

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

**N°: SDRCC 24-0714/0715
(ORDINARY TRIBUNAL)**

Between:

Srimantha Wijeyeratne
(Claimant)

AND

Ammar Khalid
(Claimant)

AND

Cricket Canada (CC)
(Respondent)

AND

Dilpreet Bajwa
Jeremy Gordon
Dilon Heyliger
Aaron Johnson
Shreyas Movva
Rayyankhan Pathan
Kaleem Sana
(Affected Parties)

Arbitrator:

David Merrigan

Hearing:

via Written Submissions on May 31, 2024

Appearances:

For the Claimants:

Ammar Khalid (Claimant), Srimantha Wijeyeratne (Claimant),
Jaiveer Chauhan (Counsel)

For the Respondent (CC):

Salman Khan, Amjad Bajwa, and Ingleton Liburd

1. On May 17, 2024, I issued a final decision for **SDRCC 24-0714/0715** which allowed the appeals, in part.
2. As remedy I ordered CC to re-select the T20 World Cup Team de novo.
3. On May 24, 2024, one of the Claimants, Srimantha Wijeyeratne, wrote the tribunal and requested that I reconsider my decision and actions taken since my initial award. In brief, he alleged that CC acted beyond its authority in altering the final roster from the players put forward by the National Selection Panel.
4. After hearing from the parties during an exploratory meeting on May 27, 2024, I invited submissions on the issues the Claimant's Counsel asserted were outstanding and not previously canvassed in my previous final decision.
5. Upon review of the submissions by each party, I have decided to dismiss the additional claims from Mr. Wijeyeratne and Mr. Khalid.

Background

6. In my final decision dated May 17, 2024, I concluded that the player selection process conducted by the National Selection Panel (NSP) was inadequate and had denied the Claimants a fair opportunity to be selected to the T20 World Cup Squad for Canada.
7. I directed CC to set aside the current T20 World Cup roster and re-commence the team selection de novo with the current membership of the NSP. I also encouraged CC to ensure the NSP strictly adhered to the Player Selection Policy and appoint a recording secretary to ensure accurate documentation of the NSP's selection process.
8. In the initially contested selection, the NSP had selected Mr. Khalid as a reserve player and Mr. Wijeyeratne was not selected as one of the 15 roster players nor a reserve.
9. After applying the re-selection, Mr. Khalid was selected again as a reserve player and Mr. Wijeyeratne was also selected as a reserve player.
10. Although the Board of CC made several changes to the final roster from what had been produced by the NSP, neither of the Claimants was selected as a roster player.

Issue

11. Have the Cricket Canada Board of Directors acted unreasonably and abused their power by altering the team selected by the National Selection Panel?

Position of the Claimants

12. The Cricket Canada Board of Directors acted unreasonably and abused their power by altering the team selected by the National Selection Panel. This undermines the principles of procedural fairness and natural justice, as the NSP is entrusted with the task of selecting the team based on their expertise in cricket.
13. The NSP acted unreasonably, arbitrarily, and in bad faith by failing to select Srimalantha Wijeratne in the squad of 15 for the T20 World Cup. The NSP's decision lacked transparency and sufficient justification, failing to adhere to the principles of procedural fairness and natural justice.
14. The NSP also acted unreasonably, arbitrarily, and in bad faith by failing to select Ammar Khalid in the squad of 15 for the T20 World Cup. The NSP's decision lacked proper documentation and justification, particularly regarding the measurement of Ammar's pace and the use of age as a disqualifying factor.
15. The Cricket Canada Board of Directors' role is primarily to provide direction, criteria, and overall governance in the selection process, rather than to intervene directly in the selection of the NSP. By altering the NSP's selections, the Board undermines the expert judgment of the NSP and introduces undue subjectivity and potential bias.
16. The SDRCC has the authority to review the facts and apply the law, including the authority to substitute its decision for the decision that gave rise to the dispute. The requested remedies include setting aside the current selection, ordering a re-selection of the team adhering strictly to the selection criteria, and ensuring compliance with the established policies.
17. The Claimants ask for the following remedies:
 - a. Set Aside the Current Selection: We request the SDRCC to direct the setting aside of the current T20I World Cup roster. The selection process, as evidenced, did not adhere to the established Player Selection Policy, lacked procedural fairness, and displayed clear biases.
 - b. Order a Re-selection of the Team: We request the SDRCC to mandate that the team be reselected by the NSP, adhering strictly to the selection criteria outlined in the Player Selection Policy. This re-selection should ensure transparency, fairness, and compliance with the procedural requirements set forth by Cricket Canada.

- c. Ensure Compliance with Policy: The re-selection process should be overseen to ensure that the NSP and the Board of Directors comply fully with the established policies, focusing on the criteria of skills, form, fitness, and experience without undue bias or subjectivity.
18. The Claimant cites *Baker v. Canada* [1999]2 SCR 817, *Bui v. Tennis Canada* (SDRCC 20-0457) and *Beaulieu v. Speed Skating Canada* (SDRCC 13-0199) to support their argument.

Position of the Respondent

19. The arbitrator directed Cricket Canada to re-commence team selection with the current membership of the National Selection Panel (NSP) for the T20 World Cup.
20. Cricket Canada has the authority to make changes to the team selected by the NSP if deemed necessary, as per Cricket Canada's Player Selection Policy (section 4.1).
21. The changes made to the team were done after consulting with the National Physio and Doctor, and with complete due diligence to ensure the best possible team was selected for the World Cup.
22. The minutes of the NSP meeting should not be regarded as a verbatim transcript of the meeting, but rather as a document capturing the essence of the meeting.
23. The claimants have not provided evidence to support their assertion that they were not selected based on age or that they were treated unreasonably or in bad faith by the NSP.

ANALYSIS

24. The Player Selection Policy of Cricket Canada contains the following pertinent sections:

4. Role of the Board of Directors

4.1: The Board of Directors is responsible for:

- Appointing and announcing the National Selection Panel (NSP), Annually, (generally by October of the current year, to allow the committee to meet and prepare a plan for the upcoming season).
- Communicating with the National Selection Panel (NSP) on upcoming tournament dates and the dates by which a team must be selected.
- Providing selection criteria.
- Providing a list of players that are not eligible for selection for any reason.
- Providing details of the player compensation for the tour.
- Reviewing and approving teams prior to announcement.
- Announcing National Squads and National Teams.
- Approving National Selection Panel's (NSP) nominations of captain and vice-captain

25. The Board of Directors of CC retains the responsibility to *review and approve* teams prior to announcement. (Emphasis added).

26. The Player Selection Policy also contains details on the role of the NSP:

2. National Selection Panel Responsibilities

National Selection Panel (NSP) of Cricket Canada, which is responsible for selecting the squads for various categories in international cricket competitions. The mentioned squads include:

- I. **Senior Men's Team:** This team consists of experienced male cricketers who represent Canada in senior-level international cricket tournaments.
- II. **Women's Team:** The Women's Team comprises female cricketers selected to represent Canada in international competitions.
- III. **U19 (Boys & Girls) Team:** The Under-19 (U19) Boys' & Girls Teams are composed of young male/female cricketers who are under the age of 19. This team is usually considered a development squad to nurture and groom talented players for future senior competitions.

The NSP plays a crucial role in evaluating players' performances, skills, and potential to ensure the best possible squads are selected to represent Cricket Canada in various International Cricket Council (ICC) competitions and other tournaments as requested by the Board of Directors.

Submission of Selected Players List:

- The National Selection Panel (NSP) is responsible for compiling a list of selected players.
- This list must be submitted to Director In charge or President of Cricket Canada



POLICY

- The selected team list is then presented to the Board of Cricket Canada for approval by the Board of Directors.

- **Timeline for Submission:**

The submission of the selected players' list should occur no later than 24 hours after the conclusion of any selection meeting.

- **Announcement of the Selected Team:**

Upon receiving approval from the Board of Directors, the announcement of the selected team is the responsibility of the Cricket Canada General Secretary and Media/General manager.

- **Communication Channels:**

The announcement is communicated through various channels:

- Members of Cricket Canada
- International Cricket Council (ICC)
- Media outlets
- Posting on the Cricket Canada website & Social Media Handles
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- **Media/General Manager Role:**

The media/general manager plays a crucial role in disseminating information about the selected team to the public and relevant stakeholders.

It's important to follow these steps systematically to ensure transparency and timely communication of the selected team. These guidelines help maintain the integrity of the selection process and keep all stakeholders well-informed about the team composition.

Dedicated Women's Selection Panel shall be appointed by Board of Directors in consultation with Director-in-Charge Women's Cricket from among the interested and qualified selectors.

27. Section 2 states that the NSP plays a crucial role in evaluating players' performances, skills, and potential to ensure the best possible squads. It does not specify that the NSP has exclusivity in this role.

28. Part of the selection process, as outlined in the section on NSP responsibilities requires receiving the approval from the Board of Directors before the team is announced. This means that the NSP does not have the ultimate say in the selection process – it cannot approve the selections itself.
29. The Board of Directors, however, have explicitly reserved role of “reviewing and approving teams prior to announcement” in the policy.
30. The policy goes on to state that “Upon receiving approval from the Board of Directors, the announcement of the selected team is the responsibility of the Cricket Canada General Secretary and Media/General manager.”
31. This is noteworthy because it shows that after the NSP forwards its list of selected players to the Board of Directors via the “Director in charge or President of Cricket Canada” it does not have any further duties within this policy. The NSP has in effect, completed its tasking at this stage.
32. The Board of Directors is also responsible for “providing selection criteria.”
33. Surely, in the absence of language to the contrary, it should not only be able to review and approve teams so that they reflect the selection criteria provided, but it should also be able to take corrective action where necessary to ensure such; especially with regards to unforeseen circumstances such as replacing an injured player for an upcoming competition.
34. The only restrictions to exercising this discretion would be the requirement to exercise it in good faith and in alignment with overall goals of the organization. These are unstated in the policy but are accepted pillars of competent governance and decision making.
35. I have not seen any evidence that persuades me that this was not the case.
36. The Claimants cite the meeting minutes of the new selection ordered by my previous award as evidence of the NSP acting unreasonably, arbitrarily and in bad faith. I do not share this view.
37. Specifically, the Claimants attempt to parse the minutes to emphasize that Mr. Khalid was subject to a level of age-related scrutiny that was not applied to his peers in the NSP deliberations. The minutes, in this regard, read:

“Navdeep mentioned that Ammar lacks pace and he is in late 30s. Uday offers more or same pace bowling, and he is an upcoming youngster”

38. “Pace” is a quantifiable skill and can be objectively observed. That one of the selectors linked Mr. Khalid’s “pace” with his age in context of preferring a younger player is well within the discretion provided the NSP by the selection policy:

- **Long-Term Planning:**

In addition to immediate success, the selection panel is responsible for looking ahead and including players who can serve the country for extended periods. This long-term perspective involves identifying and nurturing young talents, providing them with opportunities, and planning for the future development of Canadian cricket.

39. I agree with the Respondent that the minutes are not a transcript and are not a verbatim record of the discussions had between the NSP. They are a general record of who was discussed by whom and they show both Mr. Khalid and Mr. Wijeyeratne were discussed by the NSP.

40. Indeed Mr. Khalid was once again selected as a reserve (the same as in the previous impugned NSP selection) and Mr. Wijeyeratne, though not being selected to the 15-man roster improved his status in the re-selection to being named one of the reserve players.

41. Frankly, the argument that the Board of Directors inferred with the Claimants’ opportunity to be selected as a roster player fails on its face as neither athlete was put forward as a roster player by the NSP, either in the initial impugned selection or the selection ordered by this Tribunal.

42. The role of this tribunal is not to alter the Player Selection Policy of Cricket Canada but to ensure that it has been applied fairly. At this stage, I am satisfied that it has been.

43. In their reply submission, the Claimants provide several examples of players being named to the T20 Roster who were not put forward by the NSP. With respect, this is not relevant to the instant case which involves only Mr. Khalid and Mr. Wijeyeratne – as they themselves were not put forward as one of the 15 roster players by the NSP.

44. If they were not put forward as roster players by the NSP, they could not have been removed, by abuse of power or otherwise, by the Board of Directors of CC.

45. As the player selection policy is silent on the appointing of NSP determined reserves to the 15-player roster, I have determined that this discretion would also be retained by the Board of Directors (the NSP completes its tasking prior to the approving of the team and is, therefore, not active to deal with any interim issues from NSP selection through competition.)

46. I would also remind the parties that they agreed that the corrective actions ordered in my final award of May 17, 2024, had been subsequently completed by Cricket Canada.

ORDER

47. For the above noted reasons, the current request by the Claimants is denied.

48. As neither party filed a request for costs as per the previously supplied deadline, no costs are awarded.

**ALL BY ORDER OF THIS ARBITRATION TRIBUNAL this 31st day of May 2024 at
Halifax.**



David Merrigan
Arbitrator