLETICS CANADA

as Respondent

DECISION

I. PARTIES

1. These appeal proceedings result from a team selection dispute. The Appellant Rachel Cliff was not nominated to compete on the Athletics Canada team for the 2016 Olympic Games in Rio de Janeiro, Brazil.
2. The Appellant, is a 28 year old distance runner who was the second highest ranked non-automatic qualifier from the final of the women's 5000 meter event at the Rio Selection Trials, July 7, 2016 in Edmonton, Alberta. She completed a 5000 meter race in 15:23.94 on June 29, 2016 which was under the Olympic standard of 15:24.00.
3. The Respondent, Athletics Canada is the sport governing body for track and field in Canada.

II. JURISDICTION

4. This Appeal has been brought to the Athletics Canada Commissioner's Office pursuant to regulations found in the National Team Selection - Rules Book as well as regulations contained in the Rio 2016 Olympic Games selection criteria. Rule 3.0 of the National Team Selection - Rules Book provides that Appeals of team selection decisions may only be submitted by athletes deemed eligible to submit appeals as specified in the Selection Criteria Document. The Commissioner will decide all first level appeals, bearing in mind the team objectives and high performance principles as specified in the Selection Criteria Document. Athletes who wish to submit a first level appeal must submit such appeal to the Commissioner's Office within 5 business days following the announcement of the team list.
5. Section 7.0 of the Rio 2016 Olympic Games selection criteria states that "only athletes who are eligible to be considered for nomination (as per Section 1.3) and who have achieved the standard (as per Appendix A) in 2016 may submit an appeal for nomination to the Commissioner's Office. Please refer to Section 3.0 of the National Team - Selection Rules Book for instructions."
6. The second paragraph of Section 7.0 stated that "due to the extremely short time frame between Team nomination and final submission to COC (July 17, 2016), Appeals will only be considered if they have been received in writing to the Commissioner's Office within **48 hours** of the official announcement of the Team nomination."
7. Ms. Cliff was eligible to submit an appeal as the second highest ranked non-automatic qualifier from the women's 5000 meters at the Rio Selection Trials by virtue of Section 4.0 - Additional Qualification. The announcement of the team list was made on

July 11, 2016 and the Commissioner's Office received the appeal from Ms. Cliff on July 12, 2016. Athletics Canada submitted a reply to the Commissioner's Office on July 13, 2016. Ms. Cliff submitted her rebuttal on the same day, July 13, 2016.

8.. In light of the urgency of this matter, the hearing and all submissions were accelerated. A telephone hearing took place on July 14, 2016 at 9:30 p.m. EST, 6:30 p.m. PST.

9. The Appellant Rachel Cliff was assisted during the hearing by her coach, Richard Lee. The Respondent, Athletics Canada was represented by its Operations Manager, Jared Macleod.

10. At the conclusion of the hearing I advised the parties that I would notify them of my decision as soon as possible and a fully reasoned decision would follow the operative part of the decision. The operative part of the decision was rendered on July 16, 2016.

III THE POSITION OF THE PARTIES

Rachel Cliff's Position

11. The Appellant, Rachel Cliff submitted that she made the Olympic standard and demonstrated competitive readiness, notwithstanding her fourth place finish in the 5000 meter race at the Olympic Trials. She stated that she had just finished a strong month of training and is incredibly fit although she did not have her best performance at the Olympic Trials.

12. Ms. Cliff argued that going into the race, she and her coach Richard Lee had developed a strategy by looking at the six strongest competitors, five of whom had already met the Olympic standard, with the sixth runner just off the standard. She believed that this strategy would see her place in the top 2 but the race turned out to be significantly slower than she could have anticipated. She tried to push the pace to burn off some runners knowing that Edmonton is at altitude and but it left her vulnerable to the final kick from three other runners who held on to the pace.

13. Ms. Cliff also argued that Athletics Canada appears to be insinuating that a top 3 finish at the Olympic Trials was a requirement in order to be nominated to the team but the selection criteria does not so stipulate. Therefore she maintains, her 4th place finish cannot be used as grounds not to nominate her.

14. Ms. Cliff also maintained that her fourth place finish was a fine performance under the circumstances. and that she would have used a different strategy if the top three finishers were automatic qualifiers. She believes that in these circumstances there was no real difference between finishing third and finishing fourth.

15. In response to Athletics Canada's claim that her performance at the trial did not meet the on demand standard, Ms. Cliff stated that other athletes with lower world rankings than her have been nominated by Athletics to the 2016 Olympic team and too much emphasis is being placed on the Olympic trial race as a determinant of her ability to perform on demand.

16. Another point raised by the Appellant in her rebuttal was that strict placing cannot be a measure of on-demand performance in that the quality and depth of competition in each event has to be considered. She noted that she "handily defeated" the Canadian record holder and member of the current Olympic team in the 10,000 meter event as well as the Canadian marathon record holder who is also made the team in the 10,000 meters.

17. Ms. Cliff argues that her ability to perform was demonstrated by running the 5000 meters in 15:23.94 nine days before the Olympic trials, and 15:28 thirteen days prior to the trials. She also pointed to the fact that the second and third best times of the two women selected for the 5000 meter event at the Olympics are slower than Ms. Cliff's next best time.

18. Ms. Cliff added that in proper context the 10 second gap between Ms. Cliff and the medal winners time in the Olympic trials is not that significant in a 5000 meter race.

Athletics Canada's position

19. The Respondent, Athletics Canada submitted that as a non automatic qualifier Ms. Cliff's eligibility to be nominated to the 2016 Olympic Team was governed by Section 4.0 - Additional Qualification - Step 2 a., which states:

If additional spots remain, nomination will be determined by the following order:
a. *The next highest ranked* non-automatic qualifier who finishes in the top 8 or top half of their field (whichever is smaller) of their event at nationals having achieved the necessary Qualifying Standard within the qualifying window and has achieved their Competitive Readiness program **may also** be nominated for selection.*

**Ranking is based on best performances in each event within the qualification period and shall appear on the Athletics Canada Olympic Tracking List (to be updated frequently).*

20. Athletics Canada also highlights that the criteria states that an athlete in Ms. Cliff's position "may also be nominated", it does not state that they will be nominated and no athlete finishing outside the top 3 was selected to the team for an individual event; with the exception of an athlete who did not compete due to a minor injury.

21. A further point raised by the Respondent was that the National Team Committee (NTC) felt that Ms. Cliff did not meet the high performance principles of section 3.1 - On Demand Performance which states:

“Success at the Olympic Games requires the ability to compete on-demand at a level equal to or better than the Qualifying standards. The ability to perform at specific high performance competitions is a principle for selection”.

22. The Respondent also stated that Ms. Cliff’s 4th place finish at the Olympic trials, more than 10 seconds behind the medalists caused the NTC to question her ability to perform when it counted.

23. To further support their view that Ms. Cliff would not be able to perform to the level required at the Olympic Games, the NTC consulted the road-to-rio.com website to establish Ms. Cliff’s ranking compared to other athletes in the world in her event who have achieved the Olympic qualifying standard. That website indicates that Ms. Cliff would be ranked 37th on that list had she been nominated.

24. In further support of their position, the NTC used podium level athlete progression statistics to analyze Ms. Cliff’s performance pathway and it found that based on her age and her performance in the 5000 meters, she is four years behind where she should be on the podium pathway.

25. The Respondent submitted that the NTC followed the steps outlined in section 4.1 of the Rio 2016 Olympic Games selection criteria only to the point where they still had athletes who met the high performance principles of section 3.0. and Ms. Cliff was not nominated to the Olympic team because she did not meet those principles to the satisfaction of the NTC.

IV. DISCUSSION

26. In an appeal such as this, the test is not whether putting myself in the position of the NTC, I would have come to a different conclusion with regard to Ms. Cliff’s ability to meet the high performance principles that are referred to in section 3.1 of the selection criteria. What I am required to consider is whether the NTC failed to follow its own policies, acted in an unreasonable fashion or otherwise acted unfairly or contrary to the principles of natural justice.

27. It’s well settled in law that reasonableness is not necessarily the same as correctness. The decision maker is not required to demonstrate the correctness of a decision, but only that it was reasonable in the circumstances and that it falls within a range of plausible outcomes.

28. The tribunal in this instance must scrutinize the decision of the NTC, but not for the purpose of setting it aside because it thinks that a better one could have been made. The standard used for setting aside a decision on Olympic selection or nomination is usually abuse of discretion. Such abuse of discretion often manifests itself by evidence of unfair, discriminatory or arbitrary exercise of discretion. I find no such evidence in the case before me.

29. For these reasons, I find no basis to overturn the decision made by the NTC not to nominate Rachel Cliff to the 2016 Olympic team.

30. The appeal filed by Rachel Cliff on July 12, 2016 against the decision of the National Team Committee of Athletics Canada not to nominate her for selection to the 2016 Summer Olympic Games in Rio de Janeiro, Brazil is hereby dismissed.

Dated at Ottawa, Ontario, this 20th day of July, 2016.

Hugh Fraser
Athletics Canada Commissioner