

ACC 2016/A/006

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

between

WHITNEY ROWE

as Appellant

and

ATHLETICS CANADA

as Respondent

and

FARAH JACQUES

as Affected Athlete

DECISION

I. PARTIES

1. These appeal proceedings result from a team selection dispute. The Appellant, Whitney Rowe was not nominated to compete on the Athletics Canada team for the 2016 Olympic Games in Rio de Janeiro, Brazil.
2. The Appellant, Whitney Rowe is a 100 and 200 meter runner who is part of the Athletics Canada National Team relay eligibility pool.
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. I determined that the Appellant, Whitney Rowe was eligible to submit an appeal in that she was a member of the Athletics Canada National Team relay eligibility pool and was therefore eligible for nomination to the relay team. The announcement of the team list was made on July 11, 2016 and the Commissioner's Office received the Appeal on July 13, 2016. The Respondent provided its response the same day. The Appellant did not provide a rebuttal.

8. In light of the urgency of this matter, all submissions were accelerated. The athlete chose not to have a hearing and was satisfied that the decision on this appeal could be made based on the documentary evidence provided to the Commissioner's Office.

III THE POSITION OF THE PARTIES

Whitney Rowe's Position

9. Ms. Rowe stated that one of the criteria necessary for consideration as part of the relay pool was attendance at relay camps. She noted that she had taken part in all three of Athletics Canada's relay camps held in 2016 whereas another runner who was nominated as a member of the 2016 Olympic relay team, did not take part in any camps.

10. Ms. Rowe also maintains that she was part of the Athletics Canada 4 x 100 meter relay team that ran its fastest time of the season in Gainesville, Florida and that replacing her with someone with less experience will negatively impact team chemistry and cohesiveness.

11. Ms. Rowe observed that another member of the relay team is a 100 meter hurdler who already had a place on the team in her individual event and should not have taken up a relay place that could be given to another athlete.

12. Ms. Rowe pointed to her versatility as a relay runner, in that she is able to run both the curve portion of the race as well as the straight and she is efficient at passing the baton and has developed chemistry passing the baton with some of the more established members of the relay team.

13. The Appellant also maintains that her performances at the 2016 Olympic Trials in Edmonton, Alberta were better than some of the athletes nominated to the relay team. She observed that she made the finals in both the 100 meters and 200 meters at the trials, and has shown her commitment to the National Relay program, whereas team member Marissa Kurtimah did not make the 200 meter finals and another team member Farah Jacques did not make the 100 meter finals at the Olympic trials.

Athletics Canada's position

14. The Rio 2016 Olympic Games selection criteria states that all nominations will be made in accordance with Athletics Canada's (AC) National Team Selection Rules Book. The National Team Committee (NTC) is responsible for the implementation of these criteria and has the sole authority to make all decisions relating to the nomination of the Rio 2016 Olympic Team to the Canadian Olympic Committee.

15. The Respondent, Athletics Canada submits that athletes were considered for selection for the relays under section 5.1 and Appendix B of the 2016 Olympic Games selection criteria. Point 6 of the Fundamental Principles, found in Appendix B states; "Selection of the team will be at the sole discretion of Athletics Canada coaching staff".

16. Athletics Canada maintained that the reasoning behind the decision not to name Ms. Rowe to the 4 x 100 relay team is rooted in the "Relay Team Athlete Selection" section of Appendix B. which lists the following facts (not in priority order) for consideration in relay team selection:

- Placing at the Selection Trials in his/her individual event
- Health and fitness levels that indicate optimal competitive readiness
- Individual performance ranking as determined by 2016 Athletics Canada rankings
- Commitment to the National Relay program as determined by attitude, attendance, participation, and performance at national team camps, competitions and events
- Performance on previous relay teams
- Assessment of relay skills and position suitability.

17. The Respondent also argued that the position that Ms. Jacques was selected to run is one of the curve legs on the relay, therefore placing in the 200 meters at the 2016 Rio Selection Trial was considered most relevant. In that event, Ms. Jacques finished 3rd, whereas Ms. Rowe finished 5th.

18. Athletics Canada states that with regard to health and fitness levels, commitment to the National Relay program, and performance on previous relay teams, both the appellant and the affected athlete, (Ms. Jacques) are similar and that neither athlete has an advantage in these categories.

19. Athletics Canada notes that Ms. Jacques is ranked higher than Ms. Rowe in both the 200 meters and the 100 meters on the 2016 Athletics Canada rankings. The Respondent adds that Ms. Jacques' three best performances in the 200 meters are faster than Ms. Rowe's best 200 meter time.

20. Athletics Canada also stated that Farah Jacques was named to the 4 x 100 meter relay team as a potential third runner. She is considered a 200 meter specialist and runs twice as many 200 meter races as she does 100 meter events.

21. A further observation made by Athletics Canada was that Farah Jacques had the second fastest zone time of anyone in the relay pool and in their opinion was better suited to run the curve than was Ms. Rowe.

IV DISCUSSION

22. The process for the nomination of potential relay team members is set out in section 5.0 of the Rio 2016 Olympic Games Selection Criteria which reads as follows:

5.1 RELAYS

Team Qualification - General Requirements

The Top 8 placing teams at the 2015 IAAF Relay World Championships and the next 8 teams from the Top Lists (Average of the teams 2 best times during the qualifying period) will be invited to compete at the Rio 2016 Olympic Games. Teams must be comprised 100% of eligible athletes (as per Section 1.3)

NOTE: At least 2 athletes on each relay team must meet an individual Qualifying standard for an Olympic event in order for the NTC to nominate the relay eligibility pool does not guarantee nomination to a relay team

Relay Eligibility Pool

All athletes who have been named to the AC National Team relay eligibility pool will be eligible for nomination. Athletes must sign the Relay Team Athlete Agreement (Appendix B) to be eligible. Being named to the relay eligibility pool does not guarantee nomination to a relay team.

Final Relay Team Nomination

Notwithstanding these Criteria or the provisions of the Relay Team Athlete Agreement, whether AC will enter a specific relay team will depend on the number, quality and competitive readiness of eligible athletes. If there are insufficient athletes to form a relay team that will be capable of making the final at the Rio 2016 Olympic Games, or if there are not at least 2 athletes from the relay team that are individually qualified in an event, the NTC reserves the right not to select a given relay team.

Selection of Individual Athletes

Once a Relay Team is nominated, individual athlete nomination will follow the guidelines outlined in the Athletics Canada National Relay Team Athlete Agreement (Appendix B).

23. The Athlete Agreement included as (Appendix B) lists placing at the Selection trials in his/her individual event and individual performance ranking as determined by 2016 Athletics Canada rankings as two of the six factors to be considered in relay team selection.

24. Section 5.1 of the Rio Olympic Selection Criteria makes it clear that “being named to the relay eligibility pool does not guarantee nomination to a relay team.” Whilst it is clear that the Appellant has been part of the relay eligibility pool and was eligible for nomination, the National Team Committee and Athletics Canada’s coaches made the determination that there were other more suitable candidates for the six available positions. One of those athletes was Farah Jacques who was the athlete most likely to be removed from the team, if Ms. Rowe’s appeal was successful. Athletics Canada in their submissions gave ample justification for the nomination of Ms. Jacques to the relay squad.

25. In the case of Andrew Mewing v. Swimming Australia Limited, CAS 2008/A/1540, the Appellant launched an appeal against the decision of the Respondent, not to nominate him for selection as a member of the Men’s 4 x 200 Meters Freestyle Relay Squad for the 2008 Summer Olympics in Beijing, China.

26. At paragraph 24 of the Mewing case, Arbitrator Sullivan stated the following:

In the absence of bad faith, dishonest(y) or perversity, this appeal could only succeed if it could be shown that Mr. Thompson, in nominating the relay team, did not give “proper, genuine and realistic” consideration to the “overall needs of the team” (see e.g. Zhang v. Canterbury City Council (2001) 51 NSWLR 589 at 601 [62]; CAS 2004/A/582 at 6.33). Mr. Thompson did give such consideration. The fact that someone else, similarly considering the matter, may have arrived at a different result or even the fact that his decision is wrong, is insufficient to enable the appeal to be successful as such matters go to the merits of the decision not whether or not the decision-maker gave proper consideration to such matters (in addition to the cases already mentioned, see, also, Bruce v. Cole (1998) 45 NSWLR 163 at 186; CAS 2004/A/582 at 6.44).

27. I come to the same conclusion in the case before me. The submissions made by Athletics Canada demonstrate that the recommendations made to the National Team Committee were made in good faith and in consideration of the overall needs of the team. An appeal against a selection decision cannot succeed if the relevant decision maker has properly followed and implemented the nomination criteria and has given proper, genuine and realistic consideration to the needs of the team. The fact that different conclusions could be reached as to who should be on the relay team should not lead to a contrary finding.

28. The decision to constitute the women's 4 x 100 meter relay team in the manner recommended by Athletics Canada's coaches and agreed to by the NTC, the Committee responsible for the nomination of athletes to the Canadian Olympic Committee, was made fairly and with proper regard for the relevant selection policies and considerations.

V. CONCLUSION

29. For all these reasons the appeal filed by Whitney Rowe on July 13, 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 dismissed.

Dated at Ottawa this 21st day of July, 2016

Hugh Fraser
Athletics Canada Commissioner