

Case number: NST-E26-611

Case Title: Athlete v Rowing Australia

Determination

National Sports Tribunal General Division

sitting in the following composition:

Member Matthew O'Grady

in the arbitration between

Athlete

Self-represented

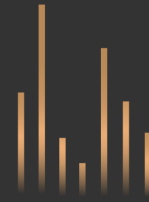
And

Rowing Australia

Represented by Paul Thompson, Performance Director

Applicant

Respondent



PARTIES

1. Athlete (**the Appellant**) is a Rowing Australia National Training Centre athlete.
2. Rowing Australia is the national governing body for rowing in Australia (**the Respondent**).

INTRODUCTION

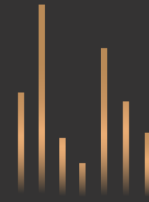
3. The 2026 World Rowing Cup III in Lucerne, Switzerland takes place between 26 and 28 June 2026 (**the Event**). The Appellant was not selected for the Event and appeals that non-selection decision.
4. The Appellant's ultimate position was to challenge the Athlete's non-selection on the ground that they were not afforded a reasonable opportunity by the Respondent to satisfy the relevant selection policy (being ground 5.2(b)(iii) of the *Rowing Australia Selection Appeals Policy* of February 2026 (**the Selection Appeals Policy**)). The applicable selection policy is the *Rowing Australia National Selection Policy – Senior Team and Senior Para Team (9 February 2026)* (**the Selection Policy**).

NST JURISDICTION

5. The jurisdiction of the NST is engaged by section 23(1) of the *National Sports Tribunal Act 2019* (NST Act) and clause 5.2 of the Selection Appeals Policy.
6. The Parties also confirmed their agreement to the NST's jurisdiction at the commencement of the Hearing. Rowing Australia further provided a waiver of strict compliance in respect of any issues arising from non-compliance with the time requirements in clauses 5.1 and 5.2(c) of the Selection Appeals Policy.

FACTUAL BACKGROUND

7. I considered all the documents provided to me and the representations made during the hearing carefully. This is not intended to be a petition of everything I have read or heard. What follows is only a summary. My failure to refer to a particular matter does not reflect a failure on my part to consider it. However, I make clear I have had no regard and given no weight to the representations made on behalf of the Respondent relating to technical data concerning air quality at the Australian National Rowing Championships at Lake Barrington, Tasmania (**the ARC**) nor data or submissions made on behalf of the Respondent concerning the Appellant's training load. I have taken this course because it would not be procedurally fair to weigh into my determination matters the Appellant had no notice of.
8. On or around 20 April 2026, the Respondent announced the World Cup Training Squad. The Appellant was not selected. By an Appeal Notice dated 21 April 2026, the Appellant challenges their non-selection for the Event. That Appeal Notice asserted all the available grounds of appeal available under the Selection Appeals Policy. In support of the appeal the Appellant prepared a two-page summary of arguments which addressed each of the four grounds of appeal available.

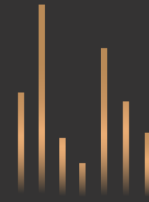


9. In advance of the hearing of this appeal on 7 May 2026, the Appellant prepared and provided a fresh summary of argument dated 5 May 2026. That document was filed in the proceeding without the Respondent's consent. Sensibly, the Respondent took no objection to the Appellant being permitted to rely on that document.
10. In their 5 May 2026 submission, the Appellant abandoned all grounds of appeal, save that advanced under ground 5.2(b)(ii), that they were not afforded a reasonable opportunity by the Respondent to satisfy the Selection Policy.
11. It was not contentious before the NST that the Respondent had prepared and issued the Selection Policy prior to the Respondent making selection decisions.
12. The relevant Selection Policy states as its objective:

The objective of the Selection Policy is to select the best possible team (maximising team potential) to represent Australia with the best chance of producing podium performances and winning Gold medals at the 2028 Olympic and Paralympic Games, and the World Championships leading up to those Games.
13. The ability of selectors to exercise discretion is codified into the Selection Policy. It states:
 - 2.2.1 *The Selectors have discretion in selection of Athlete to, or removal of Athletes from, a National Team having regard to the Selection Criteria.*
 - 2.2.2 *The Selectors may apply a standard which calls for a value judgment and overall assessment of the relevant criteria. In the exercise of their discretion, the Selectors are expected to bring to account those matters within the criteria they consider to be relevant to the determination, in achieving the overall objective of the Selection Policy. When comparing Athletes' performances, the predominant function of the Selectors' discretion is to determine the relevance of each of the Selection Criteria and the weight attributable to them. For the Selectors to exercise their discretion prudently, judiciously and with sound judgment they are required to:*
 - (a) *act reasonably and justly;*
 - (b) *act in good faith and for proper purposes;*
 - (c) *consider the Selection Criteria; and*
 - (d) *consider the relevant materials and disregard irrelevant considerations.*
14. The Selection Policy proscribes *Mandatory Selection Criteria* being:

The Selection Criteria that must be taken into account by the Selectors in selecting rowers and coxswains for the National Team (the Mandatory Selection Criteria) are the following:

 - (a) *performance in trialling and competition specified in the Selection Requirements;*
 - (b) *current national and international performances.*
15. In addition to the Mandatory Selection Criteria, there are *Additional Selection Criteria*. The Selection Policy permits selectors, in applying the Selection Criteria to "*consider results and reports recorded from collated data and information ...*".



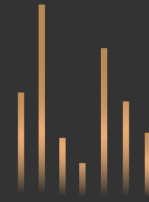
16. The Respondent is required to issue Selection Requirements that constitute the “*trialling and competition referred to in section 2.3(a).*” It is common ground that such Selection Requirements were issued. The specific requirements under the Selection Requirements are:

Specific Activity Details:

Selection Requirement	See Note(s)	2025 Senior Team - Selection Requirement Dates
5000m Ergometer Test #1	4	3 November 2025
November Domestic 5000m Time Trial	5	5 - 8 November 2025
2000m Ergometer Test #1	4	8 December 2025
December Domestic 5km Time Trial	5	17 – 20 December 2025
National Time Trial & Assessments	5	17 – 20 December 2025
5000m Ergometer Test # 3	4	2 February 2026
Lightweight Weight Management	6	
2000m Ergometer Test	4	16 March 2026
National Championships	10	23 - 29 March 2026
RA announcement of invitations to National Selection Regatta	7	2 April 2026
2000m Ergometer Test	4	13 April 2026
National Selection Regatta	7, 10	17 – 19 April 2026
World Cup Training Squad Announced	9	20 April 2026
World Cup Boats Announced	9	8 May 2026
World Cup I, Seville, Spain	11	29 – 31 May 2026
World Cup II, Plovdiv, Bulgaria	11	12 – 14 June 2026
World Cup III, Lucerne, Switzerland	11	26 – 28 June 2026
Team announcement for World Championships	9	no later than 24 July 2026
2026 World Championships, Amsterdam, The Netherlands	11	23 – 30 August 2026

Selection Activity	See Note(s)	Selection – Activity Dates
Closing date for completion of athlete and nomination forms	1	29 August 2025
Closing date for completion of coxswain CVs	2	5 September 2025
Olympic Class Athletes 30 Minute R20 Ergometer	3	Week commencing 6 April 2026
Paralympic Class Athletes 30 Minute Ergo – PR3’2 R22 PR1’s & 2’s R24	3	Week commencing 6 April 2026

17. The ARC took place between 23-29 March 2026. The National Selection Regatta (**NSR**) took place between 17-19 April 2026.
18. The following facts are not disputed by the parties:
- At the ARC, the Appellant finished 8th in the final of the Single Scull with a time of 10:03.
 - The Appellant’s 8th place was 21.1s slower than the athlete who placed next ahead of them (**Athlete X**).
 - Of those athletes who were selected, their recorded times at the ARC were between 28.8s – 71.5s faster than the Appellant.



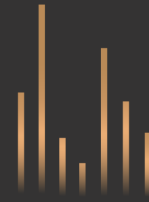
- d. At the NSR, the Appellant finished ninth of 9 athletes in the Single Scull final.
 - e. The Appellant's 9th place in that final was 16.6s slower than the athlete placed 8th (who was, again, Athlete X).
 - f. Of those athletes who were selected, their recorded times at the NRS were between 20.1s – 39.9s faster than the Appellant.
 - g. The selectors assigned each athlete an overall score. The ranking in the Single Scull final at the NSR accounted for 75% of the overall score and the aggregated ranking from performances between December 2025 and February 2026 accounted for 25% of the overall score.
 - h. The Appellant's overall score was 7.7, which was equal 8th with Athlete X.
 - i. Athlete X was selected for Quad trial. Athlete X's result at the ARC Single Scull was 21.1s faster than the Appellant's time and Athlete X's result at the NSR Single Scull was 16.6s faster than the Appellant's time.
 - j. The athletes who trialled for the Quad, but who were not selected for the Quad, were trialled for the Double using a double's matrix.
 - k. The Appellant was given the opportunity to race in a Double. In the first race, the Appellant's pair performed 0.91% ahead of the senior coxless four on prognostic time. In the second race the Appellant's pair performed 2.04% slower than the senior coxless four on prognostic time and slower than 4 of the 5 Under 23 crews in the same race.
 - l. Like the Appellant, Athlete X was not selected for any of the boats.
19. Given the concession made by the Appellant, it is not in dispute that the selectors are entitled to weight different events differently.

PROCEEDINGS BEFORE THE NST

- 20. The hearing of the appeal took place on Thursday 6 May 2026. The Appellant represented themselves. The Respondent was represented by Paul Thompson, Performance Director at Rowing Australia. I thank the Appellant and Mr Thompson for their measured and helpful submissions.
- 21. No Pre-Hearing Conferences were conducted because of the need to provide an expedited outcome to the appeal.
- 22. My decision was communicated to the parties by the NST Registry on Friday 7 May 2026 with reasons to follow.

APPLICABLE RULES

- 23. In a First Instance Appeal, the Appellant has the burden of making out that they were not afforded a reasonable opportunity by the Respondent to satisfy the Selection Policy (rule 5.2(b) of the Selection Appeals Policy).

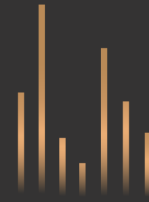


MAIN SUBMISSIONS OF THE PARTIES

24. The Appellant's argument, as re-crafted in the 5 May 2026 submission, is that they were not informed of the weightings that would be attributed to each of the activities they competed in until *after* the selection decisions had been made and they had been asked for reasons for their non-selection decision.
25. The Appellant submits that, had they known the weightings that would be given by the selectors they would have conducted themselves differently. For example, they submit that at the ARC:
 - a. they would have reduced his training load at the gym;
 - b. they would have reported a boat breakage that they consider negatively affected their rank and margin;
 - c. they would have reported being affected by [REDACTED] in the preparation for the race and during the race itself. The Appellant tells me they did not report these matters because they did not wish to be medically prevented from further trialling.
26. The Appellant has referred me to the decision of NST Member Bridie Nolan in *Jackson Roberts-Young v Australian Weightlifting Federation*. The Athlete submits to me that the case is an example of selection standards taking retrospective effects. It is the Appellant's submission that this is analogous to the Athlete's circumstances.
27. The Respondent argues that its selection decisions were made within its selection decision discretion and consistent with the Selection Policy. The Respondent submits that it applied the Mandatory Criteria. I am told that the Appellant did not progress because the margins between the Appellant and competitor athletes were very significant. It is submitted that the Appellant's national and international performances did not otherwise weigh in favour of the Athletes selection because the other members of the Quad in 2025 have the same international performances.
28. It is the Respondent's case that it is legitimate for it to apply weighting to different events and put greatest weight on those events which are (A) competitive; (B) on water; and (C) closest in time. The Respondent submits that the matters referred to by the Appellant do not amount to the denial of a reasonable opportunity and advance notice of weighting risks the integrity of the competitive nature of the selection process.

MERITS

29. The determination of this appeal sits in this context:
 - a. The Appellant accepts that the Respondent was permitted to attribute different weight to different events within the Selection Requirements differently.
 - b. The Appellant does not argue that the particular weightings that were given by the selectors were unreasonable or outside its discretion.
 - c. The Appellant does not argue the Respondent did not correctly apply the Selection Policy in so far as it relates to the application of the Mandatory and Additional Criteria.

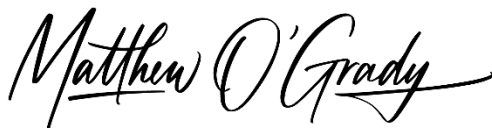


30. The only issue to be determined is whether the Appellant has proved the Athlete was not afforded a reasonable opportunity by the Respondent to satisfy the Selection Policy.
31. In my judgment the appeal must fail. First, the Selection Policy and (importantly) the requisite Selection Requirements were communicated to the Appellant prior to the commencement of those activities. Secondly, I accept it would undermine the integrity of the selection process and the objective of the Selection Policy for exact weightings to be released in advance to athletes. Such an outcome would be unreasonable. It is reasonable to expect athletes will apply their best efforts to each Selection Activity. Thirdly, there is nothing within the Selection Policy that requires such weightings to be communicated in advance. Fourthly, each of the matters relied upon by the Appellant as things the Athlete would have done differently had the Athlete known the weightings, do not establish that the Athlete was not afforded a reasonable opportunity by the Respondent to satisfy the Selection Policy.
32. Whilst I considered *Jackson Roberts-Young v Australian Weightlifting Federation*, it is not binding on me. Furthermore, the facts of that matter are very far from being on all-fours with the Appellant's case. In *Jackson Roberts-Young v Australian Weightlifting Federation*, the entire selection policy was changed retroactively, whilst 19 weeks into a 26-week qualification period and was not applied equally to all weight classes. The result was that the athlete did not meet the new criteria. In my judgment that is entirely different to the Appellant's circumstances. Here: (A) the athletes were informed of the Selection Policy in advance; (B) the Selection Policy did not change during competition; (C) all athletes were afforded an opportunity to put their best effort into meeting criteria; and (D) it was within the discretion of the selectors to make progress through the Selection Requirements as subject to invitation (and by necessary inference, also, exclusion from invitation) (see section 2.10.4 of the Selection Policy).

THE TRIBUNAL THEREFORE DETERMINES:

1. *The appeal is dismissed.*

Date: 11 May 2026



M. J. S. O'Grady