

IMPORTANT NOTE: *This version is a translation of the original French version*

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)**

NO.: SDRCC 23-0660

**MATISSE JULIEN
(Claimant)**

AND

**CYCLING CANADA CYCLISME
(Respondent)**

AND

**PHILIPPE JACOB
(Affected Party)**

Appearing before:

Patrice Brunet (Arbitrator)

Appearances:

For the Claimant:

Louis Vallière

For the Respondent:

Kris Westwood, Dan Proulx, Nigel Ellsay and Richard Wooles

DECISION WITH REASONS

INTRODUCTION

1. This appeal was held under time constraints, considering that the selection of athletes participating in the World Cycling Championships must be confirmed by the Respondent at a meeting to be held on August 8, 2023, at 9:00 a.m. (UK time).
2. The present case involves a request by Mr. Matisse Julien (the "Claimant") challenging Cycling Canada Cyclisme's June 30, 2023 decision refusing to select him to compete in the U23 Men's Road Race at the 2023 UCI Cycling World Championships in Glasgow ("World Championships"). Instead, Mr. Julien was selected as the first alternate.
3. On August 1, 2023, I accepted my appointment as arbitrator in these proceedings in accordance with Section 5.3 of the *Canadian Sport Dispute Resolution Code* (the "SDRCC Code"). No objections to my appointment as arbitrator were raised by the Parties.
4. On August 2, 2023, a preliminary meeting was held by conference call with the arbitrator, the Parties and the staff of the *Sport Dispute Resolution Centre of Canada* (the "SDRCC"). The Claimant wished to proceed via a videoconference hearing, which was initially scheduled for August 5, 2023. The Respondent wished to proceed by way of documentary review.
5. On August 3, 2023, the Claimant agreed to proceed by way of documentary review. He also provided his witness statement and documents in support of this case. On August 4, 2023, the Respondent provided its evidentiary file in support of its arguments.
6. The Parties acknowledged that none of the selected athletes met the specific selection criteria, and that the selection was based on the Respondent's exercise of its discretion. However, the Claimant challenged the Respondent's exercise of its discretion in reaching its decision. More specifically, the Claimant challenged the selection of Mr. Michael Leonard and submitted that he should have been selected instead.
7. After examining the evidence, the Respondent's decision is confirmed, the Respondent having made a reasonable decision based on its discretionary power. The Claimant's appeal is therefore dismissed. The reasons for my decision are set out below.

BACKGROUND

8. The Claimant, Mr. Matisse Julien, is a Canadian cyclist who competes in the U23 road cycling category.
9. The Claimant is a candidate in the U23 Men's Road Race for the World Championships to be held in Glasgow. For this race, a selection was carried out to choose the best performing

athletes. In accordance with the *2023 Road Selection Policy*, the Respondent was allowed to select up to three athletes and two alternates for the U23 Men's Road Race category.

10. On June 30, 2023, the Respondent rendered and published a decision regarding the selection of athletes for the World Championships. For the U23 Men's Road Race, the Respondent had selected three athletes to participate, namely Mr. Riley Pickrell, Mr. Michael Leonard and Mr. Philippe Jacob. The Claimant was selected as the first alternate.
11. This selection decision is based on the recommendations of a panel of coaches submitted on June 26, 2023 to Head Coach Mr. Dan Proulx and High Performance Director Kris Westwood for review. The recommendations were then submitted to Cycling Canada Cyclisme's High Performance Committee (HPC) for review on June 27, 2023. On June 30, 2023, the Respondent shared its decision with the athletes and published it on its website.
12. On July 6, 2023, the Claimant informed the Respondent of his intention to appeal this selection decision.
13. On July 12, 2023, the Respondent was informed of the appeal and on July 17, 2023, provided a response to the Claimant's allegations in accordance with Cycling Canada Cyclisme's internal appeal procedures.
14. On July 18, 2023, the independent case manager informed the Respondent that the case would be heard directly by the SDRCC.
15. On July 31, 2023, the Claimant submitted his notice of appeal to the SDRCC, in accordance with Section 6.1 of the *SDRCC Code*. On August 1, 2023, the Respondent submitted its reply, in accordance with Section 6.4 of the *SDRCC Code*. On the same day, the undersigned arbitrator was appointed by the SDRCC from the rotating list.
16. On August 2, 2023, a preliminary meeting was held by conference call with this arbitrator, SDRCC staff and both Parties. On August 3, 2023, the Claimant submitted his written arguments and documents in support of his appeal. On August 4, 2023, the Respondent submitted additional written arguments.

ISSUES IN DISPUTE AND POSITIONS OF THE PARTIES

POSITION OF THE CLAIMANT

17. The Claimant alleged that the Respondent failed to consider relevant information when appointing him as the first alternate in the U23 Men's Road Race. He also alleged that the Respondent considered irrelevant information to qualify Mr. Leonard's selection to his detriment and raised the presence of a bias in favour of Mr. Leonard in the Respondent's analysis.
18. The Claimant contended that he had obtained better results and is better suited to participate in the World Championship course than Mr. Leonard.
19. The Claimant thus requested that he be given the position assigned to Mr. Leonard and that he be allowed to take part in the U23 road race.
20. The Claimant also demanded that Cycling Canada Cyclisme provide him with an explanation as to their ability to assess his racing ability, tactical ability and the support provided to his teammates while Cycling Canada Cyclisme representatives did not attend his races this year nor did they communicate with his team and coach.

POSITION OF THE DEFENDANT

21. The Respondent submitted that both the Claimant and the three selected athletes (including Mr. Leonard) were unable to meet the specific selection criteria, therefore all athletes were assessed based on the coach's discretion, pursuant to the *2023 Road Selection Policy*.
22. The Respondent stated that in its discretionary assessment leading to the selection of Mr. Leonard, it took into consideration the fact that Mr. Leonard has competed in events at a higher level than the Claimant, is a member of a World Tour team and has demonstrated strong team support skills, as well as a greater physical ability/fitness than the Claimant.
23. The Respondent stated that it has considered all relevant information and that it has reached a reasonable decision based on the available evidence.
24. The Respondent requested that this appeal be dismissed and that its selection decision be upheld.

POSITION OF AFFECTED PARTY

25. The Respondent identified Mr. Jacob as Affected Party in these proceedings.

26. In its reply, the Respondent explained that, although the Claimant challenges the selection of Mr. Leonard, it is rather Mr. Jacob who could be affected if a new selection were to take place.
27. In fact, the Respondent explained that Mr. Leonard was ranked second, while Mr. Jacob was ranked third. Thus, if the Claimant were selected before Mr. Leonard (regardless of the rank awarded), Mr. Leonard would be placed third, but would remain selected. As a result, Mr. Jacob would become the first alternate. On this basis, the Respondent submitted that only Mr. Jacob could be impacted by the situation, and he is therefore the Affected Party in this dispute.
28. Mr. Jacob could not be reached and therefore could not present his position in these proceedings before the SDRCC.

MATTER IN DISPUTE

29. The issues raised by the Parties in this case are as follows:
- A. Did the Respondent unreasonably consider irrelevant information as part of its discretionary selection assessment to determine Mr. Leonard's selection to the detriment of the Claimant?
 - B. Is the Respondent's analysis unreasonably based on conjecture to discredit the Claimant's probative results in favor of Mr. Leonard's development potential?
 - C. Did the Respondent unreasonably fail to consider in its analysis rational criteria (significant concrete facts) in favor of the Claimant?

APPLICABLE LAW

APPLICABLE PROVISIONS

30. Section 6.10 of the *SDRCC Code* sets out that in team selection disputes, it is up to the Respondent to demonstrate that the criteria were properly established and that the disputed decision was made in accordance with these criteria. Once this has been established, it is then up to the Claimant to demonstrate that he should have been selected.

6.10 Onus of Proof in Team Selection and Carding Disputes

If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the

disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.¹ [our underlining]

31. In the present dispute, the Claimant does not challenge the way the selection criteria were established. Rather, it is alleged that the decision rendered by the Respondent was not made in accordance with the selection criteria set out in the *2023 Road Selection Policy* and applicable to the U23 Men's Road Race, specifically the relevant factors guiding residual and discretionary selection power found in clause 3 of Section D of the *2023 Road Selection Policy*.

U23 Men's Road Race:

1. *Athletes finishing top-5 (one-day, stage or GC) in a UCI Class 1 or higher Elite event in the 12 months before the selection date. Any tie breakers will be at coach discretion considering the finishing place, the level of the event, and the difficulty of the course.*
2. *Athletes finishing in the top-3 (one-day, stage or GC) in a UCI U23 Road Nations Cup event in the 12 months before the selection date. Any tie breakers will be at coach discretion considering the finishing place, the level of the event, and the difficulty of the course.*
3. *Coach discretion based on Other Factors listed in Section D, Clause 3 Up to 2 alternates will be nominated using the criteria above. [...]*

3. OTHER FACTORS THAT MAY BE CONSIDERED IN SELECTION

In addition to the Specific Selection Criteria, selection may take into consideration any one or more of the following additional factors, in no particular order:

- *The rider's past performances and/or results in international competition.*
- *The rider's potential to contribute to future World Championship, Olympic or Paralympic performances.*
- *The rider's technical ability.*
- *The rider's tactical ability.*
- *The rider's physical ability / fitness.*
- *The rider's suitability for the course / venue / environmental conditions of the event.*
- *The rider's attitude, composure, and behavior in high-pressure competitive environments.*

¹ Section 6.10, *SDRCC Code*.

- *The results of any of the rider's sport science tests conducted by CC, including biomechanical and physiological.*
- *The rider's consistency and reliability in competition.*
- *The ability of the rider to contribute to a team result.*
- *The rider's attendance, performance, attitude and conduct in training whilst a member of national team program (DTE, training camp or competition).*
- *The rider's level of communication with CC, including sharing training programs and reports with the relevant National Coach.²*

32. Thus, Claimant alleges that had these discretionary factors been properly applied, he would have been selected instead of Mr. Leonard.

STANDARD OF INTERVENTION

33. The standard of reasonableness is the standard of intervention applicable by the SDRCC in team selection disputes, as confirmed by arbitrator Pound in the *Larue*³ decision, relying on the landmark *Dunsmuir*⁴ decision, which was subsequently confirmed and clarified by the Supreme Court of Canada in the *Vavilov*⁵ case.

34. In this decision, the Supreme Court clarified the approach applicable to the review of decisions made by administrative decision-makers, including the applicable standard of review and the concept of reasonableness. Considering this decision, it appears that the SDRCC must demonstrate due deference to the initial decision-maker, the Respondent, and his expertise. The latter must nevertheless adequately justify his decision, in the sense that his reasoning must be intrinsically intelligible, transparent, and justified to be valid.⁶

35. An SDRCC arbitrator must be able to trace the Respondent's reasoning without stumbling upon a decisive flaw in the overall logic and must also ensure that there is a line of analysis in the reasons provided allowing the SDRCC to reach, on the evidence before it, the conclusion reached by the Respondent in its decision.⁷

36. The Arbitrator must determine whether the result of the selection process was achieved in accordance with the selection criteria and whether the reasoning adopted by the Respondent is intrinsically reasonable within the meaning of *Vavilov*.

² Document C-02, *2023 Race Selection Policy*.

³ *Larue v. Bowls Canada Boulingrin*, SDRCC 15-0255.

⁴ *Dunsmuir v. New-Brunswick*, [2008] 1 SCR 190.

⁵ *Canada v. Vavilov*, 2019 SCC 65.

⁶ *Idem*, par. 15.

⁷ *Idem*, par. 102.

ALLEGATIONS OF THE PARTIES SPECIFIC TO THE ISSUES IN DISPUTE

A. Did the Respondent unreasonably consider irrelevant information as part of its discretionary selection assessment to qualify the choice of Mr. Leonard to the detriment of the Claimant?

i) Allegations by the Claimant

37. Firstly, the Claimant submitted that the Respondent integrated irrelevant considerations into its analysis to justify qualifying Mr. Leonard's selection to his detriment. Consequently, the Claimant submitted that the Respondent's analysis is tainted by a bias in favor of Mr. Leonard.

38. More specifically, in its reply to the Respondent's reply,⁸ the Claimant alleged that the Respondent based its analysis on results obtained by Mr. Leonard in time trial races ("TT"), whereas the disputed decision relates to selection for the road race, and not TT (for which he is already selected, which the Claimant does not challenge).⁹ The Claimant therefore submitted that the results obtained by Mr. Leonard in the TTR event are not relevant to the selection decision for the road race event.

39. The Claimant also submitted that the Respondent is unreasonable in basing its choice on the fact that Mr. Leonard appears to be a "better teammate", whereas road racing requires only individual skills, and the team concept is therefore "utopian."¹⁰ As a result, the Claimant submitted that the Respondent admitted in its own reply that Mr. Leonard did not have the opportunity to demonstrate his own individual abilities within the team for which he is riding.¹¹

40. On this basis, the Claimant submitted that in considering Mr. Leonard's results in the TT event and in considering his performance as a teammate, the Respondent made an unreasonable exercise of its decision by basing its analysis on overtly irrelevant information and ignored his probative results from an individual standpoint.

41. Moreover, the Claimant also submitted that the Respondent failed to contact his coaches to obtain information that would have enabled them to determine that he is a teammate who combines strategic and physical qualities and having the required racing intelligence. As a result, he pointed out that the Respondent appears to have discussed the matter with Mr.

⁸ Document C-05.

⁹ Document C-05, paras. 1 and 2.

¹⁰ Document C-05, paras. 3 to 5.

¹¹ Document R-03, par. 16, and Document C-05, par. 6.

Leonard's coaches, given that the conclusions drawn as to Mr. Leonard's performance could only have been reached after discussions with Mr. Leonard's coaches.

42. He therefore argued that the Respondent did not offer him the same opportunity it offered Mr. Leonard. The Claimant thus stated that if the Respondent had taken the necessary steps to verify these elements with its coaches and evaluate the candidates on the same basis, his candidacy would have been retained.¹²
43. On this basis, the Claimant submitted that the Respondent showed an obvious bias towards Mr. Leonard by disqualifying him based on unfounded considerations and without having bothered to make valid comparisons and had overqualified and misrepresented Mr. Leonard's role within the team for which he rides.¹³

ii) Allegations by the Respondent

44. In its response of August 4, 2023 (Document R-05) and, more specifically, in reply to the Claimant's argument that Mr. Leonard's results in the TT events (Copi e Bartalli stage 5 result) constituted irrelevant information for selection to the road event, the Respondent acknowledged that there is a significant difference between the TT and road events. However, the Respondent stated that Mr. Leonard's results were considered in its analysis, as they speak to his ability/physical fitness as a rider, which is one of the discretionary factors that may be considered by the selection committee.
45. Furthermore, and to justify its decision, the Respondent pointed to Mr. Leonard's participation in a higher category event while the Claimant has participated in lower circuit events. The Respondent submitted that Mr. Leonard competes on higher circuits than the Claimant. Thus, if the results of the Claimant and Mr. Leonard in the same class (class 1) were to be compared on the same basis, Mr. Leonard would obtain a much higher result. The Respondent also pointed out that Mr. Leonard, at his young age, is the only Canadian currently under contract with a *UCI WorldTeam*.¹⁴
46. In its written submissions, the Respondent also dismissed the Claimant's argument that the team concept for the road race is utopian. The Respondent submitted that a team of three athletes can very well implement a very effective team strategy and provided an example in support. By the same token, the Respondent dismissed the negative inference drawn by the Claimant from the fact that Mr. Leonard "rarely had the opportunity to achieve individual results" and stated instead that he was able to demonstrate his ability to play a supporting

¹² Document C-05, paras. 7 to 9.

¹³ Document C-05, par. 10.

¹⁴ Document R-03, paras. 15 and 16.

role in events where the field was very strong, which is an important factor in favour of his selection.

47. In short, the Respondent stated that Mr. Leonard competed at a higher level than the Claimant during 2023, demonstrated superior physical fitness/capacity to Claimant in high-level events, and demonstrated his ability to be an effective teammate during his 2023 performances with a *UCI WorldTeam*.¹⁵

B. Did the Respondent unreasonably rest its analysis on conjecture to discredit the Claimant's probative results in favor of Mr. Leonard's development potential?

i) Allegations by the Claimant

48. The Claimant submitted that by considering that Mr. Leonard competes at a higher level than the Claimant and is a member of a *UCI WorldTeam*, the Respondent has unreasonably favored Mr. Leonard's development potential, to the detriment of the results obtained by the Claimant. Thus, the Claimant submitted that the Respondent unreasonably based its analysis on conjecture by relying on Mr. Leonard's development potential rather than on probative results.¹⁶ In support of his argument that the Respondent relied on conjecture, the Claimant provided Cycling Canada Cyclisme's response in another recent case heard before the SDRCC (involving another athlete), as well as the decision rendered by the arbitrator.

49. Moreover, the Claimant submitted that the Respondent disqualified him and overqualified Mr. Leonard on subjective/conjecture elements that do not appear as factors in the *2023 Road Selection Policy*.¹⁷ Thus, the Claimant submitted that, while the Respondent decided to attribute a high importance to elements that do not constitute discretionary selection factors for Mr. Leonard (his participation in a *UCI World Team*, while the Claimant is part of a *Continental Team*), it refused to take into consideration his participation in qualifying for three places for Canada at the World Championships on the grounds that this is not one of the criteria listed in the *2023 Road Selection Policy*.

50. On this basis, the Claimant submitted that the Respondent randomly interpreted and applied the discretion granted to it under the criteria set out in the *2023 Road Selection Policy*.¹⁸

ii) Allegations by the Respondent

¹⁵ Document R-05, paras. 22, 23 and 27.

¹⁶ Document C-05, par. 11.

¹⁷ Document C-05, par. 13.

¹⁸ Document C-05, par. 15

51. The Respondent submitted that the Claimant's reliance on a document provided in another file before the SDRCC (and the decision rendered, but not published) and any reference to its contents must be disregarded, as this violates the confidentiality of proceedings before the SDRCC, within the meaning of Section 5.9 of the *SDRCC Code*. The Respondent therefore asks this arbitrator to set aside and ignore these elements and any reference to them in the Claimant's submissions.¹⁹
52. In response to the Claimant's argument that the Respondent was biased in favor of Mr. Leonard and used entirely discretionary/random elements to select him, the Respondent submitted that both Mr. Leonard and the Claimant did not meet the specific selection criteria of the *2023 Road Selection Policy* and were therefore subject to the discretionary decision of the coach, which the Respondent did.
53. Regarding the bias alleged by the Claimant, the Respondent submitted that the Claimant has failed to demonstrate that Cycling Canada Cyclisme was biased, within the meaning of the definition contained in its *Appeal Policy*.
54. In response to the Claimant's argument that the Respondent drew a positive inference in assessing Mr. Leonard's candidacy from elements not contained in the list of "other factors",²⁰ the Respondent acknowledged that, in the case of both Mr. Leonard and the Claimant, it highlighted elements not specifically recognized as "other factors" that could be considered in the context of the discretionary assessment. The Respondent stated, however, that the reference to Mr. Leonard's membership of a *UCI WorldTeam* served to set his performance in the context of the *UCI WorldTeam*.²¹

C. Did the Respondent unreasonably fail to consider in its analysis rational criteria (significant concrete facts) in favour of the Claimant?

i) Allegations by the Claimant

55. In his submissions, the Claimant argued that the Respondent failed to consider significant concrete facts in his favour, which it should have relied on for selection purposes. The Claimant submitted that if the Respondent had applied its discretion rigorously, and not randomly, it would have considered certain significant concrete facts that would have made it possible to make the best choice for the purposes of the "performance" objective of the World Championships.

¹⁹ Document R-05, paras. 27 and 28; Exhibits R-04 and R-06.

²⁰ Clause 3, Section D, *2023 Road Selection Policy*.

²¹ Document R-05, par. 33.

56. The Claimant submitted that the Respondent should have considered the decisive contribution of his performances in qualifying three Canadian representatives for the World Championships Road race, as well as the historical information profiling the best performing riders at said Championships (and demonstrating that the Claimant would have been a better candidate). To establish these allegations, the Claimant referred to Mr. Kevin Field's statement,²² who formerly held the position of Head Sports Director (race coach) at Cycling Canada Cyclisme and is an expert in road cycling.

ii) Allegations by the Respondent

57. With respect to the Claimant's arguments and Mr. Field's statement, the Respondent stated that contribution to ranking is not part of the selection criteria. The Respondent also stated that, although Mr. Field provided an interesting analysis of the U23 performances at the World Championships, he did not provide compelling evidence that the Respondent made an unreasonable decision in selecting Mr. Leonard in favor of the Claimant, given the available evidence.

ANALYSIS AND CONCLUSIONS

ADMISSIBILITY OF DOCUMENT C-07

58. In the present case, the Respondent challenged the admission into evidence of Document C-07 produced by the Claimant in support of his appeal, the response offered by Cycling Canada Cyclisme in another case before the SDRCC. It also challenged any reference made to the decision rendered by the SDRCC in this case, considering that it has not yet been published. The Respondent therefore asks this arbitrator to disregard any reference made by the Claimant in his submissions to these documents, as well as to the decision rendered by the SDRCC in the other file.

59. In support of its allegations, the Respondent submitted that this document and decision (and any reference to their contents) are inadmissible and must be excluded, as they constitute information from confidential appeal proceedings in another file, rendering their production in the present file in violation of Section 5.9 of the *SDRCC Code*. The Respondent therefore strongly opposed this disclosure and requested that this evidence and all the Claimant's arguments relating to it be excluded from the present appeal.

60. After reviewing the above-mentioned documents, I confirm the Respondent's position and have disregarded Document C-07, as well as any reference to these documents and the decision of the other file in my analysis in this case. Indeed, Section 5.9 of the *SDRCC Code*

²² Document C-06

confirms that arbitration proceedings before the SDRCC must remain confidential. Thus, confidential information and documents relating to the proceedings and obtained during the arbitration may not be disclosed to third parties. Furthermore, all documents produced in the context of internal appeal procedures at Cycling Canada Cyclisme must also remain confidential.²³

61. However, in support of the Claimant's appeal, the Claimant shared documents from submissions made by Cycling Canada Cyclisme in another appeal procedure, which were to remain confidential within the meaning of Section 5.9 of the *SDRCC Code*. The Respondent's reply to the appeal procedure held in another case was to remain confidential and cannot be considered in the present case.
62. As for the decision rendered by the SDRCC in another case and not published, it can be shared or made public once rendered, if no appeal is possible (in the case of doping). This decision can therefore be considered by the Tribunal as being of quasi-judicial knowledge.
63. On this basis, I conclude that it was inappropriate for the Claimant to submit into evidence elements of Cycling Canada Cyclisme's argument, as the information and documents were confidential and could not be shared with third parties. Considering that the disclosure of pages 1 to 3 of Document C-07 is in violation of Section 5.9 of the *SDRCC Code*, I have set aside this section of the document and any reference to it in the Claimant's submissions.

ANALYSIS AND CONCLUSIONS REGARDING THE DISPUTED DECISION

64. As a preliminary matter, the role of the arbitrator hearing an appeal of a selection decision was defined by Arbitrator Richard W. Pound in *Larue v. Bowls Canada Bowlingrin*.²⁴ Thus, this decision establishes that, in the absence of cogent evidence of error, I must deferentially assume that the Team Selection Committee composed of experts knows what it is doing. Moreover, my role is simply to determine whether the outcome of the team selection process was consistent with the selection criteria, and whether it falls within the range of reasonable possible outcomes that can be justified considering the facts and the team selection criteria. It is therefore not my role to substitute my opinion for the decision that was or could have been made:

In the present case, there are three considerations that should guide me. The first is that, absent cogent evidence of error, I should adopt a deferential assumption that the Team Selection Committee, composed, as it was, of experienced experts in bowls, knows its business. Second, my role as Arbitrator is not to re-write BCB's High Performance policy or its team selection criteria with any view of "improving" either, or to substitute

²³ Cycling Canada Cyclisme, *Appeal Policy*, clause 6.9.2. 60.

²⁴ *Larue v. Bowls Canada Bowlingrin*, SDRCC 15-0255.

my personal view, of what they could or ought to contain. The operating consideration is that BCB knows the sport of bowls better than any arbitrator. Third, my role is simply to determine whether the outcome of the team selection process was made in accordance with the selection criteria and whether that outcome falls within a range of possible, reasonable, outcomes defensible in light of the facts and the team selection criteria (i.e., the applicable "law" in this matter).

65. In this case and considering that this appeal concerns a dispute over the selection of team members (a dispute in which the athlete is the Claimant), it is therefore up to me to determine whether the Respondent has demonstrated, within the meaning of Section 6.10 of the *SDRCC Code*, that the selection criteria of the *2023 Road Selection Policy* were properly established and that the disputed decision was made in accordance with these criteria.
66. I must therefore rely on the selection criteria for the U23 Men's Road Race set out in the *2023 Road Selection Policy*. In this case, it is not questioned by the Claimant that the Respondent established the selection criteria appropriately, i.e. in accordance with the applicable governance structure.²⁵ In the absence of any dispute or evidence to the contrary, I therefore conclude that the selection criteria for the U23 men's road race were properly established.
67. Furthermore, it is also not in question by the Parties that no candidate athlete for the U23 Men's Road Race met the specific selection criteria set out in Cycling Canada Cyclisme's *2023 Road Selection Policy*. Accordingly, both Parties agree that no candidate for the U23 Men's Road Race met these specific selection criteria, and that the selection was therefore properly established at the discretion of the coach within the meaning of clause 3 of Section D of the *2023 Road Selection Policy*. I therefore conclude that it was reasonable for the Respondent to use its discretion in the selection for the U23 Men's Road Race.
68. As such, it is solely for me to determine whether the Respondent exercised its discretion reasonably in reaching its June 30, 2023 selection decision. To do so, I must examine the "other factors" that are likely to be considered in the selection process via the Respondent's discretionary power. These factors are set out in clause 3 of Section D of the *2023 Road Selection Policy*, and it is specified that the coach's discretion to select a candidate may be based on one or more of these factors.
69. The very wording of these criteria is broad, in such a way that the Respondent's discretionary power was intended to be applied in a broad manner. Furthermore, no other provision of the *2023 Road Selection Policy* limits this discretionary power. It therefore appears to me that clause 3 is intended to offer broad discretion to the Respondent and to

²⁵ *Richards v. Speed Skating Canada*, SDRCC 18-0364.

give deference to its expertise in selecting athletes who do not meet the requirements of the specific selection criteria. As a result, the Respondent's discretionary power to select athletes who have not met the specific criteria is broad and unrestricted.

70. Considering the Respondent's broad discretion and expertise, I must give great deference to its expertise and discretion. As previously mentioned, it is not for me to determine whether Cycling Canada Cyclisme could have made another reasonable decision, but only whether it exercised its discretion reasonably in reaching its selection decision.
71. My analysis of the disputed decision allows me to conclude that the Respondent reasonably based its discretionary conclusions on the factors listed in clause 3 of Section D of the *2023 Road Selection Policy*. The reasoning offered by the Respondent in reaching its discretionary conclusion to select Mr. Leonard as second-ranked and the Claimant as alternate is reasonable and sufficiently justified considering the factors relied upon. It therefore appears to me that the disputed decision has the attributes of intelligibility, transparency and justification required for a discretionary decision.
72. Moreover, I also find that the Respondent has provided reasonable explanations to the Claimant's allegations. The Respondent considered relevant information in reaching the conclusion that Mr. Leonard should be ranked second. It thus appears to me that the factors on which the discretionary decision is to be based are intentionally broadly worded so that the information considered by the Respondent was relevant to its assessment of the discretionary factors and its reasoning.
73. I also dismiss the Claimant's allegation that the Respondent resorted to the use of conjecture in its reasoning. As previously mentioned, I must set aside Document C-07 and the written observations referring to it in my analysis. In view of this, I conclude that it was within the Respondent's discretion to consider the fact that Mr. Leonard competes with a *UCI World Team* and at a high level as a means of situating his performance in relation to other candidates. I do not consider this conclusion unreasonable.
74. Moreover, regarding the Respondent's alleged failure to consider certain facts surrounding the Claimant which, if considered, would have led to his selection, I defer to Cycling Canada Cyclisme's analysis. It is not for me to determine whether another decision could have been made by the Respondent, but only whether it exercised its discretion in a reasonable manner. In the present case, it appears to me that the Respondent reasonably examined several selection factors contained in clause 3 in the analysis of the candidacy of both Mr. Leonard and the Claimant and reached its discretionary decision as to the final choice of competitors.
75. In the present case and considering the reasonableness of the disputed decision, I defer to the Respondent's expertise in reaching its conclusions and will not substitute my decision for the

Respondent's conclusions. I understand that different experts might have reached different conclusions than the Respondent. However, the SDRCC is not an appropriate forum for a Claimant to review a discretionary/subjective analysis that is provided for in the applicable provisions and that has been reasonably rendered.

76. Furthermore, I dismiss the allegations of bias invoked by the Claimant, as these are not supported by probative facts. I therefore conclude that the Respondent exercised its discretion reasonably, in accordance with the *2023 Road Selection Policy*, based on the established factors.

77. In this matter, I find that the Respondent has provided reasonable explanations justifying its selection decision and the different ranks awarded to the athletes. It has also provided explanations justifying, in consideration of the applicable factors, the reasons why the Claimant was not selected to compete in one of the three positions offered. I therefore conclude that the Respondent's discretionary decision is supported by the applicable selection policy and has the required attributes of intelligibility, justification, and transparency.

DECISION

78. I therefore dismiss the Claimant's appeal and uphold the disputed decision.

Signed at Montreal, on August 8, 2023

Patrice Brunet, Arbitrator