

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

N°: SDRCC 23-0656

BETWEEN:

Jonas Walton

(Claimant)

-and-

Cycling Canada Cyclisme (CCC)

(Respondent)

-and-

Tristan Jussaume

(Affected Party)

ARBITRATOR: Jonathan Fidler

APPEARANCES:

Louis Vallière (counsel), Kevin Field and Todd Scheske for Jonas Walton

Kris Westwood, Nigel Ellsay, Dan Proulx and Richard Wooles for Cycling Canada Cyclisme

Tristan Jussaume - self-represented

Heard by Zoom July 31st, 2023

DECISION

HISTORY

This is a team selection case. The Claimant, Jonas Walton, asks that he be selected in place of the Affected Party, Tristan Jussaume, for the Canadian team for the 2023 Road World Championships, U23 men's individual time trial team. He alleges that the Respondent, Cycling Canada Cyclisme, failed to consider relevant information in its selection process including past results, equipment issues, potential to contribute to future world championships and physical capacity in determining whether he should be on

the team. He is the first alternate on the team.

The parties agreed that this matter proceed as a Med/Arb. The matter therefore proceeded first as a mediation. As a result of there not being an agreement made between the parties during the mediation phase, I proceeded to convert the process to an arbitration.

THE EVIDENCE

It was agreed that the filings made by the parties with the SDRCC could be considered by me as evidence and used in the arbitration. Several witnesses were called by the Claimant. No witnesses were called by the Respondent. The Affected Party testified on his own behalf.

JONAS WALTON

The first witness called on behalf of the Claimant was the Claimant himself, Jonas Walton. He is 19 years old and has been in competitive cycling since he was 16. Prior to that, he was a track athlete and competed in the Junior Olympics. Prior to the 2023 Canadian Road Championships U23 Men's Individual Time Trials in Edmonton he set a junior cycling world record. He also competed in a team event in Quebec where his team won the yellow jersey. Two days later he went to Edmonton to compete in the Canadian Championships. The 2023 World Championship U23 men's individual team has two cyclists. The winner of the Canadian Championships is automatically on the team. The other team member is selected by Cycling Canada Cyclisme based on factors set out in Section D, Clause 3 of the Cycling Canada Cyclisme 2023 Road Selection Policy. At the Canadian Championships, Mr. Walton testified that he finished third by 9 seconds to the Affected Party, Tristan Jussaume who was given the second position on the team. There were problems with his equipment at the Canadian Championships. He got his time trial ("TT") bike two days before the Canadian Championships. It was prepared by his team in France. It was not the bike he wanted, but by reason of supply chain issues it was the bike he received. He said it was an older inferior bike and he was unable to make appropriate adjustments to it since the tools and equipment necessary were in France. He was disappointed with the bike, but there was nothing he could do. There were issues with the power meter, the tires, and the chain. Despite this, he competed with the bike. He did not complain to Cycling Canada Cyclisme about the equipment issues before the race. He feels that with proper equipment his result at the Canadian Championships would have been significantly better and certainly better than Mr. Jussaume. In addition to the equipment issue, he testified that he is well suited for the World Championship course in Glasgow.

In cross examination, he agreed that the TT was his focus, but that he did not train on a TT bike, again due to lack of availability due to supply chain issues. He knew that the Canadian TT Championships were important, but hoped Cycling Canada Cyclisme would take other factors into account. He maintained that he would have done better than Mr. Jussaume, who had optimized equipment, if he had the same optimized equipment. He was challenged that such a statement was theoretical not real.

KEVIN FIELD

Mr. Field has been a Sports Director in cycling since 1999. He has worked with many of Canada's top professional cyclists. In addition, he held various positions with Cycling Canada Cyclisme from 2015 to

2020, including Head of Performance Strategy. He has been involved in team selection for road cyclists. He outlined three areas involved in assessing cyclists. The first is fundamentals which includes the physiology of the athlete, the second is assessing variable conditions including holding an aerodynamic position in variable conditions and weather. The third is competition environment and adaptability. He pointed out that the course at the Canadian Championships in Edmonton was very different than the course in Glasgow and therefore was not a good test for World Championships eligibility. He also pointed out that collecting data from athletes is important and that Cycling Canada Cyclisme has stopped doing this. He feels that the criteria in the Road Selection Policy should be extended. In addition, he says that there is no doubt that better equipment can result in a significant gain in time. He is of the view that Cycling Canada Cyclisme took too narrow an approach in this case and failed to consider relevant information.

In cross examination, he admitted that his three criteria apply to all cyclists, not just the Claimant. He also agreed that the time result is indicative of everything on the day of the race. And that in a TT event, the racers are ranked by their time. He confirmed that statistics in tire testing are from lab tests and not from the real world.

TODD SCHESKE

Mr. Scheske was a cyclist for 38 years and a coach for 20 years. He has been the Claimant's coach for two years. When he met him, he saw that not only did he have strengths as a TT racer, he had the ability to become an all-around rider. At the Canadian Championships, he said the Claimant was fit for the race and the problem was the equipment. They were not sure what bike would be available and when they got the bike, they could not adjust it. These problems were beyond their control. Much of Mr. Scheske's evidence related to why the Claimant did not do well at the Canadian Championships. He said that he did an analysis as to what could be achieved with proper tires and a waxed chain. He estimated that conservatively that would have made up 40-50 seconds which would have more than made up the 9 second difference between the Claimant and Mr. Jussaume.

When cross examined, he confirmed that he did not do his analysis on Mr. Jussaume as he did not have his data. He therefore could not say what improvements could be made to his time. He also agreed that he was not aware of any challenges Mr. Jussaume may have had.

TRISTAN JUSSAUME

Mr. Jussaume is the Affected Party in this matter and was given the second spot on the team. He testified that he thought Cycling Canada Cyclisme's selection process was fair and questioned the theoretical and speculative nature of the Claimant's analysis.

CLAIMANT'S CHAIN AND TIRE ANALYSIS

The Claimant filed, as part of his appeal, an analysis done on tire selection and chain drag. This study concluded that with a different tire selection and a waxed chain, instead of a wet lubed one, he would have had a time 32 to 46 seconds faster, which would have put him in second place and very close to first place at the Canadian Championships.

CYCLING CANADA CYCLISME 2023 ROAD SELECTION POLICY

Cycling Canada Cyclisme's policy provides as follows:

U23 Men's Individual Time Trial

1. Top finisher at the 2023 Canadian Road Championship U23 Men's Individual Time Trial
2. Coach discretion based on Other Factors listed in Section D, Clause 3

Section D, Clause 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.
- The result 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 National Coach.

PARTIES' SUBMISSIONS

The Claimant submits that Cycling Canada Cyclisme had a lot of information, other than the Canadian Championship results and did not access that information before it made its decision. He says that Cycling Canada Cyclisme should have consulted the Claimant about his circumstances. It should have considered that the Claimant would have been a better fit for the team, and that with poor equipment he still had an "astonishing" result. That performance should have triggered a conversation about the Claimant. He feels that there are many factors in Clause D section 3 that should have been applied to the Claimant and that Cycling Canada Cyclisme did not do so. He also suggests that the supply chain issues with respect to the bike are "extenuating circumstances" as set out in the 2023 Road Selection Policy. He therefore asks that he be placed on the team in place of Mr. Jussaume. The Respondent submits that it followed its selection policy based on recommendations made by the road Coach Panel. It feels that the Canadian Championships were important in making its decision, particularly as it is the only competition where the

Claimant and Mr. Jussaume competed against each other. The selection criteria are set out and can not be changed retroactively. The analysis of gains that can be achieved by tires and chain lubrication are theoretical and cannot apply to only one athlete and not all athletes. There are no studies on Mr. Jussaume or any other rider. There is also nothing in the selection policy that allows theoretical considerations to be taken into account. It also points out that "extenuating circumstances" as set out in the selection policy only relate to injury, illness, pregnancy or travel restrictions or delays, none of which apply here.

DECISION

There is no doubt that both Mr. Walton and Mr. Jussaume are accomplished cyclists. It is not my role as Arbitrator to decide who is better. In team selection cases, I feel that the Arbitrator's role is to determine whether there was a selection process in place, whether the process was reasonable and communicated, and whether it was applied reasonably. It is the Claimant's view that it was not applied reasonably. The 2023 Road Selection Policy says that the second team member will be selected based on coach discretion and based on the factors in Clause D section 3. The Policy states that those factors MAY (my emphasis) be taken into consideration. It is therefore clear that the intention was that Cycling Canada Cyclisme should use discretion and have flexibility in making these decisions. Otherwise, the Policy would have used the word "shall" instead of "may" in Section D Clause 3. I recognize this may seem like a technical approach but that is how the Policy is drafted and I am to interpret it as written. As well, the main argument by the Claimant is based on an analysis of tires and chains which has only been done with respect to the Claimant and not with respect to Mr. Jussaume, but more important, even though it is scientifically calculated, it is theoretical and subject to many variables. There is nothing in the selection policy that allows, or contemplates this kind of analysis.

I therefore do not find any error in the selection process conducted by Cycling Canada Cyclisme and dismiss the Claimant's appeal.

Dated at Toronto, July 31st, 2023

A handwritten signature in black ink, appearing to read 'Jonathan Fidler', written over a horizontal line.

"Jonathan Fidler"

Arbitrator