

**Before the American Arbitration Association
Commercial Tribunal**

Case Number: 01-18-0004-7396

**Erin Lemmons-Innes, Cameron Holzer,
Heather Reynolds, and Cheryl Van Deusen**

Vs.

United States Equestrian Federation

FINAL AWARD

Background

This is a dispute arising under Section 9 of the United States Olympic Committee (USOC) Bylaws concerning the selection of team members for the 2018 World Equestrian Games – Endurance Competition (WEG-Endurance). The Claimants (self-represented by Erin Lemmons-Innes): Cameron Holzer, Erin Lemmons-Innes, Heather Reynolds and Cheryl Van Deusen contend that they were denied the opportunity to participate in the 2018 WEG-Endurance because the selection procedures were impermissibly vague and subjective; because the selection procedures did not meet United States Olympic Committee Standards; because the selection procedures were not applied equally applied to all candidates; and because of dishonesty, unfairness, and conflicts of interest in the selection process.

In their Original Claim, the claimants sought the following Relief:

1. Based on the evidence presented here, the combinations, Gwen Hall and Size Doesn't Matter, Cameron Holzer and Kong, Erin Lemmons-Innes and Ogee, Heather Reynolds and RTR Rimfines Ettg, and Cheryl Van Deusen and Hoover the Mover to be named to the 2018 FEI World Equestrian Endurance Team. The combinations Erin Champion and Kongtik; Danielle Crouse and Mysterious Mopsa, Kelsey Russell and Firemand Gold, and Rae Shumate – Tyson and DM Michaelangelo to be removed from the team and be put on the list of Nominated Reserve Entries;
2. Claimants will have all the rights, privileges, benefits, and status thereof;
3. Claimants will be named to the USA Endurance Squad for any subsequent replacement event for the 2018 WEG Endurance Championship;
4. Official Announcement of being named to the 2018 WEG USA Endurance Squad;
5. Provide each Claimant with full set (including crew members) of 2018 WEG Team Apparel and Tack;
6. If no replacement event for 2018 WEG Endurance Championships is held within the next six (6) months, Award each Claimant \$10,000 for partial reimbursement toward qualification expenditures by the Claimant.

Their Amended Claim, added this request for relief:

7. USEF will re-write the current 2020 WEG Selection Procedures to meet legal Standards.

The United States Equestrian Federation (USEF) (represented by Brent Rychener and Suzanne Crespo of Bryan Cave LLP) contends that all claims asserted here should be dismissed either for being filed too late; for mootness; or because of waiver, laches, and estoppel.

Procedural History

Prior to initiating this arbitration, the Claimants filed a grievance (asserting virtually the same claims) before a Hearing Committee of the USEF. The Hearing Committee dismissed the claims because under USEF Rules, a grievance must be filed, “as soon as practical following the events which are the subject of the grievances.” The Hearing Committee noted that the “nominated entries” were announced on July 13, 2018 and did not include the Claimants; that the “Definite Entries” were announced on September 3, 2018 and did not include the Claimants; and that the event was held on September 12, 2018. In the Hearing Committee’s view, the Claimants had at least from July 13 until September 3 in which to complain about the selection, but they waited until after the event - thus violating USEF rules.

Applicable Law

Sections 9.1 and 9.10 of the USOC Bylaws are at issue here. Section 9.1 reads in pertinent part 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 competition. 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. Section 9.1.

Section 9.10 provides that "A claim against a respondent shall be prohibited unless filed with the AAA not later than six (6) months after the alleged date of a denial."

Facts

On July 13, 2018 four rider and horse pairs were announced as the U. S. Endurance Squad for the 2018 WEG; another pair was named as "the traveling reserve combination"; and three pairs were named to the Reserve List for the 2018 WEG. The three named to the Reserve List were Cameron Holzer and King; Erin Lemmons-Innes and Tuscarora John; Cheryl Van Deusen and Hoover the Mover. Thus, three of the four Claimants were on the squad in a reserve capacity. As it turned out, two of

the four Claimants (Van Deusen and Holzer) were named to the Team and actually started the event as Team members. Because of bad weather, the event was cancelled when the riders were only halfway through the course. As a result of the cancellation, no placement or Awards were made and the event was not rescheduled.

With regard to the two claimants who actually road as Team members, they contend that they did not get the benefit of having been chosen originally as Team members and that they have not been treated the same as those who were originally named to the Team. They explain that they never received the Tack and other items that came with being named to the Team and that their crew members were not paid for by the U.S. Equestrian Federation as would have happened had they been originally named to the Team.

The Claimants explained why they waited until after the event to complain about the selection procedures. They stated that they kept silent until September 23, 2018 when they sought the advice of an ombudsman because they “are not sports attorneys and were only vaguely aware of any legal rights they had.” Response to Motion to Dismiss at page 6. They also said that:

“No complaints were filed from July 13, 2018 until the Event because the Claimants remained FEI

eligible to compete as Replacements; we were only waiting on a phone call. But USEF still retained discretionary power over who would get the call.... It was felt, filing a grievance or complaining would jeopardize our chance to complete.”

This last statement suggests that Claimants made a tactical decision not to complain.

Discussion

Is This Section 9 Claim Barred Because It Was Filed After The Event

The USEF contends that a Section 9 Claim must be filed before the event or else that claim must be dismissed. The Claimants point out that the Bylaws provide that: “a claim against a respondent shall be prohibited unless filed with the AAA not later than (6) months after the alleged date of denial.” They argue that had it been the intent of the drafters, the language could have easily said that a claim was prohibited at the commencement of the event. Claimants also rely on Section 5 of the USOC Bylaws that requires retention of “the approved Selection Procedures and all supporting documents, including scouting on evaluation forms, etc. and data from the Selection Process for six months past the Closing Ceremony of the Games.” Thus, Claimants argue that their claim was timely filed. The Arbitrator is of opinion that Claimants are correct on this issue.

Is This Claim Moot

The USEF also contends that this matter must be dismissed as moot. USEF argues that a claim is moot when “a determination by the court will not, as an immediate consequence of the judgment sought, affect the rights of interest of the parties.” Reply Brief at 2 citing Crumpley v. Wack, 212 A.D/2d 299, 303, 629 N.Y.S.2d 395, 398 (1995). The resolution of the mootness inquiry turns in large part on the relief the Claimants have sought in this arbitration. Basically, Claimants ask the Arbitrator to go back in time and change what actually happened. Claimants ask the Arbitrator to rule that the four pairs of riders and horses that were named to the 2018 WEG squad were not named to the Squad but were named as reserves. They also want the Arbitrator to rule now that they should have been named to the 2018 WEG Squad and that the records of the USEF should be altered to show that they were named to the Squad. Further, Claimants ask the Arbitrator to give them all the rights and privileges of having been named to the Squad and if no substitute event for the 2018 WEG is scheduled, they seek \$10,000 for their efforts to try to make the 2018 Squad.

The relief they seek in this case is beyond the power of the Arbitrator. First, a Section 9 claim does not involve an award of money damages. Next, what has happened in the past is over and there is no ruling that

could be made today that can change the past. Thus, even though Claimants timely filed this proceeding, the relief they ask for renders this matter moot. In short, it is not that Section 9 requires that every claim must be filed before the date of the event; it is just that if the athlete wants to be named to a team or squad then the claim must be asserted in time to allow for such a ruling. It may be that some types of Section 9 claims can fairly be brought after the event, but this is not that case. The arbitrator can do nothing to affect the team that was selected.

Can This Arbitrator Make a Decision Regarding the 2020 Rules

In their Amended Claim, Claimants ask the Arbitrators to retain jurisdiction to oversee the drafting of the 2020 selection procedures. This is 2019, the 2020 rules lie in the future. Because they do not exist no actual dispute can presently exist about what those rules will provide. The 2020 rules could be altogether different from the past rules and Claimants might have no complaint about those rules. Indeed, during the hearing on this Motion to Dismiss, a representative of the USEF stated to the Arbitrator and the parties that the 2020 rules are being revamped in light of this present dispute to make them more objective and to remedy the complaints made by the Claimants in this matter. Thus, it is premature to consider a dispute that might well not exist.

Conclusion

In light of all the foregoing, having considered the Claims asserted here, the arguments of the parties, the citations to the applicable rules and case law, it is the opinion of the Arbitrator that this matter must be and is Dismissed as moot and the claim for review of the 2020 rules must be and is dismissed as premature.

The administrative fees of the American Arbitration Association totaling \$1,000.00 shall be borne as incurred and the compensation of the Arbitrator totaling \$2,000.00 shall be borne as incurred.

This Award is in full settlement of all claims submitted to this Arbitration. **It Is So Ordered this 24th day of May, 2019.**

A handwritten signature in black ink that reads "John Charles Thomas". The signature is written in a cursive, flowing style.

John Charles Thomas
Arbitrator