

**BEFORE THE AMERICAN ARBITRATION ASSOCIATION (“AAA”)
COMMERCIAL ARBITRATION TRIBUNAL**

LAUREN RAUCK KOMANSKI,)	
)	
Claimant,)	
)	
v.)	AAA Case No. 01-15-0004-9907
)	
)	
USA CYCLING, INC.)	
)	
Respondent.)	
)	
ALLIE DRAGOO,)	
)	
Affected Athlete)	

FINAL REASONED AWARD AND DECISION

Pursuant to the American Arbitration Association’s (“AAA”) Commercial Arbitration Rules (“AAA Commercial Arbitration Rules”), pursuant to the Ted Stevens Olympic and Amateur Sports Act, 36 USC 22501, *et seq.* and the United States Olympic Committee (“USOC”) Bylaws, an evidentiary hearing was held in Los Angeles, California, on August 5, 2015, before the duly appointed arbitration panel consisting of Jeffrey G. Benz (“the Panel” or “the Arbitrator”). The Panel, having been duly sworn, and having duly heard the proofs, arguments, witness testimony, and allegations of the parties, do hereby render our full award pursuant to our undertaking to do so within the time required under the relevant rules, as follows:

I. INTRODUCTION

1.1 This case involves the application of discretionary criteria to individual performances in the selection procedures of a national governing body making selections for a team discipline at the world championships.

1.2 The Arbitrator views this case as a close case, not one fraught with any malice or ill will directed toward any particular athlete, but one that appears, nonetheless, to have involved a decision that has not followed the published selection criteria on their face. Accordingly, the Arbitrator rules in favor of the Claimant.

1.3 Counsel and the parties in this case proceeded very professionally and the case was well-briefed, for which this Arbitrator is thankful.

II. THE PARTIES AND THE PROCEDURAL HISTORY

2.1 Claimant Lauren Komanski (“Claimant” or “Ms. Komanski”) is an elite US cycling athlete of international caliber.

2.2 Respondent USA Cycling, Inc. (“USAC”) is the USOC-recognized national governing body (“NGB”) for the sport of cycling in the United States. USAC is also recognized as the United States member of the UCI, the international federation for the sport of cycling worldwide that is recognized as such by the International Olympic Committee.

2.3 A number of “affected athletes”, as that term is defined in USOC Bylaws Section 9, were identified and given notice of these proceedings. Only Ally Drago (“Ms. Drago”) elected to participate in these proceedings in person. Ms. Drago was selected by USAC to fill the position at issue in this arbitration.

2.4 Ms. Komanski filed her USOC Bylaws Section Section 9 Complaint for Arbitration filed September 14, 2015. In her Complaint, Ms. Komanski sought to be named to the US Team for the Elite Women’s Road Race at the UCI World Championships set for September 26, 2015 in Richmond, Virginia (the “Elite Women’s Road Race”). Specifically, Ms. Komanski sought to be named to the support-rider spot that had been selected by USAC to be occupied by Ms. Drago.

2.5 On September 16, 2015, the Arbitrator held a preliminary hearing conference call with the parties and issued the following pre-hearing order:

“Following conference with the parties, the Arbitrator orders as follows:

- 1. Affected Athletes must notify AAA (<JenNilmeier@adr.org>), the USOC Athlete Ombudsman Office (Athlete Ombudsman <Athlete.Ombudsman@usoc.org>), and counsel for USA Cycling (<shess@shermanhoward.com>) and Komanski (<sjthompson@nixonpeabody.com>) no later than 11:59pm EDT Thursday that they elect to participate as parties.*
- 2. Affected Athletes who indicate that they are participating as parties may, but are not required, to submit briefs or statements in support of their positions by 11:59pm EDT Sunday.*
- 3. Any athlete who submits a statement or intends to testify at the hearing must appear in person and subject herself to cross-examination unless they are more than 200 miles from Richmond during the hearing, in which case they may testify by phone. This does not limit any party from listening to the remainder of the hearing by phone.*
- 4. If a party submits a statement and does not appear to be cross-examined, her statement will likely be given no practical weight in the Arbitrator’s adjudication.”*

2.6 Certain athletes submitted timely expressions of interest to participate in these proceedings but in the end only Ms. Drago did so actively.

2.7 On September 21, 2015, a daylong evidentiary hearing was held in person in this matter in Richmond, Virginia. At the conclusion of the hearing, all parties and counsel acknowledged that they had been given a full and fair opportunity to present their respective case.

2.8 On September 22, 2015, the Arbitrator issued the interim operative award and decision reading as follows:

“The sole arbitrator in this case, Jeffrey G. Benz, (“Arbitrator” or “Panel”), after duly considering the submissions, evidence, and arguments of the parties and the relevant authorities, presented in an expedited day long hearing in person in Richmond, Virginia on September 21, 2015, renders the following interim operative decision and award in this expedited proceeding within the time required and requested, and in the form as agreed and requested, by the parties:

1.1 The arbitration claims of Lauren Komanski are granted and USA Cycling is directed to substitute Lauren Komanski for Allie Dragoo as a discretionary selection and entry as a support rider member of the United States Women’s Team in the 2015 UCI World Road Championships Elite Women’s Road Race to be held in Richmond, Virginia. USA Cycling shall replace Lauren Komanski with Allie Dragoo as a resource rider member of the same team. For sake of clarity, the current nominations by position of Ms. Komanski and Ms. Dragoo shall be switched. The Arbitrator wishes to note that all potentially affected athletes were given notice of their opportunity to participate in these proceedings and only Allie Dragoo availed herself of that opportunity.

1.2 There is no evidence of bad faith, bad intent, gross error or other improper intention or action in this case in the decisions taken by USA Cycling, and in fact this case was a “close call” based on an objective reading of the relevant selection criteria. Accordingly, each of USA Cycling and Lauren Komanski shall bear their own attorney’s fees and arbitration costs and they shall share equally in the costs of the AAA and the fees of the Arbitrator. Ms. Dragoo shall bear no responsibility for attorney’s fees or arbitration costs or the costs of the AAA or the compensation of the Arbitrator in this proceeding.

1.3 The fully reasoned award shall be delivered by the Arbitrator hereafter, within the required time.

1.4 This Award is in full and final settlement of all claims and counterclaims submitted to this arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED AND AWARDED . . .”

2.9 The parties agreed to extend the time for issuing this final award and decision until and through the date hereof.

III. JURISDICTION

3.1 The USOC was created by federal statute by the United States Congress. The law governing its activities is embodied in the Ted Stevens Olympic and Amateur Sports Act (“Ted Stevens Act”), 36 U.S.C. § 220501, *et. seq.*, and is set forth as being, among other things, for the purpose of exercising exclusive jurisdiction directly or through constituent members or governing bodies over all matters pertaining to Olympic Sport. This includes the USOC’s governance of NGBs. The purposes and powers of the USOC include (in pertinent part) providing swift resolution of conflicts and disputes involving athletes and national governing bodies “that arise in connection with their eligibility for and participation in ... world championship competition...” 36 U.S.C. §220503(8) and 220505(5).

3.2 Pursuant to 36 U.S.C. §220505, the USOC has adopted a Constitution and Bylaws and is authorized to recognize a NGB for each Olympic sport. As the recognized NGB for the sport of cycling, including women’s road racing, USAC, pursuant to the Ted Stevens Act, USOC procedure and USAC’s bylaws, is obligated to “submit to binding arbitration in any controversy involving...the opportunity of any amateur athlete to participate in amateur athletic competition in cycling, upon demand of the USOC or any aggrieved amateur athlete in accordance with the Commercial Rules of the American Arbitration Association or as modified pursuant to the Ted Stevens Olympic and Amateur Sports Act.”

3.3 As part of its requirements for continuing as the NGB for cycling in the United States, USA Cycling has the exclusive authority within the United States to sanction events that are involved in international competitions and to nominate athletes to the USOC for international games such as world championships. *See* Ted Stevens Act, 36 U.S.C. § 220523(a)(7) (“a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition . . .”). *See also* USOC Bylaws, § 8.7(a).

3.4 Although USA Cycling has the authority to select athletes to represent the country in protected competitions, its authority does not come with unbridled discretion. Rather, one function of the Ted Stevens Act, and the oversight of the USOC generally, is to inject as much objectivity and accountability into the selection process as was consistent with the promotion of Olympic and international medal-winning capability. As a consequence, an NGB is required as part of its delegation of authority from Congress, to

“establish a written procedure, approved by the corporation [USOC], to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials.”

USOC Bylaws, § 8.7(f).

3.5 Although the language above specifically calls out only the Olympic, Paralympic, and Pan American Games, NGBs are required by the USOC to publish “Athlete Selection Procedures” for all “protected competitions,” including world championships. *See* USOC Bylaws § 1.3(w)(1) (defining a “protected competition” as one in which the competition

is among representatives of their respective nations and for which selection procedures are published by the NGB).

3.6 An athlete who believes that she has been denied an opportunity to participate in a “protected competition” is entitled to challenge the NGB’s selection through arbitration in accordance with Section 9 of the USOC Bylaws.

3.7 On September 14, 2015, Ms. Komanski filed a simultaneous Section 9 Complaint with the USOC and a Demand for Arbitration, and the USOC issued a letter authorizing proceedings before the AAA that same day. Therefore, based on the foregoing and applicable law, jurisdiction of this action is properly before the American Arbitration Association and this Panel.

3.8 No party objected to arbitral jurisdiction to hear this dispute and both parties proceeded without objection in these proceedings.

IV. STANDARD OF REVIEW

4.1 The jurisprudence in the area of the standard of review for athlete selection cases is developing and is established primarily through the decisions of arbitrators in cases brought under Section 9. “It is well accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is *de novo*. Section 9 proceedings are not appeals of NGB decisions and there is no requirement for an arbitrator in these proceedings to give deference to any prior decision and in fact it would be incorrect to do so.” *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014), *quoting Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 at p. at 5. (August 21, 2011). In the context of selections cases, that review is not one that substitutes the arbitrator’s assessment of performance for that of the NGB experts who are involved in the decision making. Rather, it is a *de novo* review, with no deference, of the application of the published selection procedures to the facts of the individual case.

4.2 The burden of proof rests with the athlete to demonstrate by a preponderance of the evidence that the NGB failed to appropriately apply its rules to the facts at issue. *See Hyatt v. USA Judo at p. 10; Casey Tibbs v. United States Paralympics*, AAA 71 190 E 00406 12 JENF (August 28, 2012) at 14. “Section 9 jurisprudence requires [Claimant] to prove [the NGB] breached its approved and published Athlete Selection Procedures for the [World Championships], applied them inconsistently to athletes similarly situated, acted in bad faith towards or with bias against [her], and/or violated applicable federal or state laws (e.g., Ted Stevens Olympic and Amateur Sports Act).” *Id.* *See also Craig*, *supra* at 5 (“Because this case involved an athlete selection issue, the burden of proof rests with the athlete to demonstrate that the NGB failed to appropriately apply its rules to the facts at issue.”).

4.3 Regarding the athlete selection process for protected competitions such as the World Championships, USAC has “the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion. . . . Athletes are entitled to know what standard they have to meet and precisely how such selections will be made.” *McConneloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. “The whole purpose for the

development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA 30 190 00056 06 (January 27, 2006) at p. 2. Arbitrators in Section 9 disputes are therefore obligated to apply the selection criteria as written. *Craig* at p. 6.

V. THE PARTIES’ ARGUMENTS

5.1 Ms. Komanski’s Complaint is based on the alleged failure of USAC to appropriately apply its selection rules for this protected event to the facts at issue, and the failure of USAC to provide athletes and others selection rules that are clear, transparent, and easy to apply without confusion, and that allow athletes to know what standard they have to meet and precisely how such selections will be made. USAC’s Principles of Athlete Selection (the “Selection Criteria”) establish the criteria to be applied to athlete selection. The Selection Criteria set forth a prioritized system for determining how riders are to be selected. Although the selections at issue in this case – for support riders or “domestiques” – are deemed “discretionary” selections, USAC is obligated under applicable precedent to apply the criteria as written. The Selection Criteria themselves, while far from clear, establish that these tiered-criteria are to be applied in the order of priority established in the Selection Criteria. Ms. Komanski alleges that USAC (1) failed to give precedence to results achieved in top-level international competition over results achieved in domestic competition; (2) failed to appropriately apply the criteria to assess the medal capability of the athletes in question; (3) failed to appropriately apply the criteria regarding enhancing team performance and failed to consider the team “synergy” and the expressed wishes of the automatically selected medal-capable athletes that Ms. Komanski be selected; (4) failed to apply the criteria to appropriately assess the future medal capability of the athletes in question; (5) failed to conduct a meaningful process for nomination and for athlete selection by USAC and the Selection Committee in place for the protected competition; and (6) failed to provide selection rules that are clear, transparent, and easy to apply without confusion and that allow athletes to know what standard they have to meet and precisely how such selections will be made.

5.2 USAC accepts that the starting point is the Selection Criteria, but argues that it has discretion to make the selection it did based on the Selection Criteria and its practice, in pertinent part as follows:

“Once the stated principles are understood in the context of the overall goal of winning medals, the complexity of the coaches’ task and the relevance (or not) of specific arguments becomes much clearer. For example, an athlete who argues “I can finish on the podium” will always have a better argument than an athlete who claims to be a great teammate. An athlete who is on a trajectory to medal in four years is less valuable than a more modest athlete who can help the team win medals today. And an athlete who claims “I am likely to finish 26th and the other candidates are likely to finish 47th” simply misses the point: an athlete who is likely to finish 26th has nothing to commend her selection per se over an athlete likely to finish 47th.

USAC’s athlete selection procedures have never been intended to identify and to select middle-of-the-pack finishers. Instead, USAC asks of those

athletes: “given that you are not Medal Capable yourself, what do you bring to the team by way of specific skills that will allow you to enhance our best athletes’ chances of winning medals?” To be sure, a likely 26th place finisher has skills that distinguish her from a likely 47th place finisher if each of them is in a race solely to maximize her own personal performance, but what USAC cares about is not what skills commend an athlete when judged against another athlete when each is racing to maximize her personal performance. What matters is what skills commend an athlete when she is specifically asked to “sacrifice [herself]’ to execute a team strategy for the designated team leaders . . .

Again, data concerning individual performances in international competition are certainly relevant – but they are not relevant for purposes of establishing likely order of finish, but rather they are relevant for what they suggest about possible team contributions. Perhaps more important, it is vital to understand that the quality of being able to Enhance Team Performance cannot be decided in a vacuum by simply comparing data concerning a pool of athletes. Because the ultimate goal is to “execute a team strategy for the designated team leaders,” the consideration requires an understanding of and particular accommodation for the “team strategy” with respect to a particular race. That strategy, in turn, is educated by a number of factors that vary from race to race including, but not limited to:

- i. The identity and attributes of the “designated team leaders,”*
- ii. The identity and attributes of other “support” riders who will assist the team leaders*
- iii. The race course itself, including:*
 - a. length,*
 - b. road conditions*
 - c. technical challenges, such as turns*
 - d. the geographical contour of the course (including climbing profiles)*
 - e. Whether the course is urban or rural*
 - f. Whether the course is a circuit and, if so, how many loops are run*
- iv. How the coaches believe other teams will race the particular course (including other teams’ perceived strengths and weaknesses)*
- v. How the team as composed as a group can best flourish in different racing scenarios such as (to name just a few):*
 - a. Small breaks;*
 - b. Big breaks, where a larger group attempts to break away from the peloton;*
 - c. Sprints, where the peloton travels as a pack and the medals are determined by a sprint at the end of the race (where jockeying and position during the race is at a premium*

To put it differently, USAC did not choose Allie Dragoo because she would always be expected to Enhance Team Performance in every race. Rather, USAC chose Allie Dragoo because she was expected to Enhance Team performance for these team leaders with these teammates on this course with USA Cycling's specific UCI World Road Championship strategy in mind. If any of the variables identified above were different, USA Cycling's selection may have been different. Instead, USA Cycling chose Allie Dragoo because of the way her very specific skills fit this team for this race.

The considerations set out above are not intended to be exhaustive, but they are intended to demonstrate that the composition of an entire team requires far more than the evaluation of and ranking of how individual athletes would do in a race in which there was no coordination of effort, no teamwork, no "strategy," but only a raw effort by each individual to achieve her personal best result."

3. Future Medal Capable

Third, when no athletes appear likely to materially "Enhance Team Performance," USAC will start athletes who have demonstrated that they are on a path toward medaling in the future. The Principles of Athlete Selection explain the criteria for this category as follows:

"Future Medal Capability. A future medal capable athlete is one who:

-demonstrates a trend of improving performance in international competition that, when extended a reasonable distance into the future, intersects the current international performance standard for the event under consideration (see discussion and examples below); and/or

-despite being "new" to the sport or competing a relatively short time in the sport, is within a reasonable percentage, of the international performance standard (see discussion and example below); and/or

-despite being biologically immature, is within a reasonable percentage, of the international performance standard (see discussion and example below)."

For purposes of this arbitration, "Future Medal Capability" is not immediately relevant to the extent that USAC was able to choose athletes who are capable of enhancing team performance.

VI. LEGAL ANALYSIS

6.1 The United States was allocated seven starting positions for the Women's Road Race by UCI (the International Cycling Union), and was thus entitled to select seven athletes to

start the race and seven reserves. From those reserves, the United States is permitted to substitute no more than two riders as starters from the previously identified reserves.

6.2 USAC has published three fundamental documents that explain its selection procedures for the Women's Road Race. These three documents comprise the Selection Procedures.

1. USAC Athlete Nomination Worksheet (2015 World Road Championships – Elite Women)

6.3 The USAC Athlete Nomination Worksheet (“Nomination Worksheet”) for the Elite Women's Road Race notes that the United States will have as many as seven starting positions. It spells out in detail how an athlete can earn an automatic berth on the team through exceptional performance in international competition or by winning the 2015 USAC Professional Road Race National Championship. Those automatic selections are not at issue, as none of the Affected Athletes in this matter claimed to have earned a place on the team through the automatic qualification standards.

6.4 Those procedures go on to state in pertinent part that:

“8. If positions remain after considering the preceding criterion, then athletes may be selected by the USA Cycling Selection Committee following USA Cycling Principles of Athlete Selection (www.usacycling.org).”

6.5 As relevant here, four athletes received starting spots on the United States Elite Women's Road Race team through satisfaction of criteria for automatic selection – Megan Guarnier, Coryn Rivera, Shelley Olds, and Evelyn Stevens. There are thus three starting spots (and reserves) to be selected through the Principles of Athlete Selection.

2. USAC Team Nomination Procedures (General Team Selection Information Olympic, World & Continental Championship Teams)

6.6 The USAC Team Nominating Procedures spell out, among other things, how the selection process is administered generally. In relevant part, they state:

“Athletes may be nominated to the team via an Automatic Athlete Nomination, a Discretionary Nomination by USA Cycling or a Discretionary Nomination in response to an Athlete Petition.

1. Specific criteria for Automatic Nomination to the Team are listed in the relevant event nomination documents.

2. Discretionary Nominations by USA Cycling Coaching Staff.

a. If start positions remain after the automatic criteria have been exhausted, USA Cycling may elect to nominate additional riders to fill those

start positions based on recommendations by the USA Cycling coaching staff according to the USA Cycling Principles of Selection (www.usacycling.org) and approval of the USA Cycling Selection Committee.

The primary purpose of discretionary athlete nomination initiated by the USA Cycling Coaching Staff is to recommend the best physically, psychologically and technically prepared athlete(s) in order to produce medal-winning performances at the event to which they are being nominated. Based on the context of the situation, the USA Cycling coaching staff will evaluate those athletes who should be nominated to the team in order to field the strongest, soundest and most unified team for specified event. All discretionary selections must be approved by USA Cycling Selection Committee.

3. Discretionary Nomination in response to petition submitted by riders.

a. Athletes who want to be considered for discretionary nomination must submit an athlete's discretionary petition to USA Cycling requesting consideration to be nominated to the Team based on discretion. All petitions must be received by USA Cycling no later than the date and time indicated in the IMPORTANT DATES AND DEADLINES section in the event specific selection document.

An Athlete's Discretionary Petition form is available on the USA Cycling website (<http://www.usacycling.org>). Petitions will be reviewed by the USA Cycling Coaching Staff and the USA Cycling Selection Committee. Decisions on petition initiated discretionary nominations shall be based on and follow the USA Cycling [Principles] of Athlete Selection and must be approved by the USA Cycling Selection Committee."

6.7 In this case, several athletes submitted petitions to be considered for discretionary selection to the Elite Women's Road Team, and they have all been identified as potentially affected parties. (For purposes of this proceeding, there is no difference between coach nominations and athlete petitions in terms of the consideration for discretionary selection.)

3. Principles of Athlete Selection

6.8 The substantive criteria by which discretionary selections are made – and the focus of the present dispute – are set out in USAC's "Principles of Athlete Selection." Those Principles emphasize at the outset:

"USA Cycling Athlete Selection Criteria and Philosophy

Olympic Games, World Championships and Continental Championships. USA Cycling shall select athletes according to the following priorities. These priorities apply to both automatic and discretionary selections.

1. *The FIRST priority is the selection of athletes who have demonstrated that they are medal capable.*

2. *The SECOND priority is the selection of those athletes who have demonstrated that their presence on the team will have a positive impact on the overall team performance and create a MEDAL CAPABLE team environment.*

3. *The THIRD priority is the selection of those athletes who have demonstrated the capacity to advance to the level of medal capability in the near future.”*

6.9 Those criteria are applied in order of priority as indicated above. Thus, USAC selects those athletes who are “medal capable” to fill discretionary slots. If discretionary slots remain after all “Medal Capable” athletes have been given a starting position, USAC endeavors to populate the team with racers who can “Enhance Team Performance.” If USAC has exhausted the pool of athletes who can enhance team performance, then any remaining starting spots are given to the athletes who best demonstrate that they are “Future Medal Capable.”

6.10 Although the United States can register as many as seven reserves, USAC chose to register only three reserves in addition to seven starters. The exact composition of the team selected by USAC therefore was as follows:

<u>Athlete</u>	<u>Basis for Selection</u>
Megan Guarnier	Automatic Qualification
Coryn Rivera	Automatic Qualification
Shelley Olds	Automatic Qualification
Evelyn Stevens	Automatic Qualification
Lauren Stephens	Discretionary Selection
Taylor Wiles	Discretionary Selection
Allie Dragoo	Discretionary Selection

Ms. Komanski was selected as a reserve.

A. Medal Capable Athletes

6.11 First, USAC picks athletes who have demonstrated that they are “Medal Capable” themselves.

“Medal Capable. *A medal capable athlete is one who has demonstrated the ability to produce a medal winning result by:*

- medal finish(es) at the most recent World Championships or Olympic Games ; with demonstration of continued ability to perform at that level or higher based on performances in recent top-level international competition; and/or*
- producing medal capable times under certified conditions within the past 12 months; and/or*

- *consistently beating the World's best in recent (past 12 months) international competition with top-quality fields; and/or*
- *other historical performances in International competition that would indicate the athlete is capable of a medal winning performance.*

In all cases, the athlete in question must demonstrate that they have the capacity for a medal capable performance at the time of selection and the time of the event to which the athlete has been selected.”

6.12 As relevant to this arbitration, Lauren Stephens earned a place on the start list by being deemed “Medal Capable” by the USAC coaching staff as approved by the selection committee. Neither Allie Dragoo nor Lauren Komanski was deemed to be “Medal Capable” under the criteria set forth above.

6.13 It is important to note in this context that there is no such thing as being considered “more medal capable” among athletes who have not demonstrated an ability to “produce a medal winning result.”

B. Athletes Who Enhance Team Performance

6.14 Second, USAC chooses athletes who are not “Medal Capable” – that is, they are not deemed reasonably capable of winning medals themselves – but who have skills that can be employed for the benefit of the Medal Capable athletes to enhance the team’s likelihood of medal performances. This category was the focus of the arbitration because no athlete other than the automatic selections and Lauren Stephens was deemed “Medal Capable”.

6.15 The specific description of the second category as set out in the Principles of Athlete Selection states:

“Enhancing Team Performance. *An athlete who can enhance team performance is one who, based on their international experience and current level of international performance, is expected to contribute substantially to the overall team performance or to the performance of a medal capable team. In the case of USA Cycling selection philosophy, this is deemed to be particularly important in the case where a medal capable individual has been selected to the team and an athlete’s contribution may assist that medal capable athlete in a medal-winning performance.*

This effect also is of primary importance when nominating athletes for team-based events (Men’s Road Race, Women’s Road Race, Team Pursuit, Team Sprint, and Madison) where the synergy of the team members and/or the ability to play a strong support role is critical to the success of the team. For example, even though the Road Race event is scored individually, athletes who “sacrifice themselves” to execute a team strategy for the designated team leaders can have

a profound impact on the ability of the medal capable team leaders to achieve a medal winning performance.” (emphasis supplied)

6.16 Allie Dragoo was selected by USAC for a starting position and Lauren Komanski was selected as a reserve based on USAC’s assessment of their respective qualities and their perceived expected ability to Enhance Team Performance.

4. Arbitrator Analysis

6.17 The Arbitrator accepts that USAC is endeavoring in good faith to apply its written Selection Procedures to ensure performance success, expressed in terms of accomplishing the maximum number of medals for the United States in the sport. The Arbitrator accepts that USAC did so with respect to the selections at issue here, and, indeed, there is no allegation that USAC engaged in any bad faith related conduct. The dispute here is over how USAC applied its Selection Procedures absent any bad intention.

6.18 In defining what it means to enhance team performance, the USAC Principles of Athlete Selection state expressly as follows:

*“**Enhancing Team Performance.** An athlete who can enhance team performance is one who, based on their international experience and current level of international performance, is expected to contribute substantially to the overall team performance or to the performance of a medal capable team. In the case of USA Cycling selection philosophy, this is deemed to be particularly important in the case where a medal capable individual has been selected to the team and an athlete’s contribution may assist that medal capable athlete in a medal-winning performance.” (emphasis added)*

6.19 The Arbitrator finds compelling the plain language set forth in the immediately prior paragraph. In other words, the assessment of “enhancing team performance” has to be exclusively focused on “international experience and current level of international performance”. That appears to have been given short shrift here.

6.20 The Arbitrator understands that the struggle of creating team sport selection criteria often involves writing criteria that allow selection of the optimal team based on the determinations of experts in the sport at a time in the future closer to the time of performance for which selection is required. Sometimes criteria are written in a manner that allow that to occur with maximum flexibility based on objective factors; sometimes not. Without opining on whether the criteria here did that (the Arbitrator noted after the fact the bronze medal finish of the USAC team with Ms. Komanski on it), it appears that in making decisions about who would best enhance team performance key words in the Selection Criteria were ignored.

6.30 The evidence was undisputed that from February through September 2015, Ms. Komanski competed in 6 UCI one day races (including 4 UCI one-day World Cup races) (one day races are the closest comparable events to the event for which selections were made here). Ms. Komanski competed in a total of 11 UCI events in 2015. The evidence was also undisputed that Ms. Dragoo competed in no international one day races. Ms. Dragoo did compete in a

number of domestic races and a number of UCI stage races including some abroad. Ms. Dragoo competed in 4 UCI events, but no UCI World Cup races. Ms. Komanski had 5 podiums in her UCI events, and Ms. Dragoo had none. Ms. Komanski's top finish in UCI events excluding time trials was 1st, and Ms. Dragoo's top finish was 7th. The average finish in all UCI events was 29th for Ms. Komanski and 38th for Ms. Dragoo.

6.31 The objective evidence was quite simply that Ms. Komanski performed better based on her "international experience and current level of international performance", which are objective requirements to be assessed under the Selection Criteria. The Selection Criteria refer to international experience and performance in clear, unequivocal terms that are not subject to wide latitude of interpretation, especially when considering the objective record of the athletes involved. It is not that Ms. Komanski is a superior rider to Ms. Dragoo or that Ms. Dragoo is somehow lacking in her athletic performances; it is a simple matter of applying the Selection Criteria in a manner consistent with its own terms. Under the terms of the Selection Criteria, Ms. Komanski was the correct selection. A finding otherwise would be tantamount to a finding that the Selection Criteria were improperly drawn or vague and ambiguous, which they do not appear to be.

6.32 It appears that USAC simply failed to give sufficient primary consideration to international results and performance over domestic results and performance, instead choosing to favor other factors not identified in the Selection Criteria, some of which were only asserted at the hearing or in USAC's hearing brief (see the summary of USAC's argument above). Because the Arbitrator has based his decision on this factor, there is no need to analyze the next factor in priority on the list.

6.33 The Arbitrator certainly does not envy the difficult task and heavy burden that falls upon NGBs in this regard; it is in many ways fundamental to the Olympic sports system in the United States and forms the keystone of US success in Olympic sports in the absence of the type of government involvement that exists in many other countries around the world. But the difficulty of the task does not permit ignorance of any portion of the criteria written and published in advance and relied upon by athletes in making decisions about their own training and competitive efforts. Athletes, like Ms. Komanski, come to rely upon the published selection criteria in setting their training and competitive schedules as they endeavor to qualify to compete at the highest levels to represent their country in their sport. Indeed, here Ms. Komanski testified that she entered international races over domestic races with the intention of trying to qualify under the published criteria; in many ways this is very much like promissory estoppel in the common law of contracts, but that is very much not for this decision to attempt to analyze in great detail. Athletes are required to perform at the highest level to meet the requirements of the selection criteria for their sport. NGBs should be held to a similar high standard in promulgating and applying their selection criteria; to proceed otherwise potentially jeopardizes the overall long-term high performance athletic success of US sport.

VII. DECISION AND AWARD

7.1 On the basis of the foregoing facts, legal analysis, and conclusions of fact, the Panel renders the following decision:

a. The arbitration claims of Lauren Komanski are granted and USA Cycling is directed to substitute Lauren Komanski for Allie Dragoo as a discretionary selection and entry as a support rider member of the United States Women's Team in the 2015 UCI World Road Championships Elite Women's Road Race to be held in Richmond, Virginia. USA Cycling shall replace Lauren Komanski with Allie Dragoo as a resource rider member of the same team. For sake of clarity, the current nominations by position of Ms. Komanski and Ms. Dragoo shall be switched. The Arbitrator wishes to note that all potentially affected athletes were given notice of their opportunity to participate in these proceedings and only Allie Dragoo availed herself of that opportunity;

b. There is no evidence of bad faith, bad intent, gross error or other improper intention or action in this case in the decisions taken by USA Cycling, and in fact this case was a "close call" based on an objective reading of the relevant selection criteria. Accordingly, each of USA Cycling and Lauren Komanski shall bear their own attorney's fees and arbitration costs and they shall share equally in the costs of the AAA and the fees of the Arbitrator. Ms. Dragoo shall bear no responsibility for attorney's fees or arbitration costs or the costs of the AAA or the compensation of the Arbitrator in this proceeding;

c. The administrative fees and expenses of the American Arbitration Association, and the compensation and expenses of the arbitrators and the Panel, shall be borne equally by the parties; and

d. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED, AWARDED, AND DETERMINED.

Dated: November 15, 2015.



Jeffrey G. Benz
Arbitrator/Chair