

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

Case No. 01-19-0002-2206

In the Matter of the Arbitration between

YIANNI DIAKOMIHALIS, Claimant

and

UNITED STATES OF AMERICA WRESTLING ASSOCIATION d/b/a USA WRESTLING ASSOCIATION, INC. Respondent

and

ZAIN RETHERFORD, Affected Athlete.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA"), 36 U.S.C. §220505 et seq., and Section 9 of the United States Olympic and Paralympic Committee ("USOPC") Bylaws, having been duly sworn, having previously rendered an Interim Award dated August 2, 2019, and having fully considered the parties' respective factual evidence and legal arguments during an August 8, 2019 evidentiary hearing, does hereby, AWARD, as follows:

INTRODUCTION

This team selection dispute arises out of approximately the last 1 minute and 5 seconds of very competitive, exciting action between two of the nation's best wrestlers at the end of their second match of the men's 65 kg classification during the 2019 Final X World Team Trials. During video review of scoring calls during this time period precipitated by a challenge from the Affected Athlete's coach with 2 seconds left in the match, the USA Wrestling Jury of Appeal reversed the awarding of 2 points to the Claimant with approximately 42-43 seconds left in the

second period, which resulted in the Affected Athlete being declared the winner of the match and being selected for 2019 Senior World Championships team in the men’s 65 kg classification. To resolve this dispute, the Arbitrator must determine whether the Jury of Appeal’s decision complies with USA Wrestling’s 2019 General World Team Trials Procedures, United World Wrestling International Wrestling Rules (UWW Rules), and federal law, which requires consideration of their complex intersection, interpretation, and application in a AAA Section 9 arbitration proceeding in which Claimant alleges this decision denies him the opportunity to qualify to participate as a member of USA Wrestling’s 2019 Senior World Championships team.

THE PARTIES

Claimant Yianni Diakomihalis is a world-class wrestler who competes in the 65kg classification of Men’s Freestyle Wrestling. He is represented by Howard L. Jacobs and Katy Freeman, Law Offices of Howard L. Jacobs, Westlake Village, California as well as Craig Benedict, Cazenovia, NY.

Respondent United States of America Wrestling Association d/b/a USA Wrestling Association, Inc. (“USA Wrestling”), an Oklahoma corporation with its place of business in Colorado Springs, Colorado, is the National Governing Body (“NGB”) for the sport of wrestling in the United States, which is recognized by the USOPC and United World Wrestling (“UWW”). It is represented by Stephen A. Hess, Sherman & Howard, LLC, Colorado Springs, Colorado.

Affected Athlete Zain Retherford is a world-class wrestler who competes in the 65kg classification of Men’s Freestyle Wrestling. He is represented by Steven J. Thompson, Nixon Peabody, LLC, Chicago, IL.¹

PROCEDURAL BACKGROUND

On July 12, 2019, Mr. Diakomihalis filed a “Demand for Arbitration” based on his June 29, 2019 Section 9 Complaint asserting that USA Wrestling is denying him the opportunity to participate in the 2019 Senior World Championships as a result of its Jury of Appeal’s unauthorized and untimely review of the scoring in the second match of his best of three match competition with Mr. Retherford (identified as the only Affected Athlete) during the 2019 Final

¹ The Arbitrator expresses his appreciation to all counsel for their excellent and zealous representation on behalf of their respective clients.

X World Team Trials for the 65 kg classification at Rutgers University on June 8, 2019. Mr. Diakomihalis requests that he be declared the winner of match 2 of the Final X World Team Trials and that his competition with Mr. Retherford proceed to match 3 to determine the Final X World Team Trials champion in this weight classification. Alternatively, if the foregoing requested relief is denied, Mr. Diakomihalis requests that the result of match 2 be declared a nullity and re-wrestled and that if he wins the re-match, that he and Mr. Retherford wrestle a match 3 to determine the 2019 World Championships team member in the men's 65 kg classification. As a third alternative, Mr. Diakomihalis requests that the men's 65 kg classification best of three match competition with Mr. Retherford be re-wrestled in its entirety. Mr. Diakomihalis did not request the award of any arbitration costs or attorneys' fees.

On July 25, 2019, a telephonic preliminary hearing was held in which all of the foregoing counsel for the parties participated. Pursuant to their request, the Arbitrator permitted USA Wrestling and Mr. Retherford to file a motion to dismiss this arbitration for lack of jurisdiction pursuant to AAA Commercial Rule R-33, established a briefing schedule, and set a hearing date for oral arguments regarding this motion.

On July 30, 2019, a telephonic hearing of approximately 75 minutes in duration was held during which Messrs. Hess, Thompson, and Jacobs argued on behalf of their respective clients regarding the joint motion by USA Wrestling and Mr. Retherford to file a motion to dismiss this arbitration for lack of jurisdiction.

In an August 2, 2019 Interim Award, the Arbitrator denied the joint motion of USA Wrestling and Mr. Retherford to dismiss Mr. Diakomihalis' demand for arbitration for lack of jurisdiction as a matter of law: "Based on the allegations in his Section 9 complaint (which must be assumed to be true), the Arbitrator rules that dismissing Mr. Diakomihalis' demand for arbitration for lack of jurisdiction as a matter of law would deny him a full and fair opportunity to be heard in this proceeding in violation of the ASA and the USOPC Bylaws." The award stated it "does not make any findings of fact, resolve the merits of Mr. Diakomihalis' Section 9 claims, or determine that the Arbitrator has jurisdiction and authority to grant any of his requested relief." The award scheduled an August 8, 2019 evidentiary hearing by videoconference to determine the material and relevant facts necessary to resolve the merits of Mr. Diakomihalis' Section 9 claims,

including, but not limited to, the existence of the Arbitrator's jurisdiction and authority to grant his requested relief.

On August 6, 2019, the Arbitrator issued the following ruling on Mr. Diakomihalis' motion to exclude certain evidence that may be offered by USA Wrestling and Mr. Retherford during the August 8, 2019 hearing:

In his August 5th Supplemental Pre-Hearing Brief, Claimant requests an order excluding any video or testimonial evidence by the Respondent and the Affected Athlete regarding the existence of a "pattern and practice" by wrestling referees not to literally enforce as written the "5-second rule" in Article 32 of UWW's Rules, which states: "The coach has 5 seconds from the time the questioned score is posted on the official scoreboard to request a challenge." Asserting that this provision is a "clearly written" and "unambiguous" rule, Claimant contends that any evidence that this rule was not literally enforced in matches between other wrestlers is not relevant because "[n]either the referee nor the refereeing delegate is empowered under [UWW's] Rulebook to decide what rules to follow or disregard, whether in whole or by degree" and that "interpretation of what the Rulebook requires for purposes of this Complaint resolution is within the purview of the Arbitrator." If his requested order is denied, Claimant asks that the Respondent and the Affected Athlete be required to identify and provide a video link to each match they intend to submit as evidence of this alleged "pattern and practice" and to provide a chart stating how long "each match . . . extended past the time period of the 5-Second Rule, either with regard to the throwing of the brick, or the length of the video review by officials."

In an August 6th email, the Respondent identified 16 videos from several 2018 UWW World Championships matches in which a coach's challenge of a referee's scoring decision was made. Subsequently, in another August 6th email, the Respondent asserts that "evidence of other matches is proof of how UWW interprets and applies [its] rules," presumably and specifically Article 32. Respondent also asserts: "Unless the Arbitrator is willing to rule that, as a matter of law, practical application of the rules is irrelevant, we believe that it is important to allow this evidence."

In the August 2nd Interim Award denying the joint motion of Respondent and the Affected Athlete to dismiss this arbitration proceeding for lack of jurisdiction, the Arbitrator concluded: "Without any supporting factual evidence, the Arbitrator also cannot accept the movants' contention that the refereeing delegate has both the authority and discretion pursuant to UWW's Rules to determine if video review of referee scoring beyond '5 seconds from the time the questioned score is posted on the official scoreboard' is appropriate on a case-by-case basis, thereby rendering it a 'field of play' decision as a matter of law under USOPC Bylaw, Section 9.13 [that is] not subject to Section 9 arbitral review." In addition to the express language of Article 32's "5-second rule," the Arbitrator find that video and testimonial evidence of how UWW interprets and applies this rule in its World Championship competitions (including whether match officials such as the "refereeing body" or "refereeing delegate" have discretion (and if so, how much) in applying it) has some relevance regarding how I should interpret and apply this rule in determining my jurisdiction and/or the merits of a Section 9 arbitration proceeding arising out of a "protected competition" under the ASA and USOPC Bylaws, which is conducted pursuant to UWW's Rules, including Article 32. Therefore, the Arbitrator denies

Claimant's request to exclude any video or testimonial evidence by the Respondent and the Affected Athlete regarding the existence of a "pattern and practice" by UWW "refereeing bod[ies]" or "refereeing delegate[s]" not to literally enforce as written Article 32's "5-second rule" in the UWW World Championship competitions identified in Respondent's August 6th email.

On the other hand, the Arbitrator grants Claimant's request to the extent it seeks to exclude any video or testimonial evidence by the Respondent and the Affected Athlete regarding the existence of a "pattern and practice" by USA Wrestling "refereeing bod[ies]" or "refereeing delegate[s]" not to literally enforce as written Article 32's "5-second rule" in 2019 Final X World Team Trial matches (other than the second match of the best-of-three match competition between the Claimant and the Affected Athlete). The Arbitrator determines that any evidence of such a "pattern and practice" in other USA Wrestling World Team Trial matches is not relevant to how Article 32 should be interpreted and applied to the (to be determined) findings of fact in this arbitration proceeding. This ruling also effectively precludes Claimant from introducing such evidence, which avoids the concern expressed by the Affected Athlete in his brief in support of the joint motion to dismiss this arbitration. In the Interim Award, the Arbitrator rejected "Mr. Retherford's contention that this Section 9 arbitration proceeding should be dismissed to prevent Mr. Diakomihalis from 'second-guess[ing] th[e] exercise of discretion by match officials [in applying the 5 seconds rule in Article 32] in this arbitration," which he contended "has the potential to up-end many results of the World Team Trials." To clarify and hopefully to avoid any confusion, this ruling does not prevent any party from submitting video evidence of the second match between the Claimant and the Affected Athlete or testimonial evidence from any person serving as a member of the "refereeing body" or as the "refereeing delegate" for this match.

On August 7, 2019, the Arbitrator emailed the parties' counsel the following list of issues, which he requested that they address when presenting their respective evidence and making legal arguments during the hearing:

Was the USA Wrestling [Jury of Appeal]'s consideration of the Affected Athlete's scoring challenge timely and authorized under UWW Article 32 for purposes of Section 9.13 of the USOPC Bylaws?

If so, was his review and changing of any referee scoring beyond the five seconds immediately after the Affected Athlete's coach threw the scoring brick authorized by Article 32 for purposes of Section 9.13?

If the answer to either question is "no," did USA Wrestling deny Claimant a fair opportunity to compete for selection as a member of its team that will participate in UWW 2019 Senior World Championships (a "protected competition") in violation of the ASA, USOPC Bylaws, and applicable Section 9 jurisprudence?

If the answer is "yes," what is the authorized and appropriate relief that the Arbitrator should provide to the Claimant?

On August 8, 2019, an evidentiary hearing by a combined videoconference and teleconference, was held that lasted more than nine hours. The foregoing counsel represented

the parties during the hearing. Sara Pflipsen, Sr. Counsel NGB and Athlete Affairs, USOPC as well as Kacie Wallace and Emily Azevedo, USOPC Athlete Ombudsman Office, listened to the hearing by telephone. The following persons testified: for Claimant (Rob Koll, his coach; Mr. Diakomihalis); for USA Wrestling (Antonio Silvestre, President, UWW Head Referee Commission; Richard Tucci, USA Wrestling referee and a member of the Jury of Appeal for match 2; Les Dutches, Associate Director, USA Wrestling²); for the Affected Athlete (Cody Sanderson, his coach). The Flo Wrestling full and trimmed videotapes of match 2 as well as 17 trimmed videotapes of prior UWW World Championship matches in which match officials reviewed the official videotape to correct a scoring error when a coach's challenge of a scoring decision was made more than five seconds after it occurred were admitted into evidence. The parties' counsel agreed that their respective documentary and other evidence (e.g., Tucci Flo Wrestling interview, Team USA Wrestling article regarding Helen Maroulis-Joice da Silva match during 2011 Pan American Championships) are admissible.

The hearing was kept open until August 13, 2019 (the date it was closed) to permit the parties to submit their respective charts calculating the respective time intervals and commenting on the 17 UWW World Championship match videotapes as well as for their counsel to respond to the Arbitrator's request for clarification of certain material facts regarding match 2.

FINDINGS OF MATERIAL FACTS

Mr. Diakomihalis and Mr. Retherford are world-class American wrestlers who compete in the 65kg classification of Men's Freestyle wrestling. They both aspire to represent the United States in this weight classification at the 2019 Senior World Championships to be contested in Nur-Sultan, Kazakhstan from September 14-22, 2019.

USA Wrestling selects its team members who will compete in the 2019 Senior World Championships team through a series of trial competitions among individual wrestlers, culminating in the Final X World Team Trials, which are described in USA Wrestling's two published selection procedures: (a) "2019 General World Team Trials Procedures;" and (b)

² In his very brief testimony, he stated that USA Wrestling's only objective was to explain and defend its 2019 Senior World Championships team selection process and expressed his belief that both Mr. Diakomihalis and Mr. Retherford are outstanding wrestlers who both would likely medal in this competition.

“2019 World Team Trials Qualifications & Procedures – Men’s Freestyle.”

In the 2019 Final X World Team Trials match to determine USA Wrestling’s 2019 Senior World Championships 65kg team member, Mr. Diakomihalis faced Mr. Retherford in a best-of-three match competition.

The Final X World Team Trials were conducted by USA Wrestling with UWW Rules governing the wrestling matches, including the best-of-three match competition between Mr. Diakomihalis and Mr. Retherford.

Mr. Retherford won the first match against Mr. Diakomihalis.

For their second match, the referee was Sam Julian, the judge was Robyn Vanhouten, and the mat chair was Zach Erret (collectively the “refereeing body” under Article 16 of the UWW Rules). The Jury of Appeal members were Richard Tucci and Bill Stecklin.

After the first period of their second match, Mr. Diakomihalis led by a score of 6-4. With approximately 1 minute, 5 seconds left in the second period, Mr. Retherford initiated a series of offensive wrestling moves that Mr. Diakomihalis countered, which resulted in no scoring until approximately 42-43 seconds remained when both wrestlers were awarded 2 points for back exposure based on mat chair Erret’s scoring. Referee Julian awarded 2 points to Mr. Diakomihalis, and judge Vanhouten awarded 2 points to Mr. Retherford. The 8-6 score in favor of Mr. Diakomihalis was posted on the official scoreboard with 35 seconds remaining in the second period. Coach Sanderson did not throw the challenge brick on Mr. Retherford’s behalf at this time, although he considered doing so. The wrestling continued on the edge of the mat without any interruption or stoppage for the remainder of the period, with Mr. Retherford unsuccessfully attempting to earn 2 points for exposing Mr. Diakomihalis’ back. When time expired, the official scoreboard showed Mr. Diakomihalis as the winner in the second match by a score of 8-6.

With approximately two seconds before time expired in the second period of match 2, Coach Sanderson threw the challenge brick onto the mat to indicate that Mr. Retherford may want to challenge the referee’s prior scoring, which Mr. Retherford confirmed he wanted to do. After conferring with referee Julian, mat chair Erret accepted this challenge and permitted the

Jury of Appeal to review all of the scoring in approximately the last 60 seconds of the second period. Jury of Appeal members Stecklin and Tucci conducted an extensive review of the official video to determine the correctness of the scoring during this 60 second period. Initially, they determined that it was correct not to award Mr. Retherford 2 points because he did not expose Mr. Diakomihalis' back during the last 2-7 seconds of the second period (i.e., the 5 seconds of wrestling immediately prior to Coach Sanderson's throwing of the challenge brick) or at any other time near the end of the match. Because they wanted to ensure the correct winner of the match, they also reviewed the 2-2 points scoring awarded to both wrestlers with approximately 42-43 seconds left in the match. Based on their review of the match video of approximately the last 60 seconds of the second period, the Jury of Appeal members determined that Mr. Diakomihalis had been incorrectly awarded 2 points and changed the final score to 6-6.

After the Jury of Appeal announced its re-scoring decision and determination that the wrestlers' second match ended in a 6-6 tie, Mr. Diakomihalis' coach immediately threw his challenge brick on the mat to protest its review of the scoring awarded with approximately 42-43 seconds and posted on the official scoreboard with 35 seconds left in the second period of the match. Mr. Diakomihalis' challenge was summarily rejected without being considered by the Jury of Appeal.

Thereafter and on the mat, Mr. Retherford was declared the winner of match 2 based on criteria in accordance with UWW's Rules.

Because he won the first match and was declared the winner of the second match, USA Wrestling determined Mr. Retherford to be the winner of the Final X World Team Trials 65kg classification and selected him as a member of its team to compete in the 2019 Senior World Championships in this weight classification.

APPLICABLE 2019 GENERAL WORLD TEAM TRIALS PROCEDURES,

UWW RULES, AND USOPC BYLAWS

The 2019 General World Team Trials Procedures provide:

I. Eligibility

....

4. *The Competition will be contested by UWW rules except as modified by this document.*

VI. World Team Trials Officiating, Pairing, and Protest Procedures

1. *All bouts shall be officiated as prescribed by UWW rules, by an officiating team comprised of a referee, judge, and mat chairman. Their decision on all technical aspects of the bout shall be final and shall not be subject to protest.*
 - a. *Matside video will be made available. Matside review will be done in accordance with UWW rules. Upon review of action, the decision of the officiating team is final.*
 - b. *The matside computer and video shall be accepted as the official result of the bout, unless the officiating team determines that an error has been made.*

USA Wrestling’s published “2019 World Team Trials Qualifications and Procedures – Men’s Freestyle” expressly incorporate the 2019 General World Team Trials Procedures therein.

The relevant UWW Rules are as follows:

Article 2 – Interpretation

In the event of disagreement as to the interpretation of the provisions of any article in the following Rules, the Executive Committee of UWW is solely empowered to determine the exact meaning of the article(s) in question. . . .

CHAPTER 4—REFEREEING BODY

Article 16—Composition

In all competitions, the refereeing body for each bout shall consist of 1 mat chairman, 1 referee, and 1 judge.

....

The refereeing body shall make all decisions unanimously or by majority (two out of

three) except in passivity, caution and fall situations where the mat chairman's approval must be obtained.

Article 17—General Duties

- a) *Officials shall perform all the duties set forth in the Regulations governing wrestling competitions and in any special provisions which might be established for the organization of particular competitions.*
- b) *It is the duty of officials to follow each bout very carefully and to evaluate the actions of the wrestlers so that the results shown on the judge's and mat chairman's score sheet accurately reflect the specific nature of said bout.*
- c) *The mat chairman, referee and judge shall evaluate the holds individually in order to arrive at a final decision. The referee and judge must work together under the direction of the mat chairman, who co-ordinates the work of the officials.*
- d) *It is the duty of the officials to assume all of the functions of refereeing and judging, to award points and to impose the penalties stipulated in the rules.*

...

- f) *If a bout does not end in a "fall", the decision shall be made by the mat chairman. It shall be based on an evaluation of all the actions of a competitor, recorded from beginning to end on the judge's and mat chairman's score sheets.*

...

- i) *When a challenge is requested by a coach and confirmed by the wrestler, the refereeing delegate (or his substitute) and the mat chairman must watch the video evidence on the large screen. After a discussion together, the refereeing delegate (or his substitute) renders its decision solely without consultation with the refereeing body.*

Article 21 – The Mat Chairman

...

(i) During a bout, when the coach considers that a blatant refereeing mistake has been made against his wrestler and calls for a challenge, the mat chairman must wait for the action to go to neutral and stop the match. The refereeing delegate (or his substitute) and the mat chairman must review the video evidence. If the refereeing delegate (or his substitute) agrees that the refereeing body was right, the mat chairman must make sure that no other challenge will be granted to the wrestler in question during the remaining of the match.

After the review of the video evidence, the refereeing delegate (or his substitute) solely renders its decision. Its decision is final and cannot be challenged.

Article 32 – The Challenge

The challenge is the action through which the coach is allowed, on behalf of the wrestler, to stop the action and request the refereeing delegate (or his substitute) and the mat chairman to watch the video evidence in case of a disagreement with the call. This possibility only exists during competitions in which the video control is formally established by UWW and the Organizing Committee.

The coach must request the challenge by pushing a button provided to him immediately after the refereeing body has awarded or failed to award points to the contested situation. If the wrestler disagrees with the coach's decision, he must reject the challenge directly and the match continues.

If during a competition, the system with buttons (for the challenges) are not provided for the coaches, the organizer will have to provide a sponge that will be used to ask the challenge..

. . . .

No challenge can be requested after the end of the regular time of a period, except when the points are added to the scoreboard after the referee's whistle or in case action occurred just before the time is over. The coach has 5 seconds from the time the questioned score is posted on the official scoreboard to request a challenge.

. . . .

After having reviewed the action and after a consultation with the mat chairman, the refereeing delegate (or his substitute), renders its decision. He intervenes and renders its decision in all cases. His decision will be final and may not be discussed.

It is not possible to request a "counter challenge" once a final decision has been made.

Article 54 – The Protest

No protest after the end of a match or any appeal before CAS or any other jurisdiction against a decision made by the refereeing body may be lodged. Under no circumstances may the result of a match be modified after victory has been declared on the mat.

The ASA provides:

An amateur sports organization is eligible to be recognized . . . as a national governing body only if it—

. . .

4) agrees to submit to binding arbitration in any controversy involving—

. . .

B) 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 . . .

36 U.S.C. §220522 (a)(4)(B).

The relevant provisions of the USOPC Bylaws provide as follows:

Section 1.3 -- Definitions

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 of 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.

Section 9.1 Opportunity to Participate. No member of the corporation [e.g., USA Wrestling] may deny or threaten to deny any amateur athlete the opportunity to participate in a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws 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. . . .

Section 9.13 Field of Play Decisions. The final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) shall not be reviewable through or the subject of these complaint procedures unless the decision is (i) outside the authority of the referee to make or (ii) the product of fraud, corruption, partiality or other misconduct of the referee. For purposes of this Section, the term “referee” shall include any individual with discretion to make field of play decisions.

The relevant provision of the AAA Commercial Rules provides:

R-47. Scope of Award

(a) The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract.

LEGAL ANALYSIS

A. Jurisdiction

Mr. Diakomihalis contends that the Arbitrator has jurisdiction pursuant to Sections 9.1 and 9.13 of the USOPC Bylaws because the Jury of Appeal's review and reversal of scoring (i.e., the awarding of 2 points to him for exposing Mr. Retherford's back) that occurred at approximately 42-43 seconds and posted on the official scoreboard with 35 seconds before the end of the second period of match 2 was unauthorized under Article 21(i) as well as both unauthorized and untimely under Article 32 of the UWW Rules, which is not a "field of play" decision precluding Section 9 arbitral review.³ Relying on USA Wrestling Jury of Appeal member Tucci's testimony, he asserts that its review and confirmation of the referee's no-scoring decision within 5 seconds after Mr. Retherford's coach threw the challenge brick with approximately 2 seconds left in the match was an authorized and timely review of a "call" (i.e., Mr. Retherford did not earn 2 points for exposing Mr. Diakomihalis' back), which was confirmed and that's Mr. Retherford's challenge was rejected. He asserts that the Jury of Appeal's subsequent review and changing of any scoring beyond 7 seconds from the end of the match (specifically the 2 points awarded to both wrestlers with approximately 42-43 seconds in the second period) was a *de facto* unauthorized review of a second challenged "call" by Mr. Retherford in violation of Article 21(i), which also was unauthorized and untimely in violation of Article 32 because this scoring decision was not challenged immediately or at least within 5 seconds after it was posted on the official scoreboard based on UWW Referee Commission president Silvestre's testimony.

USA Wrestling claims that despite the express language of Article 32 and Mr. Silvestre's testimony that Coach Sanderson's challenge to the 2 points for each wrestler scoring that resulted in the 8-6 score posted on the official scoreboard was not timely, there is no bright line requirement that a coach's challenge of a scoring decision must be made immediately or within 5 seconds of its posting on the official scoreboard. It relies on Mr. Tucci's testimony that Article 32 establishes only a guideline of 5 seconds and that whether a challenge is considered timely depends on the specific situation and the discretion of the mat chairman. It relies on videotapes from five 2018 UWW World Championships matches in which a review of wrestling action and

³ He does not contend that the Jury of Appeal's alleged unauthorized and untimely decision was "*the product of fraud, corruption, partiality or other misconduct.*"

scoring occurred beyond 5 seconds prior to a coach's challenge of a scoring decision. USA Wrestling contends that mat chair Erret's acceptance of Coach Sanderson's scoring challenge with approximately 2 seconds left in the match is a discretionary "field of play" decision under Article 32 and Section 9.13, which is not within the Arbitrator's jurisdiction to review. His acceptance of this scoring challenge authorized the Jury of Appeal to review all of the scoring in approximately the last 60 seconds of the second period (which Mr. Tucci characterized as a "continuous action" during which the wrestlers were not in a neutral position at any time) to determine its correctness, which also is a discretionary "field of play" decision not within the Arbitrator's jurisdiction to review.

Mr. Retherford adopts USA Wrestling's arguments regarding why the Arbitrator does not have jurisdiction. In support of USA Wrestling's position that Article 32 establishes only a guideline of 5 seconds, he relies on 12 additional videotapes of UWW World Championships matches in which a review of wrestling action and scoring occurred beyond 5 seconds prior to a coach's challenge of a scoring decision, which Coach Sanderson found in an Internet search. He also contends that because mat chair Erret had the authority and responsibility to determine if Coach Sanderson's scoring challenge was timely (Tucci testimony), his decision is a discretionary field of play decision analogous to competition scoring issues. In his view, whether or not mat chair Erret's decision to accept this challenge was correct is not subject to arbitral review.

In response, Mr. Diakomihalis relies on the testimony of Coach Koll that there was not a continuous sequence of action from 35 seconds to the end of the match because the wrestlers reached a neutral position two or three times during this time period, which would have permitted the match to be stopped for video review of the challenged scoring with approximately 42-43 seconds in the second period if there had been a timely challenge by Coach Sanderson before 30 seconds remained in the second period (i.e., within 5 seconds after the 8-6 score was posted on the official scoreboard). Mr. Diakomihalis points out that none of the 17 videotapes of the UWW World Championships matches in which a review of wrestling action and scoring occurred beyond 5 seconds prior to a coach's challenge of a scoring decision provides an example of a coach's challenge late in a match in which a score was both changed and affected which wrestler won the match, which Coach Sanderson acknowledged.

Pursuant to AAA Commercial Rule R-7 (a), the Arbitrator has “the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim.” The claimant has the burden of proving the arbitrator’s jurisdiction by a preponderance of evidence. *Mertes v. USA Gymnastics*, AAA Case No. 51 190 00775 12 (July 15, 2014).

Section 9.1 of the USOPC Bylaws prohibits USA Wrestling from denying Mr. Diakomihalis “the opportunity to participate in . . . a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws.” The 2019 Senior World Championships is a “protected competition” pursuant to the ASA, 36 U.S.C. §§ 220522(c)(5) and 220522(a)(4)(B), as well as Sections 1.3 (w) and 9.1 of the USOPC Bylaws. Because successful athlete competitors in the designated weight classifications for the Final X World Team Trials directly qualify as a member of USA Wrestling’s 2019 Senior World Championships team, this national wrestling competition is a “protected competition” pursuant to the ASA, 36 U.S.C. §§ 220522(c)(5) and 220522(a)(4)(B), and Sections 1.3 (w) and 9.1 of the USOPC Bylaws.

Section 9.13 of USOPC’s Bylaws provides that the “final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) shall not be reviewable” in a Section 9 arbitration proceeding “unless the decision is (i) outside the authority of the referee to make or (ii) the product of fraud, corruption, partiality or other misconduct of the referee.” It defines “referee” as “any individual with discretion to make field of play decisions.”

Pursuant to Articles 16 and 17 (a-d) of the UWW Rules, the mat chairman, referee, and judge have the discretion to individually and collectively make scoring decisions. Because they are inherently discretionary field of play decisions, the referee’s decision not to award Mr. Retherford 2 points because he did not expose Mr. Diakomihalis’ back during the last 2-7 seconds of the second period or at any other time near the end of the match is not subject to arbitral review pursuant to Section 9.13. Nor is mat chair Erret’s scoring decision with approximately 42-43 seconds remaining in the match that awarded both wrestlers with 2 points for back exposure.

Article 32 (§12) provides the “refereeing delegate (or his substitute)” with the authority

and discretion to render a “final” decision regarding a coach’s challenge on behalf of a wrestler “in case of a disagreement with the call” (¶1) after a video review of the wrestling action that was its underlying basis. Article 21 (i) (¶2) states that “[a]fter the review of the video evidence,” the decision of the refereeing delegate (or his substitute) “is final and cannot be challenged.” USA Wrestling does not have a “refereeing delegate” for its sanctioned matches (Tucci testimony), so its Jury of Appeal is the substitute for the “refereeing delegate” for purposes of Articles 21 and 32. Pursuant to Section 9.13, the Jury of Appeal’s discretionary scoring decisions based on its video review of the scoring during a match (e.g., the foregoing scoring decisions in approximately the final 42-43 seconds of the Diakomihalis-Retherford match 2), including any changed scoring, are not subject to arbitral review if the scope of its review was authorized in accordance with Article 32, which also requires determination of whether any aspect of its review violated Article 21(i).

Article 32 (¶1) provides that “in case of disagreement with the call,” a coach may challenge it by requesting video review by the refereeing delegate (or his substitute) and the mat chairman. The coach “must request the challenge by pushing a button [or throwing a plastic brick in USA Wrestling competitions] immediately after the refereeing body has awarded or failed to award points to the contested situation.” Article 32 (¶2). Article 32 (¶10) states “The coach has 5 seconds from the time the questioned score is posted on the official scoreboard to request a challenge.” Read together, the express language of these provisions requires that a coach’s challenge of a scoring decision to award or not award points must be made within 5 seconds from the time the questioned score is posted on the official scoreboard, which establishes an objective standard for determining whether a coach’s challenge is timely. Based on the evidence of record (Silvestre, Koll, and Diakomihalis testimony), it appears that an objective requirement is necessary because wrestling is a time-based sport and a wrestler needs to always know the correct score to adjust his offensive and defensive strategies accordingly to give himself the best chance of winning the match, particularly when nearing its end.

Article 32 (¶8) requires the mat chairman “to stop the match to review the challenge as soon as the situation on the mat becomes neutral.” Similarly, Article 21 (i) (¶1) provides that the “mat chairman must wait for the action to go neutral and stop the match” if a coach challenges “a blatant refereeing mistake . . . against his wrestler.” Neither article explicitly permits the video

review of challenged scoring more than 5 seconds from the time the questioned score is posted on the official scoreboard or provides the mat chairman with express authority to permit such video review or to determine whether it is appropriate under the circumstances. Although both provisions require the refereeing delegate (or his substitute) and the mat chairman to review the video evidence relevant to a coach's challenge, neither provision expressly empowers either of them to individually or jointly determine the duration or scope of the video review regardless of the timing of the coach's challenge of a disputed scoring decision during the match.

Here, Coach Sanderson threw the challenge brick on behalf of Mr. Retherford with two seconds left in the second period, and the match ended with an 8-6 score in favor of Mr. Diakomihalis before it was stopped for any video review by mat chairman Erret. Based on the Arbitrator's review of the video of the Diakomihalis-Zetherford match 2, it appears there was at least a plausible (and possibly a likely successful) basis for Coach Sanderson to challenge the referee's decision that Mr. Retherford did not earn 2 points for back exposure within the last 7 seconds of the match—even though he testified this was not the scoring decision he was challenging. Coach Sanderson testified he was challenging the 2-2 points scoring awarded to both wrestlers with approximately 42-43 seconds left in the match that he believed to be an "illegal score" pursuant to Article 16 (§3) requiring the refereeing body to make all scoring decisions unanimously or by a 2 out of 3 majority, which he did not think could not be challenged until the wrestlers were in a neutral position.

Nevertheless, the Jury of Appeal determined that the referee had correctly decided not to award Mr. Retherford 2 points because he did not expose Mr. Diakomihalis' back during the last 2-7 seconds of the second period or at any other time near the end of the match. Therefore, the Arbitrator concludes that this was an authorized and timely challenge of the referee's "call" (i.e., "fail[ure] to award points [to Mr. Retherford] in the contested situation"), which Coach Sanderson more likely than not intended to contest because the match was 2 seconds from concluding with an 8-6 score in favor of Mr. Diakomihalis and a favorable decision by the Jury of Appeal would enable Mr. Retherford to win the match. In other words, Mr. Retherford had nothing to lose and everything to gain if his coach challenged this no-scoring "call."

If the Jury of Appeal had awarded Mr. Retherford 2 points for exposure of Mr.

Diakomihalis' back during wrestling occurring with 2-7 seconds left in the match, it clearly had no authority to then review and change any scoring occurring 35-43 seconds before the match's end. It is equally unauthorized for the Jury of Appeal to review and confirm the referee's refusal to award Mr. Retherford 2 points for back exposure during the time period and to then review and change any scoring occurring 35-43 seconds before the match's end.

Because the Jury of Appeal considered and confirmed the referee's decision not to award Mr. Retherford 2 points for back exposure, the Arbitrator determines that its subsequent review of the 2-2 points scoring awarded to both wrestlers with approximately 42-43 seconds left in the match, determination that Mr. Diakomihalis had been incorrectly awarded 2 points, and change of the final score to 6-6 was unauthorized by Article 32 as well as Article 21. Article 32 (§§6 and 7) provides that "[e]ach wrestler is entitled to one (1) challenge per match" and if the [Jury of Appeal] confirms the decision by the refereeing body, the wrestler loses the challenge and his opponent will receive one (1) technical point." Article 21 (i) (§1) states that if the Jury of Appeal "agrees the refereeing body was right, the mat chairman must make sure that no other challenge will be granted to the wrestler in question during the remain[der] of the match," which was violated when mat chairman Erret permitted the Jury of Appeal to review the match video of approximately the last 60 seconds of the second period and to consider a *de facto* second challenge of a scoring "call" by Mr. Retherford.

The Arbitrator rejects the contention of USA Wrestling and Mr. Retherford that after consultation with referee Julian, mat chairman Erret had valid authority to permit the Jury of Appeal to review all of the scoring in approximately the last 60 seconds of the second period by characterizing the wrestling during this time as "continuous action" whose scoring constitutes a single "call," even if for the purpose of ensuring the correct scoring and winner of the match. There is no explicit authority in the UWW Rules that permits the mat chairman to exercise any discretion in determining the appropriate duration of video review of a challenged scoring decision; the mat chairman only is authorized to determine when the wrestlers are in a neutral position and the match should be stopped for video review. Articles 21 (i) (§1) and 32 (§8). Therefore, the Arbitrator concludes that mat chairman Erret's determination regarding the duration of the video review by the Jury of Appeal should extend to include the last 60 seconds of wrestling in the second period of match 2 was not a discretionary field of play decision that

immunizes its review and re-scoring decision from arbitral review under Section 9.13.

In conclusion, based on the above determinations and conclusions, the Arbitrator rules that there is arbitral jurisdiction to review the merits of Mr. Diakomihalis' Section 9 claim, including his authorized and appropriate relief if he prevails. Because of my ruling that the Jury of Appeal's review of the 2-2 points scoring awarded to both wrestlers with approximately 42-43 seconds left in the match was unauthorized based on the facts of this case, it is not necessary for the Arbitrator to determine whether Article 32 establishes only a guideline of 5 seconds and that whether a challenge is considered timely depends on the specific situation and the discretion of the mat chairman as illustrated by videotapes from several selected UWW World Championships matches in which a review of wrestling action and scoring occurred beyond 5 seconds prior to a coach's challenge of a scoring decision. It is questionable whether this contention by USA Wrestling and Mr. Retherford should be accepted by the Arbitrator without a supporting interpretation of Article 32 by the UWW's Executive Committee, which "is solely empowered to determine the exact meaning of the article(s) in question" if there is disagreement regarding its interpretation pursuant to Article 2. Even if this proposition were accepted as a matter of general principle or policy, the Arbitrator notes that none of the 17 videotapes of the UWW World Championships matches in which a review of wrestling action and scoring occurred beyond 5 seconds prior to a coach's challenge of a scoring decision provides an example of a coach's challenge late in a match in which a score was both changed and affected which wrestler won the match. Moreover, Mr. Silvestri, the president of UWW's Head Referee Commission, testified that Coach Sanderson's attempted challenge of a scoring decision occurring approximately 40 seconds before he threw the challenge brick onto the mat was untimely.

B. Merits of Section 9 Claim

1. Denial of Opportunity to Compete in Protected Competition

"In a Section 9 team selection dispute, it is well established that an athlete claimant has the burden of proving by a preponderance of evidence his claimed denial of a fair opportunity to compete for selection as a member of a team that will participate in a 'protected competition' (i.e., UWW 2019 Senior World Championships). *Tibbs v. United States Paralympics*, AAA Case No. 71 190 E 00406 12 (August 28, 2012) at 14 (citing several prior Section 9 awards). 'Section

9 jurisprudence requires [him] to prove [USA Wrestling] breached its approved and published Athlete Selection Procedures for the [2019 Senior World Championships], applied them inconsistently to athletes similarly situated, acted in bad faith towards or with bias against [them], and/or violated applicable federal or state laws (e.g., Ted Stevens Olympic and Amateur Sports Act).’ *Id.* See also *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015) at 5 (adopting this substantive standard for evaluating the merits of a team selection dispute).” *Keter v. USATF*, AAA Case No. 01-19-0002-0105 (July 2, 2019) at 11-12. *Accord Scott v. Oklahoma Secondary Schools Activities Ass’n*, 313 P.3d 891, 896 (Okla. 2013) (“C]ourts should not intervene except to ascertain whether [sports] association proceedings are conducted pursuant to the rules and laws of the organization, in good faith and lawfully. Absent fraudulent, collusive, unreasonable, arbitrary or capricious behavior, this Court may not overturn a voluntary association’s enforcement of its rules.”).

“Although not expressly incorporated or referenced therein, ‘[i]t is well accepted that the [arbitral] standard of review for cases arising under Section 9 of the USOC Bylaws is de novo.’ *Komanski* at 5. ‘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 the law of private associations by analyzing whether its 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 and USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019) at 17.” *Keeter* at 12.

Based on Mr. Diakomihalis’ acknowledgement at the end of the evidentiary hearing, the Arbitrator finds that he had a full and fair opportunity to be heard in this arbitration proceeding. USA Wrestling and Mr. Retherford also acknowledged receiving a full and fair opportunity to be heard.

Mr. Diakomihalis contends that USA Wrestling violated his Section 9 rights under federal law (i.e., the ASA) because its Jury of Appeal’s unauthorized, untimely review and reversal of a scoring call awarding him 2 points for wrestling that occurred with approximately 42-43 seconds left in the second period denied him a fair opportunity to compete for selection as a member of its

2019 Senior World Championships team. He asserts that USA Wrestling's foregoing violations of Article 21 and 32 breached two clear as written rules with numerically objective prohibitions (i.e., a wrestler is entitled to only one scoring challenge per match and, if the Jury of Appeal agrees that the refereeing body's scoring decision was correct, no second subsequent challenge is permitted) and requirements (i.e., a coach's challenge of a scoring decision must be made within 5 seconds of its posting on the official scoreboard), respectively. Relying on Coach Koll's testimony, he contends that wrestling is a time-based sport and that UWW Rules regarding challenges of scoring decisions must be rigidly applied to prevent end of match "Hail Marys" in an effort to seek video review of all scoring throughout the duration of a time period in a match. Based on his own and Mr. Silvestre's testimony that wrestlers need to always know the correct score, Mr. Diakomihalis testified that these violations of the UWW Rules governing his competition with Mr. Retherford precluded him from wrestling as necessary to win the match if it were tied with 30 seconds remaining. He testified that these violations of applicable UWW Rules governing his competition with Mr. Retherford caused him irreparable harm by changing the 8-6 score in his favor when the match concluded to a 6-6 tie after the unauthorized and untimely post-match review by the Jury of Appeal, which resulted in Mr. Retherford being declared the winner of match 2 of the Final X Team Trials and being selected for the 2019 Senior World Championships team in the 65 kg classification.

Relying on the uncontradicted testimony of Mr. Silvestri and Mr. Tucci, USA Wrestling and Mr. Retherford contend that there is no dispute that the 2-2 points scoring award for both wrestlers with approximately 42-43 seconds remaining in the second period of match 2 was incorrect. They assert that the Jury of Appeal's re-scoring by deducting 2 points from Mr. Diakomihalis' 8 points resulted in a final corrected match score of 6-6 does not violate Mr. Diakomihalis' Section 9 rights because this decision complies with its paramount duty to ensure that match scoring is correct in accordance with Article 17.

In response, Mr. Diakomihalis relies on his own and Coach Koll's testimony that Mr. Retherford's untimely challenge of the foregoing scoring and its unauthorized re-scoring to a 6-6 post-match tie precluded him from having a fair opportunity to win match 2. He relies on his coach's testimony that the wrestlers reached a neutral position two or three times after there were 35 seconds remaining in the match, when it would have been stopped for video review and

correction of the scoring error if an authorized and timely challenge had been made. When the match resumed, Mr. Diakomihalis contends that he could have adjusted to a more offensive wrestling strategy and may have scored points in the remaining time that would have enabled him to win match 2.

The Arbitrator has ruled that the Jury of Appeal's review of the 2-2 points scoring awarded to both wrestlers with approximately 42-43 seconds left in the match and its re-scoring by deducting 2 points from Mr. Diakomihalis' score at the end of the match was unauthorized and violated Articles 21 and 32 of the UWW Rules based on the facts of this case. Therefore, the USA Wrestling Jury of Appeal's breach of UWW's Rules violates Mr. Diakomihalis' Section 9 substantive right not to be denied a fair opportunity to compete for selection as a member of a team that will participate in a "protected competition." *Hyatt and United States Judo, Inc.*, AAA Case No. 01-14-0000-7635 (June 27, 2014) at 11 ("team selection rules create the legitimate expectation that an athlete who satisfies the published qualification criteria will be selected for the team;" an NGB "is required to follow its own rules and cannot preclude their valid application to the benefit of [an athlete] by creating an entirely new unauthorized athlete selection procedure, even if its motivation is "the interest of equity and transparency"). See also *CNOSF, BOC, & USOC and FEI & NOCG and IOC*, CAS ad hoc Division (OG Athen) 04/007 (award of 21 August 2004) at ¶8.4 (nullifying modification of Ground Jury's "marks . . . awarded for [competition] performance" by Appeal Committee, which "at no stage had the power, authority, competence or jurisdiction to entertain the appeal" and violated the FEI's rules, and reinstating Ground Jury's decision).

Hyatt holds that NGB competition officials' subjective refusal to follow team selection rules with objective requirements, even in done in the interests of fairness, violates an athlete's Section 9 rights:

exercise of discretion pursuant to an unwritten custom or practice of granting extensions of time to weigh in to athletes based on individual circumstances was not expressly prohibited by United States Judo's team selection rules. But it is inconsistent with the facially uniform applicability of these rules to all athletes, which do not explicitly or implicitly permit any exceptions in individual cases or grant tournament directors the authority to exercise subjective discretion regarding when it is appropriate to grant extensions of time to weigh in. . . .

Id. at 10-11.

The Arbitrator previously ruled that USA Wrestling mat chairman Errat did not have the authority to permit the Jury of Appeal to review all of the scoring in approximately the last 60 seconds of the second period by characterizing all of the wrestling during this time frame as “continuous action” whose scoring constitutes a single “call,” even if for the purpose of ensuring the correct winner of the match. This conclusion is based on his finding that there is no explicit authority in the UWW Rules that permits the mat chairman to exercise any discretion affecting the timing and duration of video review of a challenged scoring decision other than determining when the wrestlers are in a neutral position and the match should be stopped for video review. Articles 21 (i) (¶1) and 32 (¶8).

Based on *Hyatt*, the Arbitrator rejects the contention that the Jury of Appeal’s effort to ensure an accurate final score of match 2 pursuant to Article 17 (which he finds to be an appropriate, good faith, and laudable objective) by reviewing approximately the last 60 seconds of the match does not justify its violations of Articles 21 and 32. Moreover, even if its review and re-scoring resulted in the correct final score of this match, this action violated Mr. Diakomihalis’ rights under the ASA and Section 9 of the USOPC Bylaws. See also *Keter v. USATF*, AAA Case No. 01-19-0002-0105 (July 2, 2019) (NGB’s material violation of published team selection procedures is not justified by its objective of selecting the most medal capable team).

2. Authorized and Appropriate Relief for Violation of Section 9 Rights

As the remedy for USA Wrestling’s violation of his Section 9 rights, Mr. Diakomihalis requests that he be declared the winner of match 2 of the Final X World Team Trials and his competition with Mr. Retherford proceed to match 3 to determine the Final X World Team Trials champion at 65 kilograms. Alternatively, if the foregoing requested relief is denied, Mr. Diakomihalis requests that the result of match 2 be declared a nullity and re-wrestled and if he wins the re-match, that he and Mr. Retherford wrestle match 3 to determine the 2019 Senior World Championships team member in the men’s 65 kg classification. As a third alternative, Mr. Diakomihalis requests that the Final X World Team Trials men’s 65 kg classification best of three match competition with Mr. Retherford be re-wrestled in its entirety.

Even if USA Wrestling has violated Mr. Diakomihalis' Section 9 rights, USA Wrestling and Mr. Retherford contend that the express language of Article 54 of UWW's Rules absolutely bars the Arbitrator from granting any of his requested relief. They rely on the testimony of Messrs. Silvestre and Tucci that Article 54 prohibits the result of match 2 from being modified even if USA Wrestling violated Articles 21 and/or 32 because Mr. Retherford was declared its winner on the mat. They also assert that Article 2 empowers only UWW's Executive Committee to determine the "exact meaning" of Article 54 in a dispute regarding its interpretation.

In response, Mr. Diakomihalis asserts that the first sentence of Article 54 (§1) does not bar his requested relief because it applies only to decisions made by the refereeing body, not the Jury of Appeals. He also contends that its second sentence should not be literally applied because federal law requires that there be an effective remedy for USA Wrestling's violation of his Section 9 rights. He also asserts that granting either form of his requested alternative relief would not violate this provision of Article 54 (§1).

As an initial matter, the Arbitrator notes that the UWW Rules precluded Mr. Diakomihalis from internally challenging the USA Wrestling Jury of Appeal's decision to reverse the mat chairman's awarding of 2 points to him for wrestling action occurring approximately 42-43 seconds from the end of the second period of match 2. Article 32 (§13) states that "[i]t is not possible to request a 'counter challenge' once a final decision has been made regarding a challenged call during a match. After the Jury of Appeal announced its re-scoring decision and determination that the wrestlers' second match ended in a 6-6 tie, Mr. Diakomihalis' coach immediately threw his challenge brick on the mat to protest this decision, which was summarily rejected without being considered by the Jury of Appeal.

There was no evidence submitted by any party regarding any determination of the "exact meaning" of Article 54 by UWW's Executive Committee, including whether its express language (particularly whether the second sentence of its first paragraph) should be literally applied regardless of any alleged or proven violation of any UWW Rules pursuant to its authority under Article 2. As the president of the UWW Head Referee Commission, Mr. Silvestre's opinion that the second sentence of Article 54 (§1) should be applied literally to bar

any arbitral modification of the result of match 2 because Mr. Retherford was declared its winner on the mat is entitled to some weight. But it is not conclusive because he does not have the express plenary authority to determine the meaning and appropriate application of any and all UWW Rules, including Article 54, which is vested exclusively in the Executive Committee by Article 2. The Arbitrator declines to construe Article 2 as foreclosing his authority under the ASA, Section 9 of the USOPC Bylaws, and R-47 of AAA's Commercial Rules to grant any effective relief to an athlete whose Section 9 rights have been violated, especially when there is no record evidence regarding the Executive Committee's determination of the "exact meaning" of Article 54 or interpretation of how it should be applied in the same or substantially similar factual circumstances giving rise to this arbitration proceeding.

The first sentence of Article 54 states "*No protest after the end of a match or any appeal before CAS or any other jurisdiction against a decision made by the refereeing body may be lodged.*" By its express language, this provision is inapplicable in this case because USA Wrestling's two-person Jury of Appeal (not the three-person "refereeing body" consisting of the mat chairman, referee, and judge) made the re-scoring decision that violated Mr. Diakomihalis' Section 9 rights.

The second sentence of Article 54 (¶1) states "*Under no circumstances may the result of a match be modified after victory has been declared on the mat.*" Although UWW and USA Wrestling officials with many years of collective experience opined that this provision should be interpreted and applied literally (Silverstre testimony; Tucci testimony), there is no record evidence regarding UWW's objectives, interpretation, historical application of this sentence of Article 54. Nor is there any evidence regarding the interpretation of this article by UWW's Executive Committee, which is "solely empowered to determine [its] exact meaning" if there is "disagreement as to [its] interpretation." None of the 17 videotapes from UWW Championships admitted into evidence involves factual circumstances in which a coach's challenge of a scoring decision more than five seconds after it was posted on the official scoreboard resulted in a changed score by the refereeing delegate or substitute that changed outcome of a match, so there is no UWW precedent (much less any well-established UWW custom or policy) for interpreting and applying this provision of Article 54 literally to the same or substantially similar material factual circumstances as found by the Arbitrator in this case.

The most analogous sports jurisprudence cited by the parties is *Abdevali v. United World Wrestling*, CAS ad hoc Division (AG Incheon) 14/004 (award of 17 December 2014), although the CAS panel did not determine whether Article 54 (or any then-existing UWW Rules with the same or substantially similar language as the second sentence of Article 54 (¶1)) bars any arbitral modification of the result of a wrestling match “after victory has been declared on the mat” even if it is based on unauthorized video review and re-scoring in violation of UWW rules.

In *Abdevali*, the CAS panel found that the referee determined that a semi-final match between Iranian and Korean wrestlers in the 71kg Greco-Roman competition during the Asian Games “was over by tapping his hand on the mat [to signify a ‘fall’ defined by UWW rules as ‘when the defensive wrestler is held by his opponent with his two shoulders against the mat for a sufficient time to allow the referee to observe the total control of the fall’]—with the agreement of the other relevant officials—and that [the Iranian wrestler] had won.” Before the referee raised his hand as the victor, the UWW Jury of Appeal reversed the 4 points awarded to the Iranian wrestler for the fall based on its video review of the match after an objection by the Korean wrestler’s coach, which “was raised considerably more than 5 seconds after the [referee’s] decision awarding [him] the requisite points for the fall and after the bout had ended.” *Id.* at ¶2.9. As a result, the Korean wrestler was declared the winner of the semi-final match and subsequently won the gold medal by winning the finals match against another wrestler.

The CAS panel dismissed the Iranian wrestler’s appeal of the UWW Jury of Appeal’s decision because it had no authority to grant his request for a rematch of the semi-final and final matches in Asian Games 71kg Greco-Roman competition for the following reason:

On the assumption that the Panel does have the right to intervene, the Panel is of the unanimous view that Mr. Abdevali cannot succeed as it is not possible to reconvene the Asian Games and have the semi-finals and finals rematched. The other athletes involved who are not parties to this appeal and have not been heard on the point are not obliged to return for another competition. Neither is the OCA, which organizes the Games, a party to these proceedings. For relief to be granted, if at all it could be granted, Mr. Abdevali should have filed his appeal to the CAS immediately after the decision was made at about 15.30hrs on 29 September 2014 so that a decision could have been made before the final was held at 19.30hrs on 30 September 2014. . . .

In sum, there is no relief upon which the Panel can grant the Athlete and therefore, the Panel unanimously dismissed this appeal.

Id. at ¶¶2.19-2.20.

In this case, neither USA Wrestling nor Mr. Retherford contend that either Mr. Diakomihalis' Section 9 complaint or demand for arbitration were not filed in a timely manner. Unlike a major continental sports competition with participating athletes from numerous countries with immutably fixed competition dates, the Final X World Team Trials for the 65kg classification of Men's Freestyle Wrestling involves only two wrestlers, both of whom are parties to this arbitration proceeding and reside in the U. S. It is undisputed that there is sufficient time for Mr. Diakomihalis and Mr. Retherford to compete in one or two matches with the next two weeks in order to enable USA Wrestling to select the wrestler who will compete in this weight classification as a member of its 2019 Senior World Championships team by UWW's September 4th deadline for submitting participating wrestlers' names. Therefore, unlike the *Abdevali* CAS ad hoc Division panel, the Arbitrator is not wholly precluded as a practical matter from granting effective relief to Mr. Diakomihalis that will enable him to have a fair opportunity to compete for selection as a member of USA Wrestling's 2019 Senior World Championships team.

In dicta, the *Abdevali* panel cited and considered Article 22 of UWW's 2014 Rules, which is somewhat similar to the first sentence of Article 54, and states: "No further appeal can be lodged in the FILA Bureau, CAS, or any other court once a decision has been made by the refereeing body (agreed by the mat chairman) or by the Jury of Appeal." Reading Article 22 together with paragraph 11 of section III of the "Sport Technical Handbook for the 17th Asian Games Incheon 2014" (which states "*Any Athlete/NOC can appeal to CAS, in case he feels that there is violation of IF/AF Technical Rules or OCA Constitution which is not related to reversing the decision of the referee or result.*"), a 2-1 panel majority concluded that the CAS ad hoc Division did not have the power to alter the semi-final match results in the 71kg Greco-Roman competition during the Asian Games and stated: "These are rules and regulations prescribed by the governing body of the sport and cannot be rewritten or read down." *Id.* at ¶2.16.

On the other hand, the *Abdevali* panel minority member concluded that "these provisions apply only to field of play decisions and that allowing the Korean coach's objection after the five second period and changing the result after the end of the bout are not field of play decisions." *Id.* at ¶2.16. Based on Article 44 of the then-existing UWW Rules, which provided in relevant part that "[i]t will not be possible to request any challenge in case of a fall, being understood that the fall must be validated by the mat chairman following the judge or the

referee's decision," he concluded: "[I]n the present case, when the referee had obtained confirmation from the judges, the referee confirmed the fall and brought the match to an end under the rules. After that there was simply no power under the rules for the other judges to reverse that decision and entertain a challenge that was out of time. *Id.* at ¶2.26. Moreover, there is a clear and material factual distinction between video review of a fall immediately ending a wrestling match (which is not objected to for more than five seconds thereafter) as compared to video review of referee scoring occurring approximately 42-43 seconds before time elapses in a match, which is not reviewed until after the match has ended and without re-wrestling from the time a corrected scoring error occurred through the remaining time in the match.

The Arbitrator does not consider the *Abdevali* panel majority's dicta to be persuasive authority for the proposition that the second sentence of Article 54 (¶1) should be construed literally and applied to preclude Mr. Diakomihalis from having any effective relief or remedy for violation of his Section 9 rights under federal law. He finds more convincing the *Abdevali* panel minority member's view that the unauthorized reversal of the referee's decision by the Jury of Appeals after the conclusion of a match in violation of UWW's rules entitles the aggrieved wrestler to practically available effective relief for breach of his contractual rights. As all three *Abdevali* panel members concluded: "The Panel emphasizes that it has formed, on the available evidence, the clear view that Mr. Adevali has been wrongly treated by the Jury and should have progressed to the final round of the event for the gold medal. However, for the reasons set forth above, the Panel cannot grant Mr. Adevali the relief he claims." *Id.* at ¶3.3. As the *Abdevali* panel concluded concerning the UWW Jury of Appeals' unauthorized re-scoring that changed the outcome of a wrestling match, the Arbitrator concludes that Mr. Diakomihalis has been "wrongly treated" by the USA Wrestling Jury of Appeals' unauthorized re-scoring that changed the outcome of match 2 with Mr. Retherford. But unlike the *Abdevali* panel, the Arbitrator can grant the aggrieved wrestler practically available effective relief, which is providing Mr. Diakomihalis with a fair opportunity to be earn selection as a member of USA Wrestling's 2019 Senior World Championships team in the 65 kg classification to remedy the violation of his Section 9 rights based on federal law.

R-47 of AAA's Commercial Rules, which is applicable pursuant to the ASA (specifically,

36 U.S.C. §220522 (a)(4)(B)), empowers the Arbitrator to “grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties.” Section VI (1) (a) of the USA Wrestling’s 2019 General World Team Trials Procedures provides that “*Matside review will be done in accordance with UWW rules. Upon review of action, the decision of the officiating team is final.*” Because of the unique factual circumstances of this case, the Arbitrator declines to literally construe and apply the language “*the decision of the officiating team is final*” in Section VI (1) (a) and “[u]nder no circumstances may the result of a match be modified after victory has been declared on the mat” Article 54 (§1). Doing so would preclude the Arbitrator from granting any just and equitable relief to effectively remedy the harm to Mr. Diakomihalis from being “wrongly treated” by the USA Wrestling Jury of Appeal’s unauthorized re-scoring decision, which resulted in his losing match 2.

In determining the just and equitable relief that will provide Mr. Diakomihalis with a fair opportunity to compete for selection as a member of its 2019 Senior World Championships team, the Arbitrator is mindful of the Seventh Circuit’s admonition that “Arbitrators are not ombudsmen; they are authorized to resolve disputes under contracts and rules, not to declare how the world should work in the large.” *Lindland v U.S. Wrestling Ass’n, Inc.*, 227 F.3d 1000, 1004 (7th Cir. 2000). Although declaring Mr. Diakomihalis as the winner of match 2 would be authorized and appropriate relief to remedy the violation of his Section 9 rights, the equally important objectives of UWW’s Rules to ensure fair competition among wrestlers, which necessarily requires that match scoring decisions be correct, and to preclude match results from being changed by post-match arbitral review counsels against granting this relief. All things considered, the Arbitrator determines that the just and equitable relief most consistent with and within the scope of the USA Wrestling’s 2019 General World Team Trials Procedures, which establish its agreement governing the Final X World Team Trials with all wrestlers, is to declare the result of match 2 to be a nullity and to be re-wrestled. If Mr. Diakomihalis wins the re-match, then he and Mr. Retherford must wrestle a match 3 to determine the 2019 Senior World Championships team member in the men’s 65 kg classification. The Arbitrator wishes both wrestlers good luck!

Contrary to Mr. Retherford’s contention, the Arbitrator’s granting of this relief to Mr. Diakomihalis is not inconsistent with *Klug and US Ski & Snowboard Ass’n*, AAA Case No. 30

190 00056 06 (January 26, 2006) and the arbitrator's resolution of the merits of that case. *Klug* held that the United States Ski and Snowboard Association did not violate a skier's Section 9 rights by using the FIS points awarded to a skier at World Cup events rather than the skier's place or order of finish in these events in selecting the members of the 2006 U.S. Olympic Winter Games team based on an average of a skier's top two "World Cup results." This case is inapposite because it is not factually similar to or resolve any of the dispositive issues in this case.

Moreover, *Klug* supports the Arbitrator's determination that USA Wrestling violated Mr. Diakomihalis Section 9 rights and the granting of just and equitable relief to remedy this violation:

The whole purpose of the development of written criteria for qualification for the Olympic team is for the contenders to be able to know how they will be selected and against what criteria they will be judged. While it should not be necessary for the Criteria to require interpretation, its must be remembered that these Criteria are written and applicable to a very distinct group: U.S. competitive snowboarders who might qualify for the Olympic team.

In the context of this dispute, this particular group's intent and reading of the Criteria are the determining factors. The snowboarders relied on the Criteria in establishing their competitive techniques and goals.

Id. at ¶¶ 3.3 and 3.4.

DECISION AND AWARD

Based on the foregoing facts and legal analysis, the Arbitrator decides and awards as follows:

To remedy USA Wrestling's violation of the Claimant's Section 9 rights, the result of match 2 in the men's 65 kg classification of the Final X World Team Trials is declared to be a nullity and ordered to be re-wrestled. If Mr. Diakomihalis wins the re-match, then he and Mr. Retherford must wrestle a match 3 to determine USA Wrestling's the 2019 Senior World Championships team member in the men's 65 kg classification. The date and location of the

match 2 re-match and match 3 (if necessary) as well as any other necessary details are to be determined by USA Wrestling and to enable it to timely submit to UWW the name of the wrestler who will compete in the 2019 Senior World Championships in the men's 65 kg classification.

The Administrative fees and expenses of the AAA totaling \$1,300 are to be borne as incurred. The Compensation of the Arbitrator totaling \$4,000 is to be borne as incurred. The parties shall bear their own attorney's fees and/or costs associated with this arbitration.

This Award fully resolves all claims and defenses submitted by the Claimant, USA Wrestling, and the Affected Athlete in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are denied.



August 15, 2019

Matthew J. Mitten, Arbitrator