

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

AAA Case No. 01-16-000-18462

In the Matter of the Arbitration between

Jacob Duehring (**Claimant**)
and
USA Cycling, Inc. (**Respondent**)

with
Bobby Lea (**Affected Athlete**)

AWARD OF ARBITRATOR

I, the undersigned arbitrator (the **Arbitrator**), having been designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic and Amateur Sports Act (the **Act**) and Section 9 of the United States Olympic Committee Bylaws, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on an expedited basis on June 17, 2016 in person, with Claimant, Respondent and Affected Athlete in attendance either in person or by phone and offering argument and evidence, do hereby, AWARD as follows:

I. PROCEDURAL BACKGROUND

1. This matter arises as a complaint by Jacob Duehring (**Claimant** or **Duehring**), an athlete in the sport of track cycling, with respect to the selection made by USA Cycling, Inc. (**Respondent, USA Cycling** or **USAC**) for a spot on the US Team for the Men's Omnium event at the Rio Olympic Games. On April 1, 2016, the USAC selected Bobby Lea (**Affected Athlete** or **Lea**) as the US entrant in the Men's Omnium track cycling event (the **Nomination**). Duehring contends USAC's Selection Committee failed to follow and fairly apply the USAC's "USA Cycling/USAC Athlete Selection Procedures 2016 Olympic Games Men's Track Amended March 16, 2016" (the **Selection Procedures**) in making the Nomination.
2. Claimant filed his demand for arbitration with the American Arbitration Association on May 17, 2016 on the Complaint Form used for filing a United States Olympic Committee (**USOC**) Bylaws Section 9 (**Section 9**) complaint. Claimant, Respondent and Affected Athlete, through their legal counsel participated in a preliminary hearing telephone conference on June 6, 2016 and in the ten hour hearing either in person or by phone which was held in Los Angeles on June 17, 2016.

3. Claimant was represented at the hearing by Steven J. Thompson of Nixon Peabody and telephonically, Michael Straubel, of Valparaiso University Sports Law Clinic. Witnesses for Claimant were: Stephen Hess, outside counsel for USAC, of Sherman & Howard, Jame Carney, and Jacob Duehring, all in person and Andy Sparks and Jeff Pierce by telephone. Attending the hearing as a representative of USAC was Stephen Hess and over the telephone as counsel was Shane Garman, General Counsel of USAC. Other witnesses for USAC were Jim Miller and Mike McCarthy. Affected Athlete was represented by Howard Jacobs and Lindsay Brandon of the Law Offices of Howard L. Jacobs. His witness was Bobby Lea. Gary Johansen, Mia Cameron (from Marquette University Law School) and Kacie Wallace of the USOC attended most of the hearing as observers. I thank all the parties for their excellent submissions and cooperation in the hearing.
4. Claimant's request for relief is that the Arbitrator order USAC to award him the spot as the US entrant in the Men's Omnium Olympic track cycling event.
5. USA Cycling's reply is to request that Claimant's request be denied.
6. Affected Athlete's reply is to request that Claimant's request be denied or in the alternative, if the Arbitrator finds that USAC failed to follow and fairly apply its Selection Procedures, the proper remedy would be to send the matter back to the Selection Committee for further consideration of the discretionary criteria.

II. BURDEN OF PROOF, STANDARD OF REVIEW, JURISDICTION AND APPLICABLE LAW

A. Standard of Review

7. The accepted standard of review for an eligibility case under the Act, where the specific procedures require the exercise of discretion by the national governing body (NGB) is whether the NGB breached its approved and published Selection Procedures, applied its Selection 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 at 5 (August 21, 2011); *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014) at 10; and *Casey Tibbs v. United States Paralympics*, AAA 71-190-E-00406 12 JENF (August 28, 2012) at 14. This has also been stated in multiple selection arbitrations under the Act to mean that a decision by USA Cycling which has no rational basis, i.e. is unreasonable, arbitrary or capricious, will not meet the Act's requirements. Claimant in this case has identified the claimed breach by USAC as a failure to follow and fairly apply its Selection Procedures.
8. The Arbitrator's role is not to determine whether the NGB chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAC in establishing Selection Procedures. Rather, it is a *de novo* review, with no deference, of the application of the published selection procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015) at 5.
9. USA Cycling has "the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion.... Athletes are entitled to know what

standard they have to meet and precisely how such selections will be made.” *McConneloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. “The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA 30 190 0056 06 (January 27, 2006) at 2. This principle will apply to both USA Cycling in adopting its Selection Procedures and to the Arbitrator in applying them to these circumstances.

B. Burden of Proof

10. In a case arising under Section 9 of the USOC Bylaws, claimants have the burden of proving their claims by a preponderance of the evidence. *Tibbs v. United States Paralympics*, AAA Case No. 71 190 E 00406 12 (August 28, 2012) at 14; *Beckom v. U.S. Bobsled and Skeleton Federation*, AAA Case No. 77 190 E 00105 JENF (February 12, 2010); *Nieto v. USA Track & Field*, AAA Case No. 77 190 E 00275 08 JENF (July 19, 2008); *Ruckman v. United States Rowing Ass 'n*, AAA Case No. 77 190 E 00189 08 JENF (May 29, 2008); *Cameron Booth v. United States Rowing Ass 'n*, AAA Case No. 30 190 259 07 (March 16, 2008); *Gault v. United States Bobsled & Skeleton Federation*, AAA Case No. 72 E 190 0002 92 (January 11, 1992). Thus, the burden of proving that the NGB failed to follow and fairly apply its Selection Procedures inconsistently, acted in bad faith and/or violated applicable federal or state laws is on the Claimant.

C. Jurisdiction

11. The Arbitrator has jurisdiction over this dispute pursuant to the Act, because this is a controversy involving Claimant’s opportunity to participate in the Olympic Games, which is required to be resolved by final and binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. 36 U.S.C. §§220522(a)(4)(B). Section 9.1 of the USOC Bylaws prohibits an NGB from denying or threatening to deny “any amateur athlete the opportunity to participate in the Olympic Games.” Section 9.7 of the USOC Bylaws 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.” Sections 9.7 and 9.9 of the USOC Bylaws permit the arbitration proceeding to be expedited.
12. No party objected to arbitral jurisdiction to hear this dispute and all parties proceeded without objection in these proceedings.

D. Applicable Law

13. The Act, 36 U.S.C.A. § 220523(a)(7) provides: “a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition . . .”
14. The Act’s requirements for an NGB’s selection procedures are listed in the Act itself and in the USOC Bylaws which require an NGB to “establish a written procedure, approved by a Designated Committee... of the NGB ... and thereafter approved by the corporation [USOC], to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials”. USOC Bylaws, §8.7(g).

15. USA Cycling has promulgated eight discrete selection procedures that govern selection to all the cycling disciplines that are contested in the Olympic Games. These include the Selection Procedures.
16. The United States was allocated one starting spot for the Omnium at the Olympic Games through the Union Cycliste Internationale (UCI) Qualification System.
17. The applicable Selection Procedures, Section 1.3, provide that to become a Team nominee, the athlete is first nominated to the Long Team and then from that group, to the Men's Omnium Final Team for the Olympic Games, on April 1, 2016.
18. The Selection Procedures provide as follows:

Men's Omnium Final Team Criteria

Maximum number of starters: one (1)

1. All final nominees for the 2016 Olympic Games Team will come from the previously nominated Long Team.
2. Any U.S. eligible athlete placing in the top-three (3) of the 2016 UCI Elite Men's Omnium World Championships, London, England, May 1-6, 2016 will be nominated to the 2016 Olympic Games Team.
3. If Positions remain after considering the preceding criterion, then athletes may be nominated to the 2016 Olympic Games Team by the USA Cycling Selection Committee, following USA Cycling's Principles of Athlete Selection (Section 2) and subject to review and approval of the USA Cycling Selection Committee (Section 11).

...

2. Discretionary Selection (if applicable)

- 2.1. Provide rationale for utilizing discretionary selection (if any):

The purpose of discretionary athlete nomination is to allow USA Cycling the ability to nominate to the USOC the best physically, psychologically and technically prepared team.

Discretionary Nomination will be based solely on USA Cycling's Principles of Athlete Selection (Section 2) and subject to review and approval of the USA Cycling Selection Committee (Section 2).

...

Attachment B

PRINCIPLES OF ATHLETE SELECTION

...USA Cycling will be responsible for the nomination and selection of athletes to participate in all protected events. In fulfilling this obligation, USA Cycling will use

the principles described in this document. At all times, within the context of the event, USA Cycling will strive to send the best and most prepared team to compete in protected events.

USA Cycling Selection Committee

USA Cycling will maintain a Selection Committee for the purpose of reviewing and approving the final nominations of individual athletes to ... [the Olympic Games]. The Selection Committee provides oversight on the nomination process of athletes to protected events and is the de facto body responsible for the final nomination of athletes to respective teams. This obligation includes review and approval of the process by which athletes receive automatic nominations to teams, as well as the review and final approval of athletes nominated by USA Cycling coaching staff according to the USA Cycling Principles of Selection.

...

Importance of Professional and International Competition

... results in high-level international competition should be the benchmark for selection. Therefore, whenever possible in the nomination of any athlete to a protected event, performances in top-level, professional and/or international competition will take precedence over performances in domestic competition.

USA Cycling's Athlete Selection Procedures and Philosophy

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

1. The **FIRST** priority is the selection of athletes who have demonstrated that they are medal capable.
2. The **SECOND** priority is the selection of those athletes who have demonstrated that their presence on the team will have a positive impact on the overall team performance and create a **MEDAL CAPABLE** team environment.
3. The **THIRD** priority is the selection of those athletes who have demonstrated the capacity to advance to the level of medal capability in the near future.

...

USA Cycling Principles of Discretion

...

Discretionary nominations may be employed in the event that positions are available after the application of any automatic criteria. ... The primary purpose of discretionary athlete nomination is to ensure that:

- a. USA Cycling has the ability to nominate the best physically, psychologically and technically prepared athlete in order to produce medal-winning performances.

...

Data to Support Discretionary Nominations and Selections

Data to be considered in making discretionary nominations may include any or all of the following in no specific order of priority. The inclusion and order of priority for any data set may be different from event to event as determined by the USA Cycling Coaching staff and USA Cycling Selection Committee.

1. Race results in top international competition;
2. Race results in top domestic competition;
3. Head to head competition results between multiple athletes in consideration for a discretionary position;
4. Athlete's ability to enhance team performance;
5. Athlete's future medal capability;
6. Technological data on athlete and or event. By way of example this could include but is not limited to: times on similar courses or events, athlete power data, aerodynamic drag data (if relevant) or event demand data.

Definitions and Criteria

1. **Medal Capable.** A medal capable athlete is one who has demonstrated the ability to produce a medal winning result by:
 - medal finish(es) at the most recent World Championships or Olympic Games; with demonstration of continued ability to perform at that level or higher based on performances in recent top-level international competition; and/or
 - consistently beating the World's best in recent (past 12 months) international competition with top-quality fields; and/or
 - other historical performances in International competition that would indicate the athlete is capable of a medal winning performance.
2. **Enhancing Team Performance.** An athlete who can enhance team performance is one who, based on their international experience and current level of team performance, is expected to contribute substantially to the overall team performance or to the performance of a medal capable team. In the case of US Cycling selection philosophy, this is deemed to be particularly important in the case where a medal capable individual has been selected to the team and an athlete's contribution may assist the medal capable athlete in a medal-winning performance. This effect also is of primary

importance when nominating athletes for team-based events (Men's Road Race, Women's Road Race, Team Pursuit, Team Sprint, and Madison) where the synergy of the team members and/or the ability to play a strong support role is critical to the success of the team....

III. FINDINGS OF FACT

Below is a summary of the relevant facts based on the parties' written and oral submissions, which are relevant to this Arbitrator's reasoning. The parties submitted other additional facts and evidence which was also considered by the Arbitrator.

19. There is no requirement that USA Cycling send anyone in the one starting spot at the 2016 Olympic Games for the Omnium. As a result, USA Cycling could elect to start an athlete from a different event in the Omnium or decline to name either Lea or Duehring to the Olympic Team and give its Omnium spot back to the UCI for reallocation.
20. The Selection Procedures articulate general standards for participation on USA Cycling's "Team," and then articulate additional performance standards that are used to cull the best competitors from those athletes who otherwise satisfy the general requirements into a Long Team and then into a Final Team.
21. The parties considered that the Selection Procedures were the applicable principles to be used for the selection of the one spot at issue. The parties also did not contest the composition of the Selection Committee.
22. Lea is a 27-time national track cycling champion, a two-time Olympian, and the only podium finisher in a UCI World Cup Omnium race from the United States ever in the sport of track cycling. Lea has competed in over 200 USA Cycling-recognized competitions.
23. Duehring is also an athlete in the sport of track cycling and has competed both with and against Lea in events past. Duehring did not present his entire results list but he did qualify for the Long Team in the Omnium for the 2015/16 season. He was not selected to the one spot on the Final Team.
24. Lea and Duehring were the only athletes on the Long Team for the Omnium and thus the only athletes under consideration for the Final Team, i.e. the Olympic Games Omnium spot. Lea was placed on the Long Team by an arbitrator on March 25, 2016. Duehring was designated on the Long Team by USAC.
25. USA Cycling could only enter one athlete in the two World Cup events in 2015, the one World Cup event in 2016 and the 2016 UCI Elite Men's Omnium World Championships (the **World Championships**). During the Final Team Qualification Period identified in the Selection Procedures, Duehring competed in the World Championships and one other international omnium event. Lea, who was ineligible at that time due to a doping suspension, competed in no cycling competitions during the Final Team Qualification Period.

26. The only way to automatically qualify for the Final Team was to be on the Long Team and to finish in the top-three at the 2016 World Championships held at the end of the Final Team Qualification Period. Thus, Duehring was the only athlete who had an opportunity to meet the automatic qualification standard because he was able to compete in the World Championships, but he did not finish in the top-three.
27. According to the Selection Procedures, USAC's Selection Committee is charged with reviewing and approving the final nominations of athletes to the Olympic Games. This duty includes review and approval of the process by which athletes receive automatic nominations as well as review and final approval of athletes nominated by the USAC coaching staff according to the Principles of Athlete Selection which are part of the Selection Procedures.
28. In this instance, with neither athlete qualifying for automatic nomination, the Selection Committee had to apply the Principles of Athlete Selection.
29. USAC's Selection Committee convened a telephonic meeting to discuss the Omnium Final Team selection on April 1, 2016. At that meeting, USAC's Director of Athletics, Jim Miller, presented information regarding Lea and Duehring for consideration by the Selection Committee under the Selection Procedures.
30. The information included submissions by Lea and Duehring (the **Athlete Submissions**). It also included information supplied by Mr. Miller which was presented in a format showing various data points for use of the Committee, relevant to the Selection Procedures, including their competition results, not just within the Long Team or final Qualification Period, but also prior to these Qualification Periods.
31. There was some controversy about the accuracy of some of the data presented, with one member of the Selection Committee believing there were errors in Lea's time, in his favor, and Lea who believed the errors were the opposite.
32. The minutes of the Selection Committee meeting reflect that the Selection Committee concluded that neither Lea nor Duehring met the standards for selection as Medal Capable (Priority 1), though two members of the Committee who had been track cyclists did vote for finding Lea Medal Capable. The Selection Committee members determined unanimously that Priority 2 – Enhancing Team Performance – would not be considered at all, because in the opinion of the committee, it was “not relevant” in the selection for an individual event. The Committee found unanimously that neither athlete was Future Medal Capable (Priority 3).
33. The following Committee members testified during the hearing: Jeff Pierce, Mike McCarthy and Jame Carney. In addition, Stephen Hess (**Hess**) who attended the Selection Committee meeting as counsel for USAC testified. All were consistent in identifying that the telephonic meeting was a long one, the members had received and discussed the Athlete Submissions as well as the data compiled by Mr. Miller, the members reviewed and discussed the definitions of the various Priorities identified in the Selection Procedures and the data relevant to the decision regarding the Nomination.
34. After the Committee made the findings that none of the Priorities in the Selection Procedures were met by either athlete, there was a “conditional vote” taken, using the

criterion of “which athlete was most likely to achieve the best result in the Men’s Track Omnium at the 2016 Olympic Games.” The testimony of the Committee members, other than Mr. Carney, was that they understood this to be a vote for the selection of the Olympic spot. The testimony was also that the decision had been difficult for the Committee members due to Lea’s just completed doping suspension and some were reluctant to select him for the Omnium spot.

35. After the Committee voted that Lea was the athlete most likely to achieve the best result in the Men’s Track Omnium at the 2016 Olympic Games, the Committee was advised: there would be a meeting where Hess and USAC would determine whether the criterion being employed for the Nomination was viable under the circumstances: i.e. the three express Priorities in the Principles of Athlete Selection had been exhausted; USAC would also determine if it was politically or legally possible to decline to name either Lea or Duehring to the Final Team and perhaps give up or trade the Olympic spot for one in another discipline; and each member of the Selection Committee could request a subsequent call by the end of the day if he or she felt that further discussions were warranted.
36. Hess testified that he and USA Cycling determined that the criterion employed was supportable, was consistent with the Selection Procedures and the Principles of Athlete Selection, and that the Selection Procedures did not suggest any alternate criterion. USA Cycling determined that a decision to decline to name either Lea or Duehring was not ultimately viable. No Selection Committee member requested a conference call for further discussion and at the end of the day on April 1, 2016, the conditional vote was accepted and Lea was selected to the Final Team and the Nomination announced.

IV. SUBMISSIONS OF THE PARTIES

A. Claimant

37. Claimant argues that the USAC, if it had applied the Selection Procedures fairly and as written, would have named Claimant to the Olympic Team for the Omnium. The Selection Procedures were not applied as written, their plain writing is clear and unambiguous and they need to be applied fairly as written.
38. The Selection Committee failed to follow and fairly apply the Selection Procedures, specifically by: (a) ignoring the time periods (the **Qualification Periods**) during which specific events were listed for qualification on the Long Team and then for the Final Team, the results of which international events should have been used exclusively as the benchmark for discretionary selection to the Olympic Team; and (b) failing to consider the second listed priority when assessing the Discretionary Criteria, i.e. Enhancing Team Performance. The plain writing of the Selection Procedures is clear and unambiguous and they need to be applied as written.
39. The effect of the Qualification Periods is clear from a comparison of the Long Team criteria and the Men’s Omnium Final Team Criteria: the Men’s Omnium Final Team Criteria do not list the events occurring in the Long Team Qualification Period, but instead list events, including the World Championships, which occurred in the Final Team Qualification Period. To allow consideration of events outside the Final Team

Qualification Period in the Final Team selection would run counter to the scheme set forth in the criteria, and strip the Final Team Qualification Period of any meaning at all. As such, the Selection Procedures make clear that the events to be considered for Final Team selection are those that fall within the Final Team Qualification Period. The Selection Committee considered events outside the Final Team Qualification Period of January 1, 2016 to March 7, 2016 in nominating Lea, who did not compete during this period.

40. Duehring does not dispute the conclusions that neither Lea nor Duehring met the standards for selection as Medal Capable (Priority 1) or Future Medal Capable (Priority 3). However, when the Selection Committee determined that Priority 2 – Enhancing Team Performance – was “not relevant”, it failed to apply Priority 2 which is mandatory.
41. In this regard, Duehring argues that the Selection Committee failed to consider the “team chemistry” that could be created by selecting Duehring to the Final Team and the potential to enhance the performance of the Women’s Team Pursuit Team, as evidenced by a letter of support provided by a medal capable member of that Team, Sarah Hammer.
42. Claimant argues the Selection Committee, after concluding that neither Claimant nor Affected Athlete met the priorities listed in the Selection Procedures’s Principles of Athlete Selection, then created an entirely new criterion of “best athlete” which was not within the rules of the Selection Procedures.
43. In addition, in adopting the “best athlete” criterion to make the selection, the Selection Committee removed the limitation of results achieved during the Final Team Qualification Period, and ignored Claimant’s results in international competition during that period, which were to be given precedence over other results. USAC’s failure to follow this rule in athlete selection is a continuing problem, and undermines its entire selection process. See *Komanksi* at 14 (“It appears that USAC simply failed to give sufficient primary consideration to international results and performances over domestic results and performances, instead choosing to favor other factors not identified in the Selection Procedures, some of which were only asserted at the hearing or in USAC’s brief.”) USAC did not give precedence to the international competition results during the Final Team Qualification Period in making its selection and should have.
44. Claimant also argued that the Selection Committee did not understand that their conditional vote was for the nomination of the Men’s Omnium spot, and that a “backroom deal” had been made after the Selection Committee hearing by non-members, but he presented no evidence to this effect and during the hearing, he conceded this was not his strongest argument.

B. Respondent

45. USA Cycling argues that it followed its Selection Procedures while selecting the Final Team for the Men’s Track Omnium for the 2016 Olympic Games. After neither Lea nor Duehring met the automatic selection standard of achieving a top three finish at the World Championships, the Selection Committee was required to make a discretionary selection applying the Principles of Athlete Selection.
46. After applying the three prioritized criteria – Medal Capable, Enhancing Team Performance, and Future Medal Capable – USA Cycling was left without a selection

because neither athlete met any of the criteria. Rather than electing to fill the Men's Omnium spot with a racer from a different discipline to satisfy other overall team needs or to give the Omnium spot back to the UCI, USA Cycling identified a rational criterion and supported its decision based on the consideration of permissible data as provided in its Principles of Athlete Selection. When the data was considered under the criterion of which athlete was most likely to achieve the best results at the 2016 Olympic Games, Lea was selected by an overwhelming majority of the Selection Committee.

47. The Second Priority of the Selection Procedures, Enhancing Team Performance, is used when USA Cycling chooses athletes who are not "Medal Capable" – that is, they are not deemed reasonably capable of winning medals themselves – but who have skills that can be employed for the benefit of the Medal Capable athletes to enhance the team's likelihood of medal performances. The definition of the second priority as set out in the Principles is set forth above in Para 18.
48. Prior arbitrations over this particular criterion have crystalized how it is to be applied. In *Komanski v. USA Cycling, Inc.*, at 13, the arbitrator found "the assessment of 'enhancing team performance' has to be exclusively focused on 'international experience and current level of international performance.'"
49. Since the Men's Track Omnium is an individual event, there is no team component to the event or to any of the six events that make up the greater Omnium. Duehring attempts to construe the minutes of the Selection Committee meeting as indicating the Selection Committee "ignored" the criterion of "Enhancing Team Performance." Rather the minutes indicate that the Selection Committee determined whether, in its judgment, "Enhancing Team Performance" applied to a selection for a single athlete to an individual event. In doing so it considered the language of the Principles and guidance from the decision in *Komanski*. The Selection Committee properly determined that Enhancing Team Performance did not apply and could not apply because Duehring's *international experience and current level of international performance* could not contribute to the performance of some overall team.
50. USAC points to the Duehring Athlete Submission, which states "[t]his selection priority is primarily important when nominating athletes for team-based events, which is not the case here. On this point, I can only say that I will be a supportive team member." This priority is focused solely on how an athlete can enhance team performance based on their own international experience and current level of international performance and it is clear that Duehring also interpreted it in that manner.
51. USA Cycling seeks to select those athletes who are "the best physically, psychologically and technically prepared in order to produce medal-winning performances." After several hours of discussion on April 1, 2016, the Selection Committee did not believe that either athlete was Medal Capable, Enhanced Team Performance or was Future Medal Capable. At that point, the Selection Committee decided to take a conditional vote using the criterion of "which athlete was most likely to achieve the best result in the Men's Track Omnium at the 2016 Olympic Games." Prior to voting to use that specific criterion, Selection Committee members were given the opportunity to suggest a different criterion, but none was forthcoming. This criterion was limited to consideration of the data presented and discussed by the Selection Committee during the extended meeting, all of

which was permissible under the Principles of Athlete Selection section of the Selection Procedures.

52. Because the failure of either athlete to satisfy any of the express criteria and the employment of the “best projected Olympic finish” was an unexpected development, USA Cycling wanted to make absolutely certain that the selection was supportable before announcing it. Accordingly, the selection was deemed “conditional” and subject to clearance by USA Cycling on the conditions that were later cleared by USAC: USA Cycling and its counsel determined that the criterion employed was supportable, was consistent with the Selection Procedures, and that the Selection Procedures did not suggest any alternate criterion. USA Cycling determined that a decision to decline to name either Lea or Duehring was not ultimately viable. No Selection Committee member requested a conference call for further discussion.
53. Duerhing argues that the only results the Selection Committee can consider when selecting the Final Team are those that are achieved during the Final Team Qualification Period. This does not consider the Selection Procedures as a whole. The clear purpose of the Final Team Qualification Period was to encompass the event through which athletes could automatically qualify for the Final Team, namely the World Championships.
54. Duehring’s interpretation leads to an absurd result. The Final Team Qualification Period is listed as running from January 1, 2016 – March 7, 2016, when there was one UCI World Cup event and the World Championships. Knowing that the United States had only one Omnium spot for those two events it would be absurd to interpret the Final Team Qualification Period as the time period in which Long Team members could achieve results to support one’s discretionary selection to the Final Team over the other – only one could compete.
55. If the Final Team Qualification Period limits the results that the Selection Committee may consider when naming the Final Team under the Discretionary Criteria, there would be no point in naming a Long Team because only one athlete could obtain results during that period at top-level international competition. This is an absurd result and the Selection Procedures should not be interpreted in such a manner.
56. If no athlete automatically qualified, the Principles of Athlete Selection controlled the selection and the Principles have their own lookback periods. When Duehring did not finish on the podium at the World Championships, and Lea obviously did not compete at the World Championships, the Principles of Athlete Selection became the controlling method to make the discretionary selection.
57. Not only did Duehring not meet the automatic selection standard, he did not meet any of the other prioritized criteria under the Principles when compared to Lea. Since neither athlete is Medal Capable, Enhances Team Performance or is Future Medal Capable, the Selection Committee could use any of the following data to make the discretionary selection under the Principles of Athlete Selection to choose the “athlete most likely to achieve the best result in the Men’s Track Omnium at the 2016 Olympic Games”:
 1. Race results in top international competition;
 2. Race results in top domestic competition;

3. Head to head competition results between multiple athletes in consideration for a discretionary position;
 4. Athlete's ability to enhance team performance;
 5. Athlete's future medal capability;
 6. Technological data on athlete and or event. By way of example this could include but is not limited to: times on similar courses or events, athlete power data, aerodynamic drag data (if relevant) or event demand data.
58. There is no set lookback period for considering any of the above data when making a discretionary selection.
59. Duehring in his Athlete Submission, included numerous examples of experience and results outside the Final Team Qualification Period, which, by Duehring's own argument, would be irrelevant for consideration by the Selection Committee for the Final Team nomination. In this same Submission, Duehring suggested that USA Cycling consider Lea's times from 2014 to demonstrate that Lea was not capable then and is not medal capable now. His Submission makes it clear that Duehring did not interpret the Final Team Nomination Period as limiting the scope of data that may be considered when making a discretionary selection.
60. Duehring should not be allowed to make the argument to the Selection Committee that results outside the Final Team Nomination Period should be considered, and then when he does not like the Selection Committee's decision, argue to the Arbitrator that the results he submitted to the Selection Committee should not have been considered.

C. Affected Athlete

61. The USAC Selection Procedures can be simply divided into 2 parts: (i) the criteria for automatic qualification to the Olympic team (hereinafter "automatic criteria"); and (ii) the "discretionary criteria" if positions remain after application of the automatic criteria.
62. If either Lea or Duehring finished in the top-three at the World Championships in the Omnium, they would have automatically qualified for the Olympic team, with no need to consider the discretionary criteria. However, this did not happen: Lea did not compete at the World Championships due to his serving the last days of his reduced suspension; and Duehring finished in last place at the World Championships. Because neither athlete met the automatic criteria USAC was then required to and did move on to the discretionary Selection Procedures.
63. Claimant's argument that only results during the Final Qualification Period, i.e. between January 1, 2016 and March 7, 2016 could be considered in the application of the discretionary Selection Procedures is proven false by simply reviewing the language of the First Priority discretionary criterion:

Definitions and Criteria

1. **Medal Capable.** A medal capable athlete is one who has demonstrated the ability to produce a medal winning result by:
 - medal finish(es) at the most recent World Championships or Olympic Games; with demonstration of continued ability to perform at that level or higher based on performances in recent top-level international competition; and/or
 - consistently beating the World's best in recent (past 12 months) international competition with top-quality fields; and/or
 - other historical performances in International competition that would indicate the athlete is capable of a medal winning performance.
64. Based on this definition, Claimant's assertion that USAC was precluded from relying on results that were not achieved between January 1, 2016 and March 7, 2016 is clearly incorrect.
65. Contrary to Claimant's assertion, USAC did not ignore the second Priority. Rather, the Selection Committee considered it and determined that it did not resolve the selection of the Omnium rider. The Minutes of the Selection Committee state:
- “The committee then determined whether or not the criterion of “Enhancing Team Performance” had any relevance in the selection for an individual event. Mr. Hess went on to discuss the relevance, interpretation and application of “an athlete's ability to enhance team performance” citing rulings from prior arbitrations including the recent Komanski decision, and the committee *unanimously* agreed that this was not a relevant criterion and the discussion moved on to Future Medal Capability.” [emphasis added].
66. The Selection Procedures - which encompass both team and individual events - make it clear that the “Enhancing Team Performance” criterion applies primarily to team events. See Definition above in Para 18.
67. USAC correctly considered this criterion, and correctly concluded that the addition of a single Omnium rider could not contribute substantially to the overall team performance or to the performance of a “medal capable” team, regardless of which rider was selected.
68. Claimant has to prove that the Selection Procedures were not followed rather than that he disagrees with USAC's application of the facts to their criteria.
69. Contrary to Claimant's assertion, USAC did not create a new criterion of “best athlete.” It simply used this language in describing the already existing criterion. The Selection Committee minutes state:
- “It was discussed that if anyone on the committee objected following the vote for the ‘best athlete’ (specifically, who is most likely to earn the best result in Rio based on the data and information submitted) ...” [emphasis added].

This criterion – who is most likely to earn the best result in Rio based on the data and information submitted – can be found in the Selection Procedures, at Attachment B, p. 22:

USA Cycling Principles of Discretion

Discretionary Nominations and Selections

Discretionary nominations may be employed in the event that positions are available after the application of any automatic criteria ...

The primary purpose of discretionary athlete nomination is to ensure that:

- a. USA Cycling has the ability to nominate the best physically, psychologically and technically prepared athlete in order to produce medal-winning performances

70. Therefore, even if USAC determined that neither athlete was medal capable, its Selection Procedures still required that it select the “best athlete” with the goal of producing medal-winning performances. This is exactly what USAC did, in analyzing the data that was presented and selecting Lea. As with all of Claimant’s other arguments, this claim of a “new criteria” is false.

71. Lea further argues that USAC and the Selection Committee, based on a review of the email exchanges submitted during this hearing, did not want to select Lea because of his doping suspension. They would have preferred to select Duehring if they could have. Nevertheless, when the Committee applied the Selection Procedures, as written, to the consideration of the two members of the Long Team, they had no choice but to select Lea.

V. MERITS

72. Claimant in this case has identified the breach by USAC as a failure to follow and fairly apply its Selection Procedures. In reviewing USAC’s application of its Selection Procedures, I am not substituting my judgment for that of the experts on the properly composed Selection Committee, but rather reviewing the application of the Selection Procedures as published to the facts of this particular case. In addition, I look to whether each of the two athletes competing for this spot were aware of the criteria by which they would be judged by USAC in making its selection.

73. The burden of proving that USAC failed to follow and fairly apply its Selection Procedures inconsistently, acted in bad faith and/or violated applicable federal or state laws is on the Claimant.

74. Claimant did not prove that the competitions held during the Qualification Periods are the only ones to be considered by the Committee in making a discretionary selection. There is only one event listed in the Men’s Omnium Final Team Criteria is the World Championships and that is clearly, as stated, for an automatic qualification when an athlete finishes in the top-three. The words of Section 1.3 are clear in stating that the Final Team Qualification Period serves the purpose of identifying an automatic

qualification. If that does not occur, the discretionary criteria are then used in making the selection.

75. The discretionary criteria clearly and specifically point to events outside the Qualification Periods by referencing in the definition of Medal Capable, for Priority 1 of the “USA Cycling Principles of Discretion”: -medal finish(es) at the most recent World Championships or Olympic Games; with demonstration of continued ability to perform at that level or higher based on performances in *recent* top-level international competition; and/or -consistently beating the World’s best in recent (past 12 months) international competition with top-quality fields; and/or -*other historical performances* in International competition that would indicate the athlete is capable of a medal winning performance. Additionally, The Principles of Athlete Selection specifically list “Data to Support Discretionary Nominations and Selections” as follows: “1. Race results in top international competition; 2. Race results in top domestic competition; 3. Head to head competition results between multiple athletes in consideration for a discretionary position;... 6. Technological data on athlete and or event.” There is no Qualification Period applied to these data.
76. Mr. Carney stated that such open periods would open for consideration athletes who achieved such results a very long time ago. This is logical, but the Long Team process with its Qualification Period as the first mandatory requirement does preclude that possibility. In addition, the athletes under consideration are limited to currently internationally competitive athletes at the highest level as the Selection Procedures explicitly provide that they are intended to nominate the “best physically, psychologically and technically prepared athlete in order to produce medal-winning performances”. These terms are all clearly defined in the Selection Procedures.
77. In addition, Duehring, in his Athlete Submission, included numerous examples of experience and results outside the Final Team Qualification Period, which, using Duehring’s own argument, would be irrelevant for consideration by the Selection Committee for the Final Team nomination. In this same Athlete Submission, Duehring suggested that USA Cycling consider Lea’s times from 2014 to demonstrate that Lea was not capable then and is not medal capable now. His Submission makes it clear that Duehring did not interpret the Final Team Qualification Period as limiting the time scope of data for the Selection Committee to consider when making a discretionary selection. He can not now argue that the Selection Procedures were not interpreted by the Selection Committee as they were written. He interpreted them the same way as the Selection Committee.
78. I find the Committee properly considered events outside of the Final Team Qualification Period of January 1, 2016 to March 7, 2016 in nominating Lea.
79. In the same vein, Claimant did not meet his burden to prove that USAC did not give precedence to international competition results during the Final Team Qualification Period in making its selection and should have. I find that international results were considered by the Selection Committee, in the benchmark periods identified in the Selection Procedures for Discretionary Selection, as set forth above. Precedence was given to those international results, but, as found, there was no requirement that any results considered be achieved solely in the Final Team Qualification Period.

80. The argument that when the Selection Committee determined that Priority 2 – Enhancing Team Performance – was “not relevant”, it failed to apply Priority 2 also fails. The Committee minutes reflect that Hess cited rulings from prior arbitrations and the definition of Enhancing Team Performance placing emphasis on international experience and current level of international performance to contribute to the team. This Priority was not ignored but rather considered, and the Committee determined that it was not relevant in an individual sport. The evidence Duehring submitted to support his position that he did Enhance Team Performance was mixed: he was aware Sarah Hammer, a member of the Women’s Team Pursuit Team, who will be competing in Rio, considered he was helpful to the Women’s Team Pursuit Team; but he also cited in his Athlete Submission that this “selection priority is primarily important when nominating athletes for team-based events, which is not the case here. On this point, I can only say that I will be a supportive team member.” The definition calls for the athlete to “enhance” team performance, based on international experience. Being a supportive member is not what is required and Duehring understood that was the plain meaning of this Priority by so stating.
81. Finally, Claimant’s argument that the conditional vote was not understood to be the nomination of the Final Team, i.e. the Men’s Omnium spot on the Olympic Team, was not supported by the testimony of the Committee member witnesses. The Committee knowingly voted for the Nomination, subject to the conditions. Those conditions were addressed and the Nomination became final. This was understood by all the Selection Committee members except Mr. Carney. Thus, the nomination stands.
82. Claimant’s request is therefore denied.

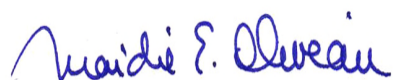
VI. ALLOCATION OF ARBITRATION FEES AND COSTS

83. Claimant and Respondent each paid half of the arbitration fees and neither made a request for any reallocation of such fees. Under AAA Commercial Rules Section R-50, the arbitrator has discretion to assess and award such fees and costs in the final award. Accordingly, each of USAC and Claimant having borne half of the arbitration fees and costs, no reallocation of fees is made.

Decision

I therefore rule as follows:

1. The appeal filed by Claimant is dismissed.
2. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



Maidie Oliveau
Sole Arbitrator
Dated: June 21, 2016