

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

NEVIN VILANDRIE	§	
	§	
v.	§	AAA Case No. 01-19-0004-4814
	§	
U.S. SKI & SNOWBOARD	§	
	§	
and	§	
	§	
8 AFFECTED ATHLETES	§	

FINAL ARBITRATION AWARD

I, the undersigned arbitrator (“**Arbitrator**”), having been designated in accordance with the Ted Stevens Olympic and Amateur Sports Act (“**Act**”), 36 U.S.C. § 220505 *et seq.*, and Section 9 of the United States Olympic Committee (“**USOPC**”) Bylaws, having been duly sworn, and having duly heard the proofs and allegations, and considering any and all evidence provided by Nevin Vilandrie (“**Claimant**”), U.S. Ski & Snowboard (“**USSS**”), and any one or more of the eight (8) affected athletes (collectively “**Affected Athletes**”) (individually “**Party**” or collectively the “**Parties**”) hereby finds, concludes, determines, and awards as follows:

I. Procedural History

On December 12, 2019, Claimant submitted his *Commercial Arbitration Rules Demand for Arbitration* and *Section 9 of USOPC Bylaws Complaint Form* arguing “US Ski & Snowboard used incorrect criteria in selecting the male alpine athletes for participation in the Lausanne 2020 Youth Olympic Games.”

On December 13, 2019, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On December 13, 2019, a preliminary hearing conference was conducted during which a briefing schedule was discussed and agreed upon. During the preliminary hearing, the Parties agreed to present pre-hearing briefs no later than December 14, 2019 by 9:00 a.m. CT. Counsel for USSS requested a one (1) hour extension and such request was granted. The Parties agreed to conduct the evidentiary hearing on December 14, 2019 beginning at 12:00 p.m. CT. During the preliminary hearing on December 13, 2019, the Parties confirmed there was no objection to the undersigned serving as the Arbitrator in this matter. No subsequent objection was filed or made.

On December 13, 2019, AAA issued the *Notice of Hearing* confirming the evidentiary hearing to be held on December 14, 2019 beginning at 12:00 a.m. CT.

On December 13, 2019 at 7:52 p.m. CT, AAA issued the *Notice of Pending Arbitration and Hearing*. Such notice provided the Parties and Affected Athletes with call-in information necessary to join the hearing.

The final hearing was held via telephone conference on December 14, 2019 commencing at 12:00 p.m. CT and concluding at 4:30 p.m. CT. During the hearing, Nevin Vilandrie appeared by and through his counsel, Carla Varriale of Havkins, Rosenfield, Ritzert & Varriale, LLP, USSS appeared by and through its counsel, Paul Greene and Matthew D. Kaiser of Global Sports Advocates, Nicola Roundtree-Williams appeared by and through her counsel, Timothy G. Atkinson and Amelia McCarthy of Ireland Stapleton Pryor & Pascoe, P.C., and Daniel Gillis appeared by and through his counsel, Ed Gillis. In addition to counsel, the following individuals attended the telephonic hearing: Nevin Vilandrie (Claimant), Martha Cavanaugh (Mother of Claimant), Ed Vilandrie (Father of Claimant), Alison Pitt (USSS), Tiger Shaw (USSS), Chip Knight (USSS), Jesse Hunt (USSS), Sam Damon (USSS), Adam Parys (Father of Affected Athlete – Maxx Parys), Kristin Parys (Mother of Affected Athlete – Maxx Parys), Parker Gray (Coach of Affected Athlete – Maxx Parys), Kim Pennington (Mother of Affected Athlete – Trent Pennington), Ian Dunlop (Coach of Affected Athlete – Trent Pennington), and Christian Zimmermann (Father of Affected Athlete – Zoe Zimmermann). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

On December 15, 2019 at 8:52 p.m. CT, the Arbitrator issued a preliminary decision set forth verbatim as follows:

Thank you to all of the parties, counsel, witnesses, affected athletes, and individuals supporting or representing the affected athletes for your participation in the arbitration of this matter on December 14, 2019. Counsel for the parties we were well prepared and thoroughly addressed the facts and circumstances with little time to prepare for the expedited hearing. I have considered all the facts, allegations, arguments, testimony, and evidence submitted by the parties in the present proceeding and have reviewed the case *de novo*. After conducting such review and providing Mr. Vilandrie a full and fair opportunity to be heard, I find that U.S. Ski & Snowboard (“**USSS**”) provided 1) fair and valid selection procedures in the *US Ski & Snowboard Alpine Skiing Athlete Selection Procedures for 2020 Youth Olympic Games* dated January 2019 (“**Procedures**”); 2) the Procedures were followed and applied consistently; 3) the selections made for the team in accordance with the Procedures were reasonable and in good faith; and 4) the Procedures comply with the Ted Stevens Olympic and Amateur Sports Act (“**Act**”) and USOPC Bylaws (“**Bylaws**”). My role, as arbitrator in this dispute, is not to determine whether USSS chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USSS in establishing the Procedures. Accordingly, Mr. Vilandrie failed to establish by a preponderance of the evidence the following: 1) the Procedures were not followed and applied consistently; 2) the selections for the team were unreasonable and not

in good faith; and/or 3) the Procedures were not in compliance with the Act or Bylaws. In conclusion, the claims filed and relief requested by Mr. Vilandrie are denied.

II. Evidence Submitted by the Parties

The Parties submitted the exhibits and called witnesses as set forth below:

A. Claimant

Claimant submitted exhibits labeled A-E and such exhibits included the following:

Exhibit A: U.S. Ski & Snowboard Alpine Skiing Athlete Selection Procedures for the 2020 Youth Olympic Games dated November 30, 2018

Exhibit B: Email from Doug Williams to Ed Vilandrie and Martha Cavanaugh dated September 11, 2019

Exhibit C: U.S. Ski & Snowboard 2020 FIS Alpine World Junior Ski Championships Team Selection Criteria

Exhibit D: U.S. Ski & Snowboard 2019-20 Alpine U.S. Ski Team Nomination Criteria

Exhibit E: FIS Qualification System – Lausanne 2020 Winter Youth Olympic Games

Claimant called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Doug Williams
2. Steve Utter

B. USSS

USSS submitted exhibits labeled A-F and such exhibits included the following:

Exhibit A: U.S. Ski & Snowboard Alpine Skiing Athlete Selection Procedures for the 2020 Youth Olympic Games dated November 30, 2018

Exhibit B: U.S. Ski & Snowboard 2020 FIS Alpine World Junior Ski Championships Team Selection Criteria

Exhibit C: Email from Janez Felere to Tiger Shaw dated December 13, 2019

Exhibit D: Spreadsheet of Female Rankings to Participate in the 2020 Youth Olympic Games

Exhibit E: Spreadsheet of Male Rankings to Participate in the 2020 Youth Olympic Games

Exhibit F: 9th FIS Points List of the 2019-20 Season

USSS called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Chip Knight
2. Sam Damon

C. *Affected Athletes*

The Affected Athletes submitted an exhibit labeled A¹ and included the following:

Exhibit A: FIS Points List Distribution Dates

The Affected Athletes called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Parker Gray

Every individual attending the telephonic hearing was permitted to provide testimony and was individually asked if interested in testifying under oath. The above individual was the only one of the Affected Athletes (or representative of Affected Athletes) who confirmed the desire to testify and, thus, was permitted to do so.

During the hearing and after the testimony of Doug Williams, Claimant and USSS agreed and stipulated that Maxx Parys was the only Affected Athlete and, thus, the other individuals were permitted to exit the hearing. Specifically, Claimant and USSS stipulated and agreed the 8th FIS Points List dated November 26, 2019 was not applicable to the dispute at issue. Accordingly, the other Affected Athletes' position on the team was not at issue.

III. Notice to Affected Athletes

As stated above, on December 13, 2019 at 7:52 p.m. CT, AAA issued written notice via email to the Parties and Affected Athletes. A copy of the *Notice of Pending Arbitration and Hearing* is set forth verbatim as follows:

IN THE MATTER OF THE ARBITRATION BETWEEN

Nevin Vilandrie vs. U.S. Ski & Snowboard

AAA Case Number: 01-19-0004-4814

NOTICE OF PENDING ARBITRATION and HEARING

¹ The referenced exhibit was submitted via email by Adam Parys, father of Affected Athlete Maxx Parys, without marking, thus the arbitrator labeled the exhibit as Exhibit A for the purposes of identification.

To the following Affected Athletes:

Daniel Gillis
Guthrie Goss
Lauren Macuga
Maxx Parys
Trent Pennington
Emma Resnick
Nicola Rountree-Williams
Zoe Zimmermann

PLEASE TAKE NOTICE, that a Demand for Arbitration has been filed by Nevin Vilandrie (“Claimant”) with the American Arbitration Association (the “AAA”), pursuant to Section 220522(a)(4)(B) of the Ted Stevens Olympic and Amateur Sports Act (the “Sports Act”) and Section 9 of the Bylaws of the USOPC against U.S. Ski & Snowboard, the National Governing Body for the sports of skiing and snowboarding in the United States.

An independent arbitrator appointed by the American Arbitration Association has determined that your right to an opportunity to participate may be affected by the outcome of this pending expedited arbitration.

Therefore:

PLEASE TAKE FURTHER NOTICE that you have a right to appear and participate as a party at the pending arbitration, and to be represented by counsel or another individual of your choice, if you so desire. You need not appear. However, having now been given notice of the Arbitration and Hearing and your right to appear and participate as a party, **you shall be bound by the results of the arbitration regardless of your decision to appear**, either by yourself or by a representative, in the arbitration proceeding.

Should you wish to obtain independent information concerning your rights under the Sports Act and/or the USOPC Bylaws concerning this arbitration, you may wish to contact the **USOPC Athlete Ombudsman, Ms. Kacie Wallace**, at 888-ATHLETE (284-5383) or by emailing Ms. Wallace at kacie@usathlete.org.

By providing this Notice of Pending Arbitration and Hearing in accordance with the requirements of the USOPC Bylaws, we are not giving, and do not intend to give, legal advice; nor is the USOPC, through its Ombudsman, giving, or authorized to give, legal advice. Should you wish to obtain legal advice with respect to this matter, please consult your own legal advisor.

The hearing has been set for **Saturday, December 14, 2019 at 1:00 p.m. ET.**

Should you wish to participate or listen to the hearing, please dial into the hearing by conference call by using the following telephone number and participate code:

Telephone: 888-537-7715
Participant Code: 8024 1607#

Dated: December 13, 2019

Cc: Mr. Christian S. Dennie, Esq. (Arbitrator)
Ms. Carla Varriale (Attorney for Claimant)
Mr. Paul Greene (Attorney for U.S. Ski & Snowboard)
Alison Pitt
Martha Cavanaugh
Sara Pflipsen, Esq.
Dawn A. Brazier
Kacie Wallace
Amelia McCarthy
Timothy G. Atkinson

IV. Jurisdiction

An arbitrator has jurisdiction over disputes if the dispute is protected under the Act, 36 U.S.C. § 220501, *et seq.*, and the controversy involves the opportunity to participate in national and international competition representing the United States. Section § 220522(a)(4) of Act states:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws . . .

Additionally, Section § 220522(a)(8) of Act states that a national governing body ("**NGB**") must:

[P]rovide[] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate . . .

Section 9.1 of the USOPC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition,

censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation shall, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete's opportunity to participate, the corporation shall consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Under USOPC Bylaws Section 1.3(w), "protected competition" means:

1) Any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country where (i) the terms of such competition require that the entrants be teams or individuals representing their respective nations and (ii) the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which by its terms, requires that entrants be expressly restricted to members of a specific class or amateur athletes such as those referred to in Section 220526(a) of the Act; and 2) any domestic amateur athletic competition or event organized and conducted by an NGB or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a protected competition as defined in 1) above.

USOPC Bylaws Section 9.7 provides that, "[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration." Under both Sections 9.7 and 9.9 of the USOPC Bylaws, the arbitration proceeding may be expedited.

V. Background

Pursuant to the Act, the USOPC has "exclusive jurisdiction, directly or through constituent members [e.g., NGBs] . . . over all matter pertaining to United States participation in Olympic Games, the Paralympic Games, and the Pan-American Games, including representation of the United States in the games." 36 U.S.C. § 220503(3)(A). The USOPC has both the authority and responsibility "to obtain for the United States, directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each event of the Olympic Games, the Paralympic Games, and the Pan-American Games." 36 U.S.C. § 220503(4). In accordance with Section 19.3(i) of the USOPC Bylaws, the USOPC is authorized "to approve or disapprove selection procedures recommended by NGBs"

USSS is the NGB for the sport of skiing and snowboarding in the United States and is recognized as such by the USOPC and the Fédération Internationale de Ski, also known as International Ski Federation ("**FIS**"). USSS is authorized as the NGB for the sport of skiing and snowboarding to "establish procedures for the determination of eligibility standards for participation in

competition” and to “recommend to the [USOPC] individuals and teams to represent the United States” 36 U.S.C. § 220523(a)(5-6). In accordance with Section 8.7(g) of the USOPC Bylaws, USSS must “establish a written procedure . . . approved by the [USOPC], to fairly select athletes . . . and, upon approval, timely disseminate such procedure to the athletes.”

After discussing possible procedures for qualification for the 2020 Youth Olympic Games (“**Games**” or “**YOG**”), USSS adopted certain policies and procedures for qualification for the Games that included accepting competition dates from July 1, 2018 to December 8, 2019. USSS drafted and adopted the *US Ski & Snowboard Alpine Skiing Athlete Selection Procedures for 2020 Youth Olympic Games* dated January 2019 (“**Procedures**”) and the same were executed by Tiger Shaw, Chip Knight, and Holly Brooks. The Procedures were approved by the USOPC and timely posted by USSS. In pertinent part, the Procedures provide as follows:

1. SELECTION SYSTEM

1.1. Provide the minimum eligibility requirements for an athlete to be considered for selection to the Team:

1.1.1 Nationality/Passport requirements:

Athlete must be a national of the United States at the time of nomination and hold a valid U.S. passport that will not expire for six months after the conclusion of the Games.

1.1.2 Minimum International Olympic Committee (IOC), standards for participation:

Any competitor in the Youth Olympic Games must be a national of the country of the National Olympic Committee (NOC) which is entering such competitor. For additional information regarding an athlete who is a national of two or more countries, has changed his or her nationality or acquired a new nationality, refer to the Olympic Charter (Rule 41).

1.1.3 Minimum International Federation (IF) standards for participation (if any):

- Athletes must be registered with the International Ski Federation (FIS).
- Athletes must be born between January 1, 2002 and December 31, 2003[.]
- Athletes must comply with the Olympic Charter[.]

1.1.4 Other requirements (if any):

- Athlete must be a member in good standing of U.S. Ski & Snowboard.
- Athletes must attend for the entire duration of the Games.

- Athletes must participate in the cultural and education program, and Mixed Team events, as requested.
- Athletes must have successfully completed all Games Registration requirements by stated deadline.

1.2 Tryout Events:

Athletes must have obtained YOG FIS points subject to the following performance criteria:

- Slalom and Giant Slalom: YOG FIS points in at least one (1) FIS alpine event[.]
- Super-G: YOG FIS points in Downhill, Super-G, Giant Slalom[.]
- Alpine Combined: YOG FIS points in Downhill, Super-G, Giant Slalom, or Alpine Combined[.]

YOG FIS points are earned in accordance with the FIS Rules of FIS Points during the YOG qualification period from July 1, 2018 to December 8, 2019.

1.2.1. Provide the events names, dates and locations of all trials, events and camps to be used as part of the selection process.

Qualification races:

- All FIS races included in the calculation of the most current FIS points list published at the time of nomination date of December 9, 2019.
- 2019 U16 U.S. National Championships, Breckenridge, CO – March 31-April 4, 2019[.]

1.2.2. Provide event names, dates, locations and description of how athletes qualify for the trials, events and camps listed above in 1.2.1. (if any).

Information regarding the FIS races and points list described above in 1.2.1 can be found at www.fis-ski.com[.]

Qualifiers for 2019 U16 U.S. National Championships:

Eastern Region U16 Championships, Sugarloaf, ME – March 8-13, 2019
Rocky/Central U16 Junior Championships, Winter Park, CO – March 4, 2019.
Western Region U16 Championships, Sun Valley, ID – March 14-17, 2019

- 1.3 Provide a comprehensive, step-by-step description of the method that explains how athletes will go through the selection process (include maximum Team size).

Up to three (3) women and three (3) men will be named based on quotas established by the FIS.

1.3.1 If quota is three (3), the selection criteria will be applied in the following order:

a) One (1) athlete will be selected ranked by the lowest sum of the best two world ranks in any of three events (SL, GS, SG) at the end of the qualification period. Ties will be broker by the single best world rank in SL, GS, or SG. Additional ties will be broken by the single best FIS point result in SL, GS, or SG during the YOG qualification period.

b) Considering all remaining eligible athletes, one (1) athlete will be selected who achieves two 1st place results in SL, GS or SG at the 2019 U16 U.S. National Championships. Ties will be broken by the single best National point results achieved at the 2019 U16 U.S. National Championships.

c) Considering all remaining eligible athletes, up to two (2) athletes will be selected by the single best world rank in SL, GS, or SG at the end of the qualification period. Ties will be broken by the single best FIS point result in SL, GS or SG during the YOG qualification period.

1.3.2. If a quota is two (2), the selection criteria will be applied in the following order:

a) One (1) athlete will be selected ranked by the lowest sum of the best two world ranks in any of the three events (SL, GS, SG) at the end of the qualification period. Ties will be broken by the single best world rank in SL, GS, or SG. Additional ties will be broken by the single best FIS point result in SL, GS, or SG during the YOG qualification period.

b) Considering all remaining eligible athletes, one (1) athlete will be selected by the single best world rank in SL, GS, or SG at the end of the qualification period. Ties will be broken by the single best FIS point result in SL, GS or SG during the YOG qualification period.

1.3.3. If quota is one (1), the selection criteria will be applied in the following order:

- a) One (1) athlete will be selected ranked by the lowest sum of the best two world ranks in any of three events (SL, GS, SG) at the end of the qualification period. Ties will be broken by the single best world rank in SL, GS, or SG. Additional ties will be broken by the single best FIS point result in SL, GS, or SG during the YOG qualification period.

8. DATE OF NOMINATION

The Nomination of Athletes form, including replacements, will be announced to all athletes and submitted to the USOC on or before December 9, 2019.

In December 2019, the nominations for the team competing in the Games were announced by USSS. Claimant was not announced as a member of the team and, thus, a dispute arose regarding the selection of the team representing the United States to compete in the Games. Specifically, Claimant argued that he met the criteria set forth in Section 1.3.1(c) of the Procedures and argued he was one of the two (2) athletes with the “best world rank” as set forth in the Procedures. Conversely, USSS argued the Claimant did not have one of the top (2) “world ranks” based on the “world rank” as set forth in the YOG FIS points list published on December 9, 2019 for dates of competition from July 1, 2018 to December 8, 2019. Claimant articulated his challenge as follows:

This dispute arises out of the selection by US Ski & Snowboard of the alpine skiing athletes to represent the United States at the Lausanne 2020 Youth Olympic Games (YOG). In this document, we have established that a preponderance of the evidence supports our case that US Ski & Snowboard did not follow their published team selection process and criteria when they selected the athletes, with the result that Nevin Vilandrie was erroneously excluded. Instead of scoring athletes based on their ‘world rank,’ as specified in the published criteria, US Ski & Snowboard scored athletes based on their ‘YOG world rank,’ which was not stated in the language of the selection criteria, nor can be reasonably inferred from elsewhere in the document to be the ranking methodology.

The language that follows is clear that athletes’ scores for selection will be calculated using the *world rank* from the current list:

1.3.1 a) One (1) athlete will be selected ranked by the lowest sum of the best two world ranks in any of three events...[.]

1.3.1 b) n/a

1.3.1 c) *Considering all remaining eligible athletes, up to two (2) athletes will be selected by the **single best world rank** in SL, GS, or SG at the end of the qualification period. Ties will be broken by the single best FIS point result in SL, GS, or SG during the YOG qualification period.*

On September 11, 2019, Sam Damon, the US Ski and Snowboard Eastern Region Coordinator, confirmed to Nevin's coach via email that overall world rankings would be used as the ranking methodology from which selections would be determined (Exhibit B, see points at reference numbers). As Sam Damon is an employee of US Ski & Snowboard, it can be assumed that his confidence in this interpretation of the criteria came from information he received from US Ski & Snowboard.

The published selection criteria do not indicate that YOG world ranking was the basis of team selection. US Ski & Snowboard has contended that the language in Section 1.2., 'Tryout Events,' implies that YOG world rankings, rather than overall world rankings, would be used to select the team. It does not. The language specifically 'YOG FIS points' in the US criteria only refers to eligibility and qualifying events, not to selection. Eligibility and selection are not the same thing and must not be conflated.

In conclusion, we have met our burden of demonstrating that a preponderance of the evidence supports our case that US Ski & Snowboard did not follow their published team selection process and criteria when they made their YOG selections, and that a reasonable person would read and understand these selection criteria the way we did, particularly because we were guided to do so by administrators at US Ski & Snowboard. The early read on the selection criteria and the early distribution of the 'preliminary list' charted athlete planning for the beginning of the season and therefore had enormous impact on Nevin's early season training strategy, travel, and competition schedule. For US Ski & Snowboard to argue now that that [sic] guidance meant nothing is unacceptable. There are consequences to these mistakes and misrepresentations. US Ski & Snowboard must take responsibility for depriving Nevin of this once-in-a-lifetime opportunity to participate in an Olympic Games – an opportunity that he earned **based on the published selection criteria**. We would ask that you compel US Ski & Snowboard to throw out the current nominations and select the YOG athletes properly.

VI. Discussion and Analysis

The undersigned has considered all the facts, allegations, arguments, testimony, and evidence submitted by the Parties in the present proceeding. In drafting and explaining the *Arbitration Award*, the arbitrator refers in this *Arbitration Award* only to the submissions and evidence considered necessary to explain the reasoning in this decision. After considering all evidence

submitted, based on the preponderance of the evidence, the undersigned makes the following findings:

A. Standard of Review and Burden of Proof

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass'n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding his claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (i.e., not arbitrary or capricious) and in good faith (i.e., without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his or her claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

In *Quigley v. Union International de Tir*, the panel, in pertinent part, stated as follows:

Regulations that affect the careers of dedicated athletes should be predictable . . . and not the product of an obscure process of accretion. Athletes and officials should not be confronted by a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders.

Quigley v. Union International de Tir, CAS 94/129 (Apr. 20, 1995). The arbitrator must determine whether USSS breached the approved and published Procedures, applied the Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (June 27, 2014); *Tibbs v. United States Paralympics*, AAA 71-190-E-00406 12 JENF (Aug. 28, 2012). Other arbitrations filed under the Act have determined this review to mean that a decision by USSS must have no rational basis, *i.e.* is unreasonable, arbitrary or capricious, will not meet the Act’s requirements. *Rivera v. USA Cycling, Inc.*, AAA Case No. 01 16 0002 6302 (July 26, 2016). The Arbitrator’s role is not to determine whether USSS chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USSS in establishing the Procedures. *Id.* Rather, it is a *de novo* review, with no deference, of the application of the

Procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

B. Whether USSS breached the approved and published Procedures.

Prior to issuing the Procedures, FIS issued the Qualification System for the Lausanne 2020 Winter Youth Olympic Games (“**Qualification System**”) setting forth the criteria for qualification for the Games. In the pertinent part, the Qualification System states as follows:

YOG FIS points are earned in accordance with the FIS Rules for FIS Points during the YOG qualification period from 1 July 2018 to 8 December 2018.

The YOG quota allocation lists, published on **9 December 2019** on the FIS Website (<https://www.fis-ski.com/>) is established by adding Giant Slalom and Slalom rankings on the YOG FIS points lists containing only YOG age group athletes using the table that can be found here, to this document during the qualification period from **1 July 2018 to 8 December 2019**. FIS will publish the latest YOG quota allocation lists for information on a regular basis.

USSS Exhibit B at §§ C.2 & D.3.1. The Parties agreed that Section 1.3.1(c) of the Procedures contains the standards for selection applicable to the Games; however, Claimant also advocated that the criteria set forth in Section 1.3 of the Procedures is also applicable. These relevant sections are set forth verbatim as follows:

1.3 Provide a comprehensive, step-by-step description of the method that explains how athletes will go through the selection process (include maximum Team size).

Up to three (3) women and three (3) men will be named based on quotas established by the FIS.

1.3.1 If quota is three (3), the selection criteria will be applied in the following order:

a) One (1) athlete will be selected ranked by the lowest sum of the best two world ranks in any of three events (SL, GS, SG) at the end of the qualification period. Ties will be broken by the single best world rank in SL, GS, or SG. Additional ties will be broken by the single best FIS point result in SL, GS, or SG during the YOG qualification period.

c) Considering all remaining eligible athletes, up to two (2) athletes will be selected by the single best world rank in SL, GS, or SG at the end of the qualification period. Ties will be broken by the single best FIS point result in SL, GS or SG during the YOG qualification period.

Claimant argued that USSS did not properly apply the “world rank” as specified in the Procedures, which was evidenced by a string of emails sent by Sam Damon of USSS in September 2019. Mr. Damon testified that he was provided certain statistics, including world ranking, for athletes in the Eastern Region. *Claimant Exhibit B*. To provide “transparency”, he forwarded the rankings to the coaches of athletes who were “in contention” to make the team as of September 2019. The “world rank” he provided were not from a list of rankings exclusively from a YOG FIS ranking list. Mr. Damon indicated he sent the emails in question in hopes that more athletes from the Eastern Region would qualify for the team, but he acknowledged that he did not draft the Procedures and did not have a role in selection of the team to represent the United States at the Games.

Claimant’s coach, Doug Williams of Green Mountain Valley School, testified that Claimant structured his training and competition based on the emails sent by Mr. Damon; however, Mr. Williams acknowledged that Claimant continued to compete to the cutoff date identified in both the Qualification System and the Procedures. *Claimant Exhibit A* at § 1.2 (stating the YOG qualification period is from July 1, 2018 to December 8, 2019); *Claimant Exhibit B* at § C.2 (stating the YOG qualification period is from July 1, 2018 to December 8, 2019). Specifically, Claimant competed in Canada (November 30-December 1) and Maine (December 7-December 8) to help his competition results in hopes to better his likelihood of making the team to compete in the Games.

To provide athletes, coaches, and administrators with guidance and ranking data, FIS issues periodic rankings lists. In late 2018 or early 2019, FIS issued a table providing dates ranking lists would be released. The FIS Points List Distribution Dates indicates the 8th FIS Points List was released on November 26, 2019 and valid for a period from November 28, 2019 to December 11, 2019 and the 9th FIS Points List was released on December 10, 2019 and valid for a period of December 12, 2019 to December 25, 2019. *Affected Athlete Exhibit A*. Claimant initially argued that the 8th FIS Points List was controlling, but concluded such list was not controlling because it did not contain all of the applicable competition dates as confirmed by Mr. Williams.

As per the Procedures, USSS was required to nominate athletes to compete at the Games “on or before December 9, 2019” and submit the same to the USOPC. *USSS Exhibit A* at § 8. Mr. Williams, Steve Utter (the Alpine Program Director at Green Mountain Valley School), and Chip Knight (USSS Alpine Development Director) agreed that the 9th FIS Points List was released after the deadline required to nominate athletes. Mr. Knight testified that FIS provided him with a rankings list of YOG competitors on December 9, 2019 (“**YOG Rankings List**”). *USSS Exhibit E*. The same was confirmed via email by Janez Flere of FIS. *USSS Exhibit C*. Mr. Knight testified the YOG Rankings List was the only list he was provided taking into account the YOG qualification period of July 1, 2018 to December 8, 2019. *USSS Exhibit E*. After review of the YOG Rankings List, Mr. Knight determined that Claimant ranked fifth (5th) among American athletes. In making this determination, Mr. Knight confirmed that he used the “world rank” as shown in the YOG Rankings List during the qualification period to select the team competing in the Games and applied the same uniformly and consistently. There was no evidence in the record that Mr. Knight, and USSS, acted unreasonably or in bad faith in selecting other athletes. Throughout the Procedures, language is included references to “YOG FIS points” and, thus it is reasonable to use the “world rank” set forth in YOG Rankings List to select the competitors representing the United States in the Games.

Accordingly, after considering all the facts, allegations, arguments, testimony, and evidence submitted and providing Claimant a full and fair opportunity to be heard, the undersigned finds USSS provided 1) fair and valid selection procedures in the Procedures; 2) the Procedures were followed and applied consistently; 3) the selections made for the team in accordance with the Procedures were reasonable and in good faith; and 4) the Procedures comply with the Act and Bylaws. The role of the arbitrator is not to determine whether USSS chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USSS in establishing the Procedures. Accordingly, Claimant failed to establish by a preponderance of the evidence the following: 1) the Procedures were not followed and applied consistently; 2) the selections for the team were unreasonable and not in good faith; and/or 3) the Procedures were not in compliance with the Act or Bylaws. In conclusion, the claims filed and relief requested by Claimant are denied.

VII. Decision

Based on the foregoing findings and analysis, the undersigned decides and awards as follows:

- All of Claimant's claims and requested relief are denied;
- The Parties shall bear their own attorneys' fees and costs associated with this arbitration.
- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.
- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb
Arbitrator

Date: December 18, 2019