Arbitration CAS 96/153 Watt/ Australian Cycling Federation (ACF) and Tyler-Sharman, award of 22 July 1996

Sole Arbitrator: Mr. John Winneke (Australia)

Selection of athletes for the Olympic Games
Failure to respect the selection procedures
Good faith

1. **The dispute concerning the selection of an athlete rather than another for a particular event at the Olympic Games is not one where the Court of Arbitration for Sport is being requested to make a choice as to which of two athletes is better or which is more likely to win a medal at the Games. They are matters for those properly qualified to make such a choice. Rather, this is a dispute about whether selection procedures have been properly and fairly exercised by the body invested with the power of making the choice.**

2. **Where a sporting organization, in circumstances deemed by it to be appropriate, chooses to depart from its established selection procedure rules and to nominate, in advance, a particular athlete as its selected choice for a particular event and, in doing so, creates expectations in and obligations upon that individual, then it should be bound by its choice unless proper justification can be demonstrated for revoking it.**

On 14 July 1996, Kathryn Watt ("the Appellant") made application to the CAS (Oceania Registry) disputing a decision ("the decision") made by the Australian Cycling Federation (ACF) on 14 July 1996 omitting her as the nominated member of the Australian Olympic track team to compete in the 3000 metres women's individual pursuit event at the 1996 Olympic Games in Atlanta in July/August 1996. She claimed to be entitled to be a member of that team, and to represent it, as its selected member, in the said event.

The Appellant, by her application, challenges the decision and seeks an award:

(a) quashing the decision of the respondent naming Lucy Tyler-Sharman as the selected member of the Olympic track team to represent Australia at the Games in the Women 3000 m. Individual Pursuit Track Cycling event ("the event");

(b) that the ACF honour its written guarantee to the Appellant, dated 22 April 1996, that she would be nominated as the member of the track cycling team to represent Australia in the event;

(c) that the ACF now nominate the Appellant to the Australian Olympic Committee as the member of the cycling track team to represent it in the event.

Due to the urgency of the matter in dispute the parties agreed to abridge and waive the time limits provided by the Code of Sports-related Arbitration.

The parties agreed to submit their dispute to my arbitration, and the proceedings were conducted as follows:

(a) The Appellant's application and written case was delivered with the application on 15 July 1996.

(b) The Respondent's written answer to the Applicant's case was delivered on 18 July 1996.

(c) Each party made oral submissions in amplification of their written cases on 18 July 1996 in the Arbitrator's Chambers in Lonsdale Street, Melbourne.

Following the completion of the hearing it was agreed that I would deliver my award with reasons on Monday, 22 July 1996. With the consent of the parties, this procedure was subsequently varied and the terms of my decision were announced on Saturday, 20 July 1996.

During the course of the Appeal the Appellant challenged the process by which the Respondent and its selectors had revoked her nomination as the preferred member of the track team to ride the individual pursuit race and had, in lieu, nominated Ms. Tyler-Sharman as such member.

The relevant facts can be summarized as follows:

It is accepted that the Appellant's performance record both in road events and pursuit events has been outstanding. She has been able to combine both road and pursuit events successfully for a significant period. She has not been beaten in the Individual Pursuit event by an Australian cyclist since 1989.

Because of her commitment to riding both road and track events the Appellant became the subject of discussion at the "high performance" meeting of the ACF in November 1989. At this meeting the President of the ACF (Mr. Godkin) said that "the women's road coach" (Mr. Logan) was autonomous; he was in charge of women's endurance in the present structure and he will be advised that he is to make the decision with respect to Kathy Watt, and he will be supported by the ACF 100%.

Logan did make a decision as required. He advised Kathy Watt that he would only support her in relation to the "pursuit" in Atlanta if she could *"demonstrate that she could ride a time at the 'track nationals' in February 1996 which would place her in contention for medals in Atlanta"*. When Ms. Watt set a new Australian record of 3' 38" 24 Logan made a decision giving her his support.

Following Ms.Watt's performance at the "Track Nationals", she and Logan sought and received an assurance from the Respondent that Ms. Watt would be the nominated rider for the pursuit event at

the Olympic Games. This was done to ensure that she could prepare herself in accordance with a schedule endorsed by Logan and to avoid disruption arising from a "last moment displacement".

The Respondent agreed to accede to the requests of the Appellant and Logan and, on 22 April 1996, provided the Appellant with a letter (which the ACF called a "guarantee") stating (inter alia) that the *"ACF executive, Head Track Coach (Walsh) and Women's Endurance Coach (Logan) have agreed that you are the nominated person to ride the Individual Pursuit in Atlanta"*.

The letter was accompanied by a media release from the Respondent which stated (inter alia) that:

"The ACF today guaranteed Kathy Watt's nomination as the rider in the Women's 3000 m. individual pursuit at the Atlanta Olympic Games in July. ... Although ... the final Australian Olympic Games track cycling team will not be announced by the Australian Olympic Committee (AOC) until early June, ACF President, Ray Godkin, rang Watt last night guaranteeing her of the nomination to ride the pursuit. The only thing that can now prevent Watt from riding the event is injury, illness or in the (very unlikely) event of a unique world record performance by another Australian cyclist".

The guarantee was not absolute but was qualified by the words, *"the only possibility of unforeseen change would be the unlikely unavailability of you through injury or the other unlikely aspect of another Australian competitor performing some unique ride; i.e. equal or near to the new world record prior to the Games"*.

Following receipt of the "guarantee" Ms. Watt left Australia to prepare herself for the Games in accordance with a training schedule endorsed by Logan. This schedule provided for her to be at various times in Europe and U.S.A.

The usual practice of the Respondent, so far as selection of its team at the Games is concerned, is to select its team of recommended competitors to represent Australia and to submit the selected team for approval of the AOC; and then to announce the riders for individual events. The Olympic qualifying procedures determine the number of riders who can compete for each nation in each event. Australia is only permitted one rider in the women's individual pursuit.

In accordance with the "guarantee" given to the Appellant by ACF, the Applicant went to Europe and U.S.A. at the end of April 1996 to train in accordance with the schedule mapped out for her.

On 6 June 1996, the "Section Manager" of the 1996 Olympic Cycling Team (Michael Turtur) advised the Appellant by letter that *"final selection for the Women's 3000 m. Individual Pursuit event in Atlanta ... will be decided at the Track Group's Training camp in Houston from 3-16 July 1996"*. The letter went on to inform the Appellant that her *"nominated person status is clearly now in question following the performances by Lucy Tyler-Sharman during the last few months"*. The Appellant was "advised" to attend the camp in Houston and "required" to confirm her attendance in writing.

Ms. Sharman had ridden some extremely fast times, one within 2/100 second of world record in training at Buttgen in Germany. This had occurred in May. She had also competed in World Championships in Milan during May in which she had been placed third, but at a slower time than she has performed at the Australian championships. Her improved training times were attributed to modification of technique.

Following the receipt of the Respondent's stated attitude in June 1996, much correspondence occurred between the ACF and the Appellant or her advisers. The object of the correspondence, from the Appellant's point of view, was to find out why her "nominated status" had been jeopardized or revoked and to what type of "assessment" she was required to subject herself in Houston.

After much correspondence the Appellant declined to attend the Houston training camp both because it was quite incompatible with her own schedule and because the suggested assessment (details of which were not forthcoming) could serve no useful purpose. It was agreed that a "ride off" between the athletes was not intended.

On 14 July the Respondent made an announcement in which it said that it had nominated Ms. Sharman for both the individual pursuit and the point's event. It said that *"Kathy Watt was overlooked for both events ... She chose not to attend the Houston training camp to allow team management to properly assess her for the individual pursuit and, as a result, could not be considered"*. (This was the impugned decision).

Watt has claimed that the Respondent has no right to revoke her "nominated status" and claims that it has acted unfairly and without *bona fides* in making its decision. She claims that the ACF has revoked her "guaranteed nomination" because it has changed its mind about her capacity to ride in both "road and track" events and has used training performances of Ms. Sharman as a spurious reason to revoke its former decision.

LAW

1. It was agreed between the parties that the Appellant had executed an Arbitration Agreement (Appeal Agreement). Inter alia, that Agreement provides that:

   "(1) Any dispute regarding:

   (a) the nomination of an athlete ... by the Australian Cycling Federation Incorp. to be a member of the 1996 Olympic Team;

   (b) (not relevant)

   must be solely and exclusively referred to the Court of Arbitration for Sport.

   (2) Any such reference to and the hearing by the Court of Arbitration will be conducted pursuant to the Code of Sport-related Arbitration".

2. Further each party signed the Order of Procedure which acknowledged the jurisdiction of the Court of Arbitration for Sport arising, inter alia, from the signing of that document.

3. At the commencement of the oral hearing on 18 July 1996 the parties indicated that there was no objection to the jurisdiction of the Court nor to any matter in the procedure followed to

date. The parties had no objection to the procedure to be followed at the oral hearing; that hearing proceeded on an informal basis with submissions being made on behalf of both parties.

4. Upon the oral hearing on 18 July 1996 Counsel representing the Respondent announced that he had instructions to represent the interests of Lucy Tyler-Sharman and produced to the Panel a written and signed authority. His oral submissions encompassed submissions on her behalf.

5. No objection was taken to the Panel's jurisdiction. Indeed the appellant tendered a transcript of a media conference of 14 July 1996 during which the President of the ACF accepted that both the Appellant and the Respondent would accept the decision of CAS: *"If the Court of Arbitration decides that she (Appellant) should ride then that is how it would be"*.

6. This dispute is a regrettable one. The Appellant and Tyler-Sharman are each world class athletes and each is eminently qualified to represent Australia in the Pursuit event. Because the Olympic qualifying procedures preclude more that one Australian rider from competing in the event, this decision will necessarily have an unfortunate impact on one or other of these talented athletes. That impact will be to some extent softened by the fact that each has been chosen to represent Australia in at least one other event.

7. I am conscious of the caution held out to me, by Counsel for the ACF, that I should be careful not to readily trespass into the selection processes of a professional cycling organization which processes clearly embrace a wealth of experience and expertise that I cannot hope to share. Counsel referred me to two decisions of the Courts during the course of which the learned judges had expressed such caveats. (Sheehy v. Judo Federation of Australia Inc., unreported, Equity Division, Supreme Court of N.S.W., 1 December 1995, and McInnes v. Onslow-Fane (1978) 1 W.L.R. 1520.)

8. Those judgements convey the caution which Courts of law traditionally exercise in interfering with the decisions of domestic bodies. The former judgement also reminds me that decisions made by a domestic body are made, *prima facie*, in the interests of the body as a whole and not in the interests of any particular individual.

9. I agree with the sentiments so expressed, but there must necessarily be a rider placed upon them in the context of this arbitration. The CAS is not a court of law. It is an arbitral body set up to entertain disputes referred to it (*inter alia*) by agreement of the parties. It must necessarily, therefore, enter into the procedural affairs of the relevant domestic body if the agreement between the parties requires it to do so. In this case the parties have executed an "Appeal Agreement" in which they agree to refer to the exclusive jurisdiction of the CAS any dispute regarding (*inter alia*) *"the nomination of an athlete by the ACF to be a member of the 1996 Olympic Team"*.

10. By their agreement the parties thus want the "selection decision" scrutinized by this Tribunal, not in the sense that this Tribunal should set aside the decision simply because it thinks a

better one could have been made; but rather to determine whether the decision was arrived at fairly and with due and proper regard, if any was owed, to the interests of the Appellant in the peculiar circumstances which existed. Even courts of law will interfere with decisions of domestic bodies made contrary to these principles and will do so by use of injunctive process if necessary (see, for example, Sheehy's case at p. 10).

11. Having carefully considered all the material which has been placed before me, both orally and in writing, I have come to the conclusion that the Respondent in reaching its decision of 14 July 1996, failed to act fairly or with due regard to the interests of the Appellant which, by reason of its own conduct, it was bound to consider. I have come to that conclusion for the following reasons:

12. However one describes the content of the letter dated 22 April 1996, it amounted to a strong representation by the ACF to the Appellant that she would be ACF's nominated rider for the 3000m individual pursuit at Atlanta. Indeed, on one view, it can be said that the letter amounts to a declaration that the Appellant had then been selected as the rider for the event, subject to "unforeseen change". Such a construction would seem to me to follow from the terms of the letter itself. As already indicated that letter was expressed, relevantly, in the following terms:

"Dear Kathy,

The ACF Executive, Head Track Coach (Walsh) and Women's Endurance Coach (Logan) have agreed that ***you are the nominated person to ride the Individual Pursuit at the Atlanta Games*** *(my emphasis).*

The only possibility of ***unforeseen changes*** *would be the* ***unlikely unavailability*** *of you through injury or the* ***other unlikely aspect*** *of another Australian competitor performing some unique ride; i.e. equalling or near to a new world record, prior to the Games (my emphasis).*

Yours sincerely,

R. Godkin OAM
President"

13. At the hearing it was conceded on behalf of the Respondent that the persons referred to in the letter of agreement were invested with the authority of the Respondent to make the nomination to which the letter referred.

14. Although the letter was not an unconditional guarantee, its terms were such as to raise in the Appellant the legitimate expectation that she would be the person recommended by the Respondent to the AOC to ride the Pursuit. This was conceded by the Respondent on the hearing. Indeed the press release issued by the Respondent's media officer following the giving of the letter to the Appellant describes the episode in the following terms:

"ACF Guarantees Watt's Olympic Place –

The Australian Cycling Federation today guaranteed Kathy Watt's nomination as the Australian rider in the Women's 3000 m. individual pursuit at the Atlanta Olympic Games in July".

15. The "guarantee" was given following negotiations between the Appellant, the Women's Endurance Coach and the ACF. It was given by the Respondent in the knowledge and with the intent that the Appellant would rely upon it and "chart her course" accordingly. It suited the purposes of both the Respondent and the Appellant. At the time, the Respondent stated:

"Growing media speculation of the past few days that Watt would not be allowed to ride pursuit in Atlanta in favour of another, caused the ACF to act swiftly and reassure (the Appellant) so she can get on with the job of properly preparing the Olympics".

The President of the ACF, at the time of the media release, stated that:

"The decision has been made ahead of time to re-assure Kathy. We don't want anything getting in her way as she prepares for the Atlanta Olympic Games".

16. In making its decision the Respondent was knowingly departing (in favour of the Appellant) from its own published selection policies and procedures, published on the 11 September 1995 and, apparently, endorsed by the Respondent at its "high performance review" meeting held in Sydney on 16 November 1995. Because this procedure provided (*inter alia*) that *"identified athletes will be required to train full time with the A.I.S. National Track Endurance Squad"* and *"to assemble so that (the Respondent) can conduct the assessments and make final selections"*, it was obvious that the Respondent, in making the "guarantee", was exempting the Appellant from the policy and its processes. Such conduct, willingly and knowingly engaged in by the Respondent, must in my view now put it beyond its reach to substantiate its decision to revoke the Appellant's nomination on the basis that she had not been prepared to abide by the ACF's published policy and procedures. For reasons to which I will hereafter refer, I am satisfied that such a view has permeated the Respondent's decision.

17. In communicating its decision "guaranteeing the nomination" to the Appellant, the Respondent knew and intended that she would act upon it and thereby change her position. The Respondent knew that it was the aim of the Appellant to engage in a training programme in Europe and the U.S.A. which had been endorsed by Logan, the National Women's Coach. This programme was designed to enable her to "peak" for the Games. However it meant that she was training on her own account and remote from the team, its coaches and its "selection assessors". This was no doubt one of the matters foremost in the minds of the Appellant and the ACF in determining to give and receive the "guarantee". The ACF, as it said, desired that she should have security of mind so that she could prepare herself according to her own training schedule, without the concern of any detriment flowing to her from a failure to follow the training schedules laid down by the Respondent in its published procedures.

18. Accordingly the Appellant has, since the end of April, spent her time, money, and energies in preparing herself in accordance with the training schedule prepared for her by Logan. Although, on this hearing, the Respondent denied that it knew the details of that schedule, that is of little consequence, although I note that the program was *"agreed to by the ACF"*. What is important is that it knew and intended that she should be free to follow her own schedule to the exclusion of the procedures laid down in its policy statement. The Respondent knew that she was under the guidance of Logan, the National Women's Endurance Coach, who, so

the President of the Respondent had said at the aforesaid "high performance" meeting on the 16 November, would have the sole authority to make the decision as to whether the Appellant would ride the "pursuit" event at the Games.

19. The matters to which I have so far adverted satisfy me that the ACF was duty bound to honour its commitment to the Appellant unless circumstances of the type which qualified that commitment came to pass. Such circumstances were envisaged by the "guarantee" as being exceptional. The media release of the Respondent, circulated on 22 April 1996, referred to them as follows:

"The only thing that can now prevent Watt from riding the event is injury, illness or in the (very unlikely) event of a unique world record performance by another Australian cyclist".

On the material before me I am not satisfied that any such event has occurred to justify the revocation of the "nominated status" given to Ms. Watt.

20. It was argued in this hearing that the Respondent's commitment to and nomination of the Appellant as its chosen rider for the "pursuit" in Atlanta was discharged because, since the making of such nomination, events occurred which fulfilled the qualification expressed in the letter of 22 April 1996. The Respondent submitted:

"The uncontested facts are that another Australian women's cyclist (Ms. Sharman) has ... on more that one occasion performed remarkable feats in trials for the 3000m individual pursuit which, in the considered opinion of the Respondent and its properly appointed responsible officers constitute the fulfilment of that condition".

(i.e. the qualification of some other Australian athlete *"performing some unique ride; i.e. equally or near to the new world record ..."*).

It is clear that "the remarkable feats" referred to were two "training trial rides" which were undertaken by Ms. Sharman in the team's training camp at Buttgen, Germany, in May 1996.

21. It seems clear from the material that the decision to revoke the Appellant's nomination occurred on or about 3 June 1996. On 6 June Turtur, the section manager of the Cycling Team, wrote to Watt informing her:

"I write to advise you that final selection for the women's 3000m Individual Pursuit event at Atlanta ... will be decided at the Track Group's Training Camp in Houston from 3 to 16 July 1996.

I refer to the letter dated 22 April 1996 ... stating your nominated person status and the possibility for unforeseen change relating to final selection for the above ... event. Your nominated person status is clearly now in question following the performance of (Ms) Sharman during the last few months.

I therefore advise you that you should attend the Final Track Training Camp in Houston, when final selection for this event will be made. I will require you to confirm in writing your attendance by no later than Friday 28 June 1996 to ... Mr. Graham Fredericks".

22. In response to queries made on behalf of the Appellant as to when and why her *"nominated person status was put in question"*, Mr. Fredericks (ACF) wrote (on 11 June 1996):

"The decision was made earlier last week (beginning Monday 3 June) after Tyler-Sharman's most recent times recorded in training camp in Buttgen.

The decision to question Kathy's status has been based on Sharman's performances in the World Cup event in Milan (17-19 May) and recent times and performances recorded in training.

There is also some concern that Kathy has not focussed any training or competition on this event since the Australian Track Championships in Perth ...".

23. Thereafter much correspondence ensued between the Respondent and the Appellant (and the Respondent and Logan). In particular Logan protested that it would be unfair to Watt and disruptive to her training schedule to compel her to attend Houston immediately prior to the Games so that she could undergo some unspecified assessment. Logan commented:

"At the road nationals I spoke with ... and yourself (i.e. Godkin) re Kathy's position to riding the individual pursuit. The reason: to seek assurance that Kathy is the nominated rider. This being so that she could prepare with confidence, without anxiety and to avoid the disruption that the stress of uncertainty about her position causes. It was to dispel the doubt in her mind that she would be overlooked at the last moment for the ride in favour of Sharman. The letter dated 6 June withdraws the guarantee and has meant that the situation that was wanted to be avoided has occurred ...

The events that have ensued since have created uncertainty. The training times that have been ridden by (Ms Sharman) have no doubt been fast. But one immediately asks, is it comparable for training times versus competition performance? One week prior, in ... the World Cup competition; the same athlete was third riding times slower that what was recorded at the track nationals. Watt's competition record in the 3000m pursuit speaks for itself. Why is it being suggested that Watt's nominated position is now in jeopardy as the result of another athlete's training times. None of the circumstances surrounding Watt's nomination have changed ...

When the ACF gave Kathy the guarantee it was always known she would be riding both road and track. That fact makes the planning of her schedule critical. It has always been known that Kathy would not race on the track before the Olympics and that she would only commence her specific track preparation phase after the last road competition.

For Watt to attend the Houston training camp serves no purpose and can only be disruptive to her training and mental preparation. (She) should be allowed, as planned, to continue her programme with the guarantee that she is the nominated person ... (She) has indicated to me that she won't be attending the training camp in Houston. I endorse the decision ...".

24. Logan's letter is, in my view, significant not only because it demonstrates that, to an experienced person, "training times" are not a fulfilment of the qualification to the "guarantee" of 22 April 1996 but also because it alludes to the proposition that the ACF was not so much interested in Ms. Sharman's training times but was more concerned about Watt's inability to combine both "road and track", particularly having regard to the fact that the preparation was more oriented towards road racing than track racing. Yet, it was in this regard, that the ACF at its "high performance meeting" in November 1995 had left the decision in the hands of Mr. Logan.

25. In my view it would be unreasonable to conclude that the qualification of Watt's "nominated status", referred to in the letter of 22 April 1996, contemplated that the *"unlikely aspect of*

another Australian competitor performing some unique ride – i.e. equalling or near to the new world record" was referring to "training times" or any performances in circumstances other than those required for "world record status". It is a truism that world records are not created in training. As Logan points out there is a great difference between producing times in training and producing times in circumstances where records will be recognized. Indeed, as I have already noted, the ACF media release which accompanied the announcement on 22 April 1996 referred to *"the (very unlikely) event of a unique world record performance by another Australian cyclist"*. This can only, sensibly, refer to a competitive performance, and in my view the circumstances demonstrated that the ACF understood it as such when they gave the Appellant the letter of 22 April 1996.

26. Furthermore the material which has been produced on this Arbitration leads me to the view that it was not so much the training times of Ms. Sharman that led the ACF to revoke the nominated status of the Appellant, but rather was a return to the long held belief that the one person could not ride both "road and track" because increasing specialization required different preparation. I refer to the following:

a) The letter to the Appellant from Turtur did not specifically refer to training times; it referred to *"performances by (Ms. Sharman) during the last few months"*.

(having regard to the fact that the letter was written about 1 1/2 months after the "guarantee" was given this explanation has a specious quality about it).

b) The letter from Fredericks (ACF) to Watt's agent on 11 June 1996 which states *"There is also some concern that Kathy has not focussed any training or competition in this event since the Australian Championships ..."*

c) The letter from Godkin (President ACF) to Mr. John Coates of the AOC dated 23 June 1996 in which it is stated (*inter alia*):

"After analysing the matter and accepting the fact that, in this age, it is impossible to properly prepare an athlete for the road and track events at the one time, particularly when the track event is in the middle of the two road events, is of great concern ...

I want to re-iterate the fact that mixing events, as in the past, is no longer possible due to the level the event now stands. ... Kathy's 2 main rivals ... have dropped the pursuit to ride the road race; this is what we should have enforced from the start ...".

d) It cannot be disputed that these views are firmly held by some people. However they were views which had been held for a long time. They were views which had been well known, and held by some, on the 16 November 1995 when the ACF left it to Logan to make the decision in respect of Watt, and they were well known on 22 April 1996 when Watt's nominated status was "guaranteed".

e) The material, to which I have referred, has led me to conclude that no circumstances arose following the ACF decision of 22 April 1996 which entitled the Respondent to revoke its nomination of the Appellant. Indeed the correspondence indicates that the

Respondent, not long after making its commitment, regretted that it had given the "guarantee" and changed its mind about the capacity of one person to ride both road and track events. I am satisfied that the "training times" achieved by Ms. Sharman did not constitute a basis for revoking Watt's "nominated status" and, in my view, the suggestion that they did was simply the peg upon which the aforesaid change of mind could be justified.

f) I am further of the view that it was quite unreasonable, in those circumstances, to require the Appellant to give up her own specially designed schedule of preparation in order to attend the Houston training camp during the most critical period of preparation for the Games. This was an invitation which the ACF must have known she could not accept for the reasons set out by Logan in his letters to it. Furthermore it was a purposeless exercise because it was never revealed what the ACF expected to be achieved as a result of the "further assessment" which was to be made in Houston. Logan requested the criteria but, although the ACF regarded such request as reasonable, no specific response was given. The whole purpose of the ACF's decision of 22 April 1996 was to ensure that such a requirement was not made of the Appellant; but when she declined to go, the ACF said she had forfeited her right to be considered. Such conduct was, in my view, unreasonable and unfair.

g) It follows from my assessment of the material, and the findings which I have made, that the Respondent has no reasonable cause for revoking the nominated status which it had accorded to the Appellant on 22 April 1996 and for replacing it with the decision of 14 July 1996. That latter decision was, in my view, arrived at in a manner which was unfair to the Appellant and in total disregard of the rights and interests which the Respondent, by its own conduct, had conferred upon her. Indeed the impugned decision, itself, was accompanied by a media release which would appear to be over concerned with self justification, and putting a gloss on the facts which, in the light of these reasons, was unjustified.

h) It is, accordingly, my view that this decision is not one upon which the Respondent should be entitled to act. I should say, in conclusion, that this decision is confined, and should be understood to be confined to its own facts. This is not a dispute where the arbitrator is being requested to make a choice as to which of two athletes is better performed or which is more likely to win a medal at the Games. They are matters for those properly qualified to make such choice. Rather, this is a dispute about whether selection procedures have been properly and fairly exercised by the body invested with the power of making the choice.

Where a sporting organization, in circumstances deemed by it to be appropriate, chooses to depart from its established rules of selection procedure and to nominate, in advance, a particular athlete as its selected choice for a particular event and, in doing so, creates expectations in and obligations upon that individual, then in my view it should be bound by its choice unless proper justification can be demonstrated for revoking it. For the reasons given I am satisfied that no such justification existed in this case.

Accordingly, it would in my view be inappropriate, as Counsel for the ACF submitted, that in the event of finding adverse to the interest of his client, I should remit the matter back to the ACF for further consideration. It is inappropriate for the reason that the "nominated status", given to the Appellant on 22 April 1996, remains valid and effective once the impugned decision (i.e. 14 July 1996) is shown to be vitiated by unfairness. All that remains is for the former decision to be effectuated by recommendation of the Australian Olympic Committee that the Appellant is the Respondent's nominated rider for the pursuit event. The terms of my decision will cover these matters.

The Court of Arbitration for Sport rules:

1. That the decision of the Respondent, Australian Cycling Federation, announced on 14 July 1996, nominating Ms. Tyler-Sharman as the athlete to represent Australia in the women's 3000m individual pursuit track cycling event at the 1996 Olympic Games in Atlanta, Georgia, U.S.A. be set aside.

2. That, in substitution for such decision, the Respondent (Australian Cycling Federation) be directed to nominate the Appellant, Ms. K. Watt, to the Australian Olympic Committee as its selected cyclist to represent Australia in the said event at the said Games.