

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

NO: SDRCC 23-0668

NICOLAS RIVARD
(Claimant)

AND

CYCLING CANADA CYCLISME
(Respondent)

AND

LUKE VALENTI
(Affected party)

DECISION WITH REASONS

PROCEDURAL BACKGROUND

1. On August 14, 2023, Nicolas Rivard (the Claimant) filed a Request with the Ordinary Tribunal in accordance with Article 6.1 of the Canadian Sport Dispute Resolution Code ("the Code").
2. The Claimant appealed Cycling Canada Cyclisme's decision to remove him from the list of selected athletes to compete at the Tour de L'Avenir 2023 race on the grounds that *he "was removed from the National Team selection ... despite meeting objective Criteria stated in Cycling Canada's 2023 Road Selection Policy"* ("the Selection Policy").
3. The Tour de l'Avenir is a road stage race for U23 men taking place in France from August 20 to 27, 2023. Invited national teams may enter teams of six athletes.
4. The matter was urgently referred to the Sport Dispute Resolution Centre of Canada ("SDRCC"). On the same day, I was appointed as Arbitrator to rule on the dispute expeditiously.
5. On August 15, 2023, Cycling Canada Cyclisme ("the Respondent") responded briefly that based on a strict interpretation of the Selection Policy, the Claimant did not meet its Priority 2 Criteria for selection.
6. A Preliminary Meeting was held on August 16, 2023, at which time a truncated calendar for submission was made, with the Parties agreeing to the matter being decided by documentary review, no later than 5:00 pm (EDT) on the same day.

7. All the parties respected their procedural deadlines, save for the Affected Party who elected not to make any submissions on his behalf. The Arbitrator then issued a short decision before 5:00 p.m. (EDT) on August 16, 2023, granting the Claimant's appeal and reinstating him to the team for the Tour de L'Avenir 2023 race.
8. The Arbitrator's reasons for the decision are as follows:

PARTIES

9. The Claimant is a Canadian cyclist who competes in the U23 (age 19-22) category in road cycling. Prior to his appeal, further to the Respondent's most recent selection decision, he was relegated to the list of alternates for the Tour de l'Avenir 2023.
10. The Respondent is the National Sport Organization that governs the sport of road cycling in Canada.
11. Luke Valenti, "the Affected Party", is a Canadian cyclist who competes in the U23 (age 19-22) category in road cycling and was selected to the Tour de l'Avenir 2023 team. He would be relegated to an alternate if the Claimant is successful.

APPLICABLE LAW, JURISDICTION and ADMISSIBILITY

12. The parties agree that:
 - The Code applies to all procedural matters related to this dispute
 - The Respondent's 2023 Selection Policy is applicable to the substantive elements of this dispute.

13. Article 6.10, the most relevant provision of the Code in relation to this dispute, reads as follows:

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.

14. The most relevant provision of the Selection Policy reads as follows:

Athletes will be selected in the following order of priority until the team is filled:

1. *The top finisher born in 2001-2004 in the 2023 Canadian Road Championship U23/Elite Men's Road Race*
2. *Athletes finishing top-5 (one-day, stage, or GC) in a UCI EuropeTour event class U23 or higher in the 12 months before the selection date.*
3. *Coach discretion based on Other Factors listed in Section D, Clause 3*

15. Although all internal Cycling Canada Cyclisme procedures had not been exhausted by the Claimant prior to appealing to the SDRCC, as required by Article 3.1 (b) of the Code,

the Respondent waived the internal remedies during the Preliminary Call. All parties thus consent to the jurisdiction of the SDRCC and the appeal is admissible.

16. All parties consent to my nomination to hear and decide the matter.

PARTIES SUBMISSIONS

17. The following is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found in the Parties' written submissions may be set out, where relevant, in connection with the legal discussion below. While the Sole Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the Parties in the present proceedings, she refers in her Decision only to the submissions and evidence considered necessary to explain her reasoning.

The Claimant

18. The Claimant submits that:

- Both parties agree on the Selection Policy and in particular Priority 2 criteria: athletes finishing top five in a European UCI event within the selection period will be selected.
- Both parties agree that Team Time Trials in UCI events in class U23 or higher are considered priority 2 events and that the Respondent added Quentin Cowan to the selection based on his 5th place finish in the Team Time Stage of the 2022 Ronde de l'Isard, a UCI class 23U event.
- The Claimant finished 2nd in stage 1, a Team Time Trial, at the 2.2U Carpathian Couriers Tour race on April 29, 2023 ("the Carpathian race").
- Both parties agree that Dataride is the UCI results database.
- The results in Dataride erroneously only show an individual ranking for the Team Trial Stage 1 of the Carpathian race.

19. The Claimant further submits that while the Respondent argues Dataride results are accurate and the authoritative source of information upon which it renders its selection decision and that it has excluded the Claimant from the selection because he finished 8th in stage 1 of the Carpathian Tour, the Respondent cites no written policy or UCI regulation to support its argument. The Claimant argues that nowhere within the UCI Regulations is Dataride cited as the "official" source of final results.

20. Relying on specific UCI regulations, the Claimant submits the Dataride results are inaccurate. Pursuant to the UCI regulations, the official results published by the event should be used to determine selection. He relies on evidence provided by a UCI Commissioner on this issue which states the Dataride results for the Carpathian race are inaccurate.

21. The Claimant further argues that the Respondent does not have the authority to determine which results are official. The UCI Regulations stipulate the process of determining official results and supersede Dataride as the authoritative source of information from which the Respondent should have made its selection decision.

22. The Claimant therefore submits that his 2nd place finish in the Carpathian Tour should be recognized and he should be named to the 2023 Tour de l'Avenir National Team Selection, along with all other athletes who meet Priority-2 criteria for selection.
23. The Claimant has claimed costs and damages. The Arbitrator explained to him that pursuant to Article 5.14 of the Code, such a request can only be made seven days after receipt of the decision with reasons.

The Respondent

24. The Respondent submits that its selection decision for the Tour de L'Avenir 2023 race was made in accordance with its Selection Policy based on recommendations by the road Coach Panel. The Selection Policy was properly established in collaboration between the Coach Panel, the Respondent's Athletes' Council and the CC High Performance Committee. It was then published in draft form on the CC website on January 13, 2023, to solicit public feedback.
25. In drafting its selection criteria, the Respondent intended to consider only individual results under the Priority 2 criteria. Team Trials were not intended to be considered because team time trial results are a reflection of the collective performance of the team and not necessarily the individual performance of any of the athletes.
26. The Respondent explains that:
 - Athletes were informed of the Tour De L'Avenir 2023 selection decision on July 5, 2023.
 - On July 12, 2023, Quentin Cowan another athlete competing in the U23 category informed the Respondent's Independent Case Manager of his intent to appeal the decision because the Respondent had not considered his 5th place result in Stage 2 of the UCI Ronde de l'Isard in its selection decision and that this result met Priority 2 of the selection criteria. The Respondent was informed of the appeal on July 31, 2023 and subsequently reviewed its selection decision on August 3, 2023, informing Mr. Cowan the selection decision would be revised adding him to the team. This revised decision was not immediately published in order to give time to inform the affected athlete (who again on that occasion was Luke Valenti).
 - On August 9, 2023, the Respondent published its revised decision, leaving both Rivard and Mr. Félix Hamel off the team and reinstating Mr. Valenti to the team.
27. The Respondent submits that, further to the above, it became aware of another international result that might need to be considered involving both the current Claimant and Félix Hamel (due to their results at Stage 1 of the UCI Carpathian race).
28. The Respondent submits that official results published by the UCI for the Carpathian race do not meet Priority 2 of the Selection Policy. Based on a strict interpretation of the Selection Policy and with direct reference to the UCI points data base and the official results published by the UCI, neither of which according to the Respondent recognize the Claimant's second-place finish, the Respondent submits that the Claimant's result

from Stage 1 of the Carpathian Couriers Race does not meet Priority 2 of the Tour de l'Avenir selection criteria.

29. The Respondent submits that in making this selection decision:

- It followed the rules carefully: it applied the selection policy to the letter and made a reasonable decision in the face of the available evidence;
- It followed the spirit of the selection policy: any reasonable observer of cycling would agree that performance in a 4 km team time trial should not be determinant in selecting a team for an eight-day, 880-km stage race

30. The Respondent submits that its selection criteria were appropriately established, as agreed by the Claimant; that it applied the criteria properly; and that it made a reasonable decision in the face of the available evidence, which the Claimant has not succeeded in disproving.

31. The Respondent therefore asks that the Claimant's appeal be denied and that its selection decision upheld.

DELIBERATIONS

32. The Respondent submits that this appeal hinges on

“whether the selection decision of the Canadian Team for the 2023 Tour de l'Avenir should be based on the international federation's recognized and authoritative database of results; or on the Claimant's interpretation of the results based on a presumed error by race officials.”

33. The Arbitrator disagrees. To simplify the decision and the dispute, the Arbitrator finds that the appeal hinges on whether the top-5 result provided as a Priority 2 criteria of the Respondent's Selection Policy for the Tour de L'Avenir 2023 may be satisfied by individual results or team results or both.

34. There is no doubt that if the Selection Criteria expressly stated that the Priority 2 criteria was solely based on individual results, the Claimant would not succeed. The rankings from the Carpathian Tour and UCI websites clearly place him in 8th place.

35. However, if the Selection Criteria allows Team Results to be considered, which the Arbitrator finds to be the case since they are not expressly excluded, the Claimant succeeds as he would automatically meet the Selection Policy's Priority 2 criteria by virtue of his team having finished 2nd the Carpathian Team Trial Race.

36. It is essential to underline that Team Trial races, as conceded by the Respondent, were not excluded from its Priority 2 selection criteria. Now, in August 2023, long after the Selection Policy's publication in January 2023 and its ongoing implementation, the Respondent argues that their intention was to have the Team Trial races excluded.

The Respondent's intentions and application of its Selection Policy

37. The Respondent submits that it “intended” to consider only individual results under Priority 2. While the Arbitrator accepts that Team Trial races may not have intended to

be considered by the Respondent because *they “are a reflection of the collective performance of the team and not necessarily the individual performance of any of the athletes”*, this however is not how the Respondent’s Selection Policy reads.

38. Based on the evidence, in the last few months, the Respondent changed its own interpretation and “understanding” of the criteria and modified its own application of its Selection Policy in its selection decisions accordingly whether on its own volition, further to appeal or other. This has led to much confusion and stress for its athletes - as corroborated by the Claimant and Félix Hamel, another athlete recently removed from the Tour de l’Avenir 2023 Team after initially being selected and then relegated to an alternate.
39. An email from Mr. Hamel’s representative dated August 10, 2023 is demonstrative of the Respondent’s problematic application of its Policy in relation to the Tour de L’Avenir 2023 Race.

On behalf of Felix Hamel, I wish to comment on the high level of stress and uncertainty that the selection process for this race has brought onto Felix as well as on other Ecoflo Chronos riders who were originally selected then got excluded.

I feel that the selection process for any major event like the Tour de l’Avenir (and the upcoming Grand Prix de Quebec and Montreal) needs to be thoroughly conducted so to avoid unnecessary stress attaching to an appeal process by athletes. As I see it in light of Quentin Cowan’s recent appeal that cascaded, there are some loose ends that need to be tied up in such a process.

Furthermore, I wish to stress the fact that the uncertainty of the selection process makes it that the athletes Sport Director are also affected by it as rosters for other races can not be determined with clarity, hence affecting the entire Team’s organization.

Needless to say that this is undue aggravation that needs to be avoided.

40. The Arbitrator recognizes that the Respondent is not acting in bad faith and appears to have been trying to right a wrong. However, the impact of its wrong is still now affecting athletes, notably Félix Hamel, the Claimant (and the Affected Party Luke Valenti). The events of the last months, as highlighted in the parties’ submissions, amount to what can only be respectfully defined as an unfortunate (and perhaps mishandled) situation both for the Respondent and its athletes.

The UCI regulations and points data base

41. Neither party’s argument with regards to the proper application of the UCI Regulations is more convincing than the other in the face of the irrefutable finding and reasonable commonsense approach that by having the second fastest time, the Claimant’s team finished in the top 5 at the Carpathian’s Courier’s event.

42. In its August 9, 2023 decision to remove both Félix Hamel and the Claimant, as reiterated in its submission before the Tribunal, the Respondent submitted that it was

relying on a strict interpretation of the selection criteria as written, [and that] the results for Felix Hamel and Nicolas Rivard do not meet Priority 2 of the selection criteria, which reads: Athletes finishing top-5 (one-day, stage, or GC) in a UCI event class U23 or higher in the 12 months before the selection date.

43. Yet, the Selection Criteria for the Tour de l'Avenir 2023 as plainly written makes no reference to UCI rules and points (on which the Respondent submits it based its strict interpretation above) and plainly provides that any top-5 finish in UCI Europe event class satisfies the Priority 2 criteria. This is supported by the Respondent's modified selection decision which added Quentin Cowan to the team as a result of his previous top 5-Team Trial finish.

44. The fact is that the Claimant finished second in a Team Trial race, whether he was rightly or erroneously not awarded UCI points for the same, or whether he was individually ranked 8th as a result of the same is immaterial to the Arbitrator's determination. It is nonetheless worth noting if only as a matter of form the UCI Commissioner's opinion, which is not fact, but nonetheless corroborates the Claimant's argument that

UCI points available for the stage ... should be awarded to the team and divided equally amongst its finishing riders as explained in 2.10.008

and that

their ranking on the stage for the purpose of DataRide is the same for all members of the team.

45. It is thus reasonable to conclude that the Claimant's second place Team Trial Result (or as the Respondent has conveniently argued was "the second fastest time") also satisfied the criteria as drafted. A simple interpretation of the Selection Policy for the L'Avenir race is that the Claimant meets Priority 2 of the selection Criteria. His team finished in the top 5 in the Carpathian Team Trial which is a UCI stage event U23 or higher. As team trial results are not expressly excluded from the criteria, the Claimant effectively meets the Priority 2 criteria.

Conclusion

46. The Tribunal cannot disregard the simple and logical interpretation of the established and published criteria and substitute it for the Respondent's intended wording and application of the criteria. That the Selection Policy as drafted does not reflect the Respondent's intended application of the same cannot be imputed to athletes, like the Claimant, who rely on criteria to be clearly established, communicated and consistently reasonably applied as drafted.

47. The Respondent's selection criteria were poorly drafted by not expressly excluding team trials and by not expressly stating that it is only athletes' "individual" results as opposed to Team Results that are the basis of the criteria. Nonetheless, the Selection Policy has

been properly established as agreed by both Parties. The first hurdle the Respondent needs to clear in Article 6.10 of the Code is therefore satisfied.

48. However, the Respondent does not succeed satisfy its second onus under Article 6.10 of the Code. The Respondents actions and selection decision disputed by the Claimant *were not made in accordance with the criteria of its Selection Policy* as required.

49. The Arbitrator consequently finds in favor of the Claimant and rules that the Respondent's Selection Criteria were not properly followed or applied by virtue of the Respondent not recognizing the Claimant's top-2 finish in the Carpathian race as satisfying the Priority 2 criteria for the Tour de L'Avenir 2023 race, as expressly provided for in the Selection Policy. The Respondent's selection decision was thus not reasonable. Conversely, the Claimant has satisfied his onus of demonstrating that he should have been selected to the Tour de L'Avenir 2023 Team.

DECISION

50. For the reasons stated, on the preponderance of the evidence, the Respondent fails to meet its onus that it applied its Selection Criteria properly or reasonably given that it is widely accepted that the Athlete finished in the top-2 team in the Carpathian race, as required, to meet the Priority-2 criteria.

51. On a preponderance of the evidence, the Arbitrator's finding is that the Claimant and his team finished top-2 in a UCI Europe Tour Event class U23 or higher in the 12 months before the selection date. Therefore, the Claimant satisfies the Priority 2 criteria and should have been selected to the Tour de l'Avenir 2023 Team pursuant to the Respondent's Selection Policy, as drafted.

52. The Claimant must therefore be reinstated to the Tour de L'Avenir 2023 Team and the Affected Party must be relegated to alternate as he falls below the Claimant in the Selection Policy's order of priority.

ORDER

53. The Claimant's appeal is granted.

54. The Arbitrator retains jurisdiction over all ancillary matters to this dispute and decision.

55. Pursuant to Article 6.12 (c) of the Code, this decision is final and binding on all parties.

Signed in Beaconsfield, this 28th day of August, 2023.



Janie Soublière, Arbitrator