

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

NO: SDRCC 24-0722

Jennifer Jackson

(“Claimant”)

And

Cycling Canada Cyclisme (CCC)

(“Respondent”)

And

**Isabella Holmgren
Emily Johnston**

(“Affected Parties”)

Before: Matthew R. Wilson, Arbitrator

Attendees at the hearing:

For the Claimant: Chris Vezina

For the Respondent: Kris Westwood
Dan Proulx
Catharine Pendrel

For the Affected Parties:

No one in attendance

Guillaume Boisseau SDRCC
Kim Bodnarchuk Observer

DECISION

1. This appeal, filed by Jennifer Jackson (“the Claimant”), challenges the decision of Cycling Canada Cyclisme (“Cycling Canada”) in the selection of the athletes to represent Canada in the sport of Mountain Bike Cross Country at the upcoming Paris Olympics. Cycling Canada selected Isabella Holmgren as the athlete to compete and identified Emily Johnston as the alternate. The Claimant was not selected and it is this decision that is being appealed.
2. I held a preliminary meeting with the parties on June 14, 2024 to review the med/arb process. The parties agreed that I would first attempt to mediate a resolution and if those efforts were unsuccessful that I would hear oral submissions with respect to their positions. The Affected Parties – Ms. Holmgren and Ms. Johnston – were given notice of these proceedings, but did not participate.
3. The hearing in this matter was held on June 17, 2024. As the mediation was unsuccessful, the parties made their submissions based on the material filed with the SDRCC.

THE SELECTION PROCESS

4. Cycling Canada made its selection decision based on the criteria set out in the Cycling Internal Nomination Policy (“INP”) for the 2024 Olympic Games. The process to establish the selection criteria is set out in the INP. Briefly, the National coaches submitted a draft to the Director of High Performance. After some revision, the draft was submitted to the Athletes’ Council in outline form on April 17, 2023 for feedback. The Claimant, who is a member of the Athletes’ Council, was engaged in this process and provided feedback about the Policy. A draft version was posted on the Cycling Canada website for public feedback and also sent to the International Olympic Committee. The final version was published on October 4, 2023, with one minor stylistic change made on February 14, 2024.

5. The Policy identified the following selection criteria:

Athletes will be nominated in the following order of priority until Canada's quota has been filled:

1. Top 5 finisher in the Elite XCO at the 2023 World Championships or a UCI World Cup.
2. Top 12 finisher in the Elite XCO at the 2023 World Championships or an Elite World Cup in Europe.
3. Top 3 finisher in the U23 XCO at the 2023 World Championships or a UCI World Cup in Europe.
4. Top 20 finisher in the Elite XCO at the 2023 UCI World Championships or at a UCI World Cup in Europe.
5. Discretionary nomination considering Section C, Clause 3.

Results must be in the top half of athletes registered for the event. In the event of a tie, the athlete with the best result will be given priority. If there is still a tie, the athletes' second-best eligible results will determine priority. If there is still a tie, it will be broken at the discretion of the Nomination Panel.

CC reserves the right to modify selection based on overarching strategy to support performances in all cycling disciplines, including but not limited to entering athletes in more than one discipline.

6. Canada has one starter position for the female event at the Paris Olympics in Cross Country Mountain Bike. Thus, it can select one athlete and one alternate. Following the process set out in the INP, the Coach Panel made the nomination recommendations to the Head Coach and Director of High Performance, which were then recommended to the High-Performance Committee. Those recommendations were accepted.
7. The Claimant was informed in a confidential email dated June 7, 2024 that she was not selected to represent Canada at the Paris Olympics.
8. The Claimant appeals this decision.

THE PARTIES' POSITIONS

9. The Claimant argues that Cycling Canada erred by using the results of the European UCI World Cup races in criteria 2 and 4. She contends that an analysis of the competitive field reveals that the North American World Cup races were comparable to most of the European World Cup races. The Claimant takes the position that a top-12 result in any World Cup race should have equivalent value based on her analysis of the competitive fields.
10. Based on the Claimant's own analysis of the strength of the competitive field, she argues that Cycling Canada ought to exercise its discretion to consider the results of the North American World Cup. She points to Clause 8 in Section C of the INP, which states as follows:

AMENDMENTS & UNFORESEEN CIRCUMSTANCES

In situations where unforeseen circumstances do not allow the nomination process to be fairly and objectively applied, the DHPS, in consultation with the HPC, reserves the right to rule on an appropriate course of action.

11. The Claimant takes the position that the circumstances are present for Cycling Canada to exercise its authority under Clause 8 and consider the more competitive field.
12. Cycling Canada argues that it applied the INP in a fair and objective manner based on the established criteria. It rejects the notion that Clause 8 has any application as it contends that there were no exceptional circumstances. It points out that the two athletes that were selected both met the criteria in the INP. Thus, Clause 8 has no application.
13. Cycling Canada also argues that the INP had been made available to the Athletes' Council (including the Claimant) for comment when it was in draft form and no appeal was filed. On this basis, Cycling Canada raises a timeliness issue to the appeal as it characterizes the appeal as an attack on the criteria and not

the actual selection that was made. It argues that if the Claimant objected to the criteria, she should have appealed at the time the INP was published in October 2023.

ANALYSIS

14. As set out in Section 6.10 of the Canadian Sport Dispute Resolution Code, the onus is on Cycling Canada to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that is established, the onus shifts to the Claimant to demonstrate that she should have been selected in accordance with the approved criteria.

15. This section of the Code reads as follows:

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.

16. The INP was established by Cycling Canada after consultation with the Athletes' Council, among other groups. Cycling Canada published an outline and then a draft to invite feedback from the athletes. The Claimant participated in this process and provided feedback, all of which was considered in the creation of the final version. The Claimant did not appeal the criteria once it was finalized.

17. Cycling Canada decided to use the European World Cups because it is usually the most competitive fields for the athletes to compete in. While the Claimant argues that the North American fields were at least as competitive, Cycling Canada was entitled to identify this criterion based on its historical assessment of the competitions in Europe.

18. I have carefully reviewed the Claimant's analysis of the competitive field. As pointed out by Cycling Canada, any analysis of the competitive field has inherent flaws such as a limited selection of events or not considering variables such as weather, race conditions or time of the competitive season. While the Claimant may have conducted the analysis in good faith, I accept Cycling Canada's point that the analysis is more complex and must address some of the variabilities.
19. I do not accept that the analysis conducted by the Claimant justifies the application of Clause 8 of the INP. The provision is triggered where "...unforeseen circumstances do not allow the nomination process to be fairly and objectively applied..." In this case, the selected athletes met the criteria. While the Claimant's analysis presents a different perspective, it does not establish that the criteria is unfair or lacking in objectivity. I find that Clause 8 of the INP has no application to the circumstances before me.
20. This Appeal essentially seeks to change the INP after the criteria was used to select the athletes. This would be inherently unfair to the athletes. The time to object to the criteria was when it was published in draft form or in the way of an appeal after the criteria was finalized.
21. I am satisfied that the criteria were appropriately established by Cycling Canada. I now turn to whether the disputed decision was made in accordance with the criteria.
22. There is no dispute that the Claimant did not meet any of the criteria set out in the INP. Moreover, it is not disputed that the athletes selected to compete and identified as an alternate met the published criteria. The only way for the Claimant to succeed in this appeal is for Cycling Canada to exercise its discretion under Clause 8 of the INP so that her North American World Cup finishes would be considered. There is no basis for me to make such an order.
23. I conclude that Cycling Canada made its selection in accordance with the established criteria.

24. As discussed, the Claimant's appeal rests entirely on her contention that the North American results should have been considered. This would be inconsistent with the INP. I have no basis to conclude that the Claimant should have been selected to represent Canada at the Paris Olympics.

SUMMARY

25. For the foregoing reasons, the Appeal is denied.

26. The matter of costs was not discussed during the hearing. My inclination would be to not award costs. However, I retain jurisdiction to address any submissions on costs, provided such submissions are filed no later than seven days from issuance of these reasons.

Signed this 21st day of June, 2024.



Matthew R. Wilson
Arbitrator