

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

ERIN HUCK

v.

USA CYCLING, INC.

and

CHLOE WOODRUFF

LEA DAVISON

HANNA FINCHAMP

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AAA Case No. 01-21-0004-3201

FINAL ARBITRATION AWARD

I, the undersigned arbitrator (“**Arbitrator**”), having been designated in accordance with the Ted Stevens Olympic and Amateur Sports Act (“**Act**”), 36 U.S.C. § 220505 *et seq.*, and Section 9 of the United States Olympic Committee (“**USOPC**”) Bylaws, having been duly sworn, and having duly heard the proofs and allegations, and considering any and all evidence provided by Erin Huck (“**Claimant**” or “**Huck**”), USA Cycling, Inc. (“**USAC**”), and Chloe Woodruff (“**Woodruff**”), Lea Davison, and Hanna Finchamp (collectively “**Affected Athletes**”) (individually “**Party**” or collectively the “**Parties**”) hereby finds, concludes, determines, and awards as follows:

I. Procedural History

On June 16, 2021, Claimant submitted her *Commercial Arbitration Rules Demand for Arbitration and Section 9 of USOPC Bylaws Complaint Form*.

On June 17, 2021, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On June 17, 2021, the Parties exchanged emails and agreed upon a briefing schedule, schedule for exchange of exhibits and information, and the date and time of hearing. The Parties agreed to conduct the evidentiary hearing on June 24, 2021 beginning at 10:00 a.m. CT.

On June 17, 2021, AAA issued the *Notice of Hearing* confirming the evidentiary hearing to be held on June 24, 2021 beginning at 10:00 a.m. CT.

On June 17, 2021 at 5:28 p.m. CT, AAA issued the *Notice of Pending Arbitration and Hearing*. Such notice provided the Parties and Affected Athletes with log-in information necessary to join the Zoom hearing.

On June 23, 2021, a pre-hearing conference was held to address matters to presented during the final hearing. During the pre-hearing conference, the Parties confirmed there was no objection to the undersigned serving as the Arbitrator in this matter and no objection to the American Arbitration Association (“AAA”) administering the arbitration. No subsequent objection was filed or made.

The final hearing was held via Zoom conference on June 24, 2021 commencing at 10:00 a.m. CT and concluding at 7:23 p.m. CT. During the hearing, Erin Huck appeared along with her counsel, Howard L. Jacobs and Katy Freeman of the Law Offices of Howard L. Jacobs, USAC appeared along with its counsel, Stephen A. Hess of Sherman & Howard, LLC, and Chole Woodruff appeared along with her counsel, Carla Varriale of Segal McCambridge Singer & Mahoney, Ltd. In addition to Parties and counsel, the following individuals attended the telephonic hearing: Sara Pfilpsen (USOPC), Kacie Wallace (USOPC Office of the Ombudsman), Bryce Boarman (USOPC Office of the Ombudsman), Kayla Williams (USOPC Office of the Ombudsman), Emily Azevedo (USOPC Office of the Ombudsman), Shannon Calhoun (Sherman & Howard, LLC), Rick Rivera (Sherman & Howard, LLC), Bob Neel (Sherman & Howard, LLC), Alejandro Armelles Bello (Sherman & Howard, LLC), Shane Garman (USAC), Jeff Pierce (USAC), and Holden Cammack (Barlow Garsek & Simon, LLP). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

II. Evidence Submitted by the Parties

The Parties submitted the exhibits and called witnesses as set forth below. All such exhibits were admitted into evidence.

A. Claimant

Claimant submitted exhibits labeled C-1-C-21 and such exhibits included the following:

- Exhibit C-1: Amended USA Cycling Athlete Selection Procedures 2020 Olympic Games – Men’s and Women’s Mountain
- Exhibit C-2: MTB Olympic Long Team Data Set
- Exhibit C-3: Erin Huck’s Discretionary Selection Submission to USAC
- Exhibit C-4: 2020 Overall UCI Rankings
- Exhibit C-5: April 9, 2021 US Cup C1 Race Result
- Exhibit C-6: April 16, 2021 US Cup C1 race Result
- Exhibit C-7: 2021 Albstadt (WC #1) Results

- Exhibit C-8: 2021 Nove Mesto (WC #2) Results
- Exhibit C-9: Selection Committee Meeting Minutes
- Exhibit C-10: June 11, 2021 Request for Information to USAC
- Exhibit C-11: June 14, 2021 Response from USAC
- Exhibit C-12: Woodruff v. Huck World Cups Time
- Exhibit C-13: Craig v. USA Taekwondo (AAA 77 190E 00144 11 JENF)
- Exhibit C-14: Lea v. USA Cycling (AAA 01 16 0000 8307)
- Exhibit C-15: Komanski v. USA Cycling (AAA 01 15 0004 9907)
- Exhibit C-16: Hyatt v. USA Judo (AAA 01 14 0000 7635)
- Exhibit C-17: McConnelloug and USA Cycling (AAA 30 190 00750 04)
- Exhibit C-18: Klug v. US Ski and Snowboard Association (AAA 30 190 00056 06)
- Exhibit C-19: Viola v. USA Diving (AAA 30 190 00828 05)
- Exhibit C-20: Marable v. USA Wrestling (AAA No. 01 15 0004 1998)
- Exhibit C-21: USAC Website Page on Selection Committee Members
- Exhibit C-22: Meeting Agenda 5-27-21: USAC Selection Committee – Tokyo 2020 MTB Selection
- Exhibit C-23: Email from Jeff Pierce to Multiple Athletes dated April 15, 2021

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

1. Dean Golich
2. Erin Huck

B. USAC

USAC submitted exhibits labeled R-A - R-Y and such exhibits included the following:

- Exhibit R-A: Email from Jeff Pierce to Multiple Individuals dated May 27, 2021
- Exhibit R-B: USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021

- Exhibit R-C: USAC Selection Committee – Tokyo 2020 MTB Selection: Meeting Agenda 5-27-2021
- Exhibit R-D: MTB Olympic Final Team Women’s Worksheet
- Exhibit R-E: Data Support Discretionary Selection: Haley Batten
- Exhibit R-F: Letter from Haley Batten supporting Discretionary Selection dated May 3, 2021
- Exhibit R-G: Email from Chloe Woodruff to Jim Miller dated May 19, 2021
- Exhibit R-H: Letter from Erin Huck supporting Discretionary Selection undated
- Exhibit R-I: Letter from Erin Huck supporting Discretionary Selection undated
- Exhibit R-J: Hannah Finchamp Olympic Data Set
- Exhibit R-K: Hannah Finchamp Olympic Data Set (Updated)
- Exhibit R-L: Letter from Lea Davison supporting Discretionary Selection dated May 3, 2021
- Exhibit R-M: Letter from Lea Davison supporting Discretionary Selection dated May 18, 2021
- Exhibit R-N: Emails Thread between and amongst the Selection Committee dated December 3, 2019
- Exhibit R-O: Emails Thread between and amongst the Selection Committee dated December 2, 2019
- Exhibit R-P: Email from Jan Benidorm to Jeff Pierce approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 8, 2021
- Exhibit R-Q: Email from Beth Hernandez to Timmy Duggan approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 7, 2021
- Exhibit R-R: Email from “E R” to Jeff Pierce approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 7, 2021
- Exhibit R-S: Email from Adam Duvendeck to Timmy Duggan approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 7, 2021
- Exhibit R-T: Email from Timmy Duggan to Stephen Ettinger approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 7, 2021
- Exhibit R-U: Email from Christine Thorburn to Jan Benidorm approving USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021 dated June 8, 2021

Exhibit R-V: Email from Jeff Pierce to the Selection Committee dated May 17, 2021

Exhibit R-W: Email from Jeff Pierce to the Selection Committee dated June 7, 2021 providing the USA Cycling Tokyo 2020 MTB Selection Call: Meeting Minutes 5-27-2021

Exhibit R-X: Email from Jeff Pierce to the Selection Committee dated May 25, 2021 providing the Athlete Data Sets

Exhibit R-Y: Email from Jeff Pierce to the Selection Committee dated May 25, 2021 providing MTB Worksheets and Data

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

1. Jeff Pierce
2. Beth Hernandez

C. Affected Athletes -- Woodruff

Woodruff relied on the exhibits submitted by USAC and did not offer additional exhibits. Woodruff called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Chloe Woodruff

Each one of the Affected Athletes was invited to attend the hearing. Woodruff was the only one of the Affected Athletes that took part in the hearing.

III. Notice to Affected Athletes

As stated above, on June 17, 2021 at 5:28 p.m. CT, AAA issued written notice via email to the Parties and Affected Athletes. A copy of the *Notice of Pending Arbitration and Hearing* is set forth verbatim as follows:

Erin Huck has filed a Complaint under Section 9 of the USOPC Bylaws and a Demand for Arbitration with the American Arbitration Association to challenge USA Cycling's selection of athletes to participate in the Women's Mountain Bike Race at the Tokyo Olympic Games. A copy of the Section 9 Complaint and Demand for Arbitration are attached. The AAA has appointed Christian Dennie, Esq. of Fort Worth, Texas to serve as the Arbitrator in this matter.

Because the arbitration may affect your rights, you are entitled to participate in the arbitration as a party. Even if you do not participate, you will be bound by any decision rendered in the arbitration that affects your rights. If you have questions about the arbitration procedures or whether you need legal counsel, or need assistance in obtaining

counsel, please contact Kacie Wallace or Emily Azevedo in the office of the Athlete Ombuds at ombudsman@usathlete.org or 719-866-5000.

Mr. Dennie has set the arbitration upon the request of Ms. Huck and USA Cycling to be conducted via Zoom commencing at **8:00 a.m. PST/9:00 MST/10:00 CST/11:00 EST on June 24, 2021**, a copy of the notice of hearing is attached. The Zoom login information is as follows:

<https://us06web.zoom.us/j/83020534444?pwd=dEVSUkl3VEZDUmJHNlhhTDhJWXZmUT09>
Meeting ID: 830 2053 4444
Passcode: 245686

It would be appreciated if you could advise me at your earliest convenience about whether you intend to participate in any manner in this procedure. In any event, the arbitrator has ordered that all affected athletes will receive copies of all submissions made during this procedure. Please address any communications concerning this matter to me at the email above.

IV. Jurisdiction

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

An amateur sports organization, a high-performance management organization, or a paralympic sports organization is eligible to be certified, or to continue to be certified, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the corporation's constitution and bylaws, except that if the Athletes' Advisory Council and National Governing Bodies' Council do not concur on any modifications to such Rules, and if the corporation's executive committee is not able to facilitate such concurrence, the standard commercial rules of arbitration of such designated provider shall apply unless at least two-thirds of the corporation's board of directors approves modifications to such Rules. . . .

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

[P]rovide[] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with

fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate. . . .

Section 9.1 of the USOPC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation shall, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete's opportunity to participate, the corporation shall consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Under USOPC Bylaws Section 1.3(x), "Protected Competition" means:

- i. any Delegation Event as defined by these Bylaws
- ii. any international competition between athlete(s) officially designated by the appropriate NGB as representing the United States, either individually or as part of a team, and any athlete(s) representing any foreign country where
 1. the terms of such competition require that the entrants be individuals or teams representing their respective nations; and
 2. the athlete(s) representing the United States are organized and sponsored by the appropriate NGB 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 athletes such as those referred to in Section 220526(a) of the Act (i.e., high school students, college students, members of the Armed Forces, or similar groups or categories);
- iii. any domestic competition or event (i.e., a camp, tryout, or trials 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 Delegation Event or protected international competition as defined in ii. above.

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

V. Background

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

USAC is the NGB for cycling in the United States and is recognized as such by the USOPC and Union Cycliste Internationale (“**UCI**”). USAC is authorized as the NGB for the sport of cycling to “establish procedures for the determination of eligibility standards for participation in competition” and to “recommend to the [USOPC] individuals and teams to represent the United States” 36 U.S.C. § 220523(a)(5-6). In accordance with Section 8.4.1(d)(ii) of the USOPC Bylaws, USAC must “establish clear . . . procedures . . . approved . . . by the [USOPC] . . . and timely disseminate such procedure to the athletes and team officials.”

USAC adopted certain policies and procedures for qualification for the Olympic Games (“**Olympics**”). USAC drafted and adopted the *USA Cycling/USAC Athlete Selection Procedures 2020 Olympic Games Men’s and Women’s Mountain Bike* on January 2, 2019 (“**Procedures**”). *Ex. C-1*. As a result of the coronavirus pandemic, on April 24, 2020 and October 28, 2020, USAC revised and amended the Procedures, respectively, to account for various necessary modifications. *Ex. C-1*. The Procedures were approved by the USOPC and timely posted by USAC. In pertinent part, the Procedures provide as follows:

1. SELECTION SYSTEM

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

1.1.1. Nationality/Passport requirements:

Athlete must be a national of the United States at the time of nomination (Section 1.3).

Athlete must hold a valid U.S. passport that will not expire for six months after the conclusion of the Games.

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

Any competitor in the Olympic Games must be a national of the country of the National Olympic Committee (NOC) which is entering such competitor. For additional information regarding an athlete who is a national of two or more countries, has changed his or her nationality or acquired a new nationality, refer to the ~~IOC~~ Olympic Charter (Rule 41 42).

1.1.3. Minimum International Federation (IF) and/or Continental Federation (CF) standards for participation (if any):

1.1.3.1. All athletes must hold an International License issued by their National Federation.

1.1.3.2. All athletes must have been born no later than December 31st, 2002 ~~2001~~ and must have a valid UCI license issued by their corresponding National Federation.

1.1.3.3. Have at least 10 UCI points in the UCI Cross-country Individual ranking of May 28, 2019 or ~~May 28, 2020~~ March 3, 2020 or the first ranking published after the last qualification event.

1.1.4. Other requirements (if any):

1.1.4.1. All athletes must be in good standing with USAC, USOPC, UCI, U.S. Center for SafeSport and the United States Anti-Doping Agency (USADA) at the time of nomination.

1.1.4.2. Athletes will only be allowed to use equipment that meets UCI equipment standards during any 2020 Olympic Games competitions, and in the process of qualifying for the 2020 Olympic Games Team. Information on UCI equipment standards is available on the UCI website (www.uci.ch).

1.1.4.3. Any athlete age 18 or older will be required to undergo a background screen in accordance with the current USOPC Background Check Policy.

1.1.4.4. Any athlete age 18 or older as of the Closing Ceremony will be required to complete the U.S. Center for SafeSport's online training.

1.2. Tryout Events:

- 1.2.1. Provide the event names, dates and locations of all trials, events and camps to be used as part of the selection process.
 - a. 2019 UCI Elite XCO World Championships. Mont St. Anne, Quebec, Canada. August 28-September 1, 2019
 - b. 2020 UCI Elite XCO World Cup #1. Nove Mesto, CZE. May 24, 2020 **Revised – This event was postponed cancelled and will no longer be part of the selection process (replaced with ‘c’).**
 - c. **2021 UCI Elite XCO World Cup** in Nove Mesto, CZE, currently scheduled for May 15-16, 2021 ~~#1 if it takes place between January 1, 2021 and May 24, 2021.~~
- 1.2.2. Provide event names, dates, locations and description of how athletes qualify for the trials, events and camps listed above in 1.2.1. (if any). Criteria for athletes to qualify to participate in the 2019, 2020 **and 2021 (as applicable)** UCI Mountain Bike World Championships and UCI Elite XCO World Cup races can be found on the USA Cycling website: <https://www.usacycling.org/team/international-events>

QUALIFICATION AND NOMINATION DATES – Revised April 24, 2020 and October 28, 2020

Tokyo 2020 Olympic Games	July 23, 2021 – August 8, 2021
Long Team Qualification Period	May 18, 2019 – May 24, 2021
Initial Long Team Nominated	June 1, 2020
Long Team Nominated	May 24, 2021
Final Team Nominated	June 4 ± , 2021

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

The maximum quota for the men’s and women’s Mountain Bike discipline is three (3) athletes per gender. An athlete may qualify for each event through automatic criteria. If the quota slot remains after the automatic criteria have been executed, an athlete may be selected through

discretionary selection. The quota slot will be filled by an athlete selected for the event in the following order:

1. Up to one (1) athlete per gender who wins the 2020 UCI Elite World Cup #1 Cross-Country event in Nove Mesto, CZE will be nominated to the 2020 Olympic Games Team. ~~Revised – the 2020 UCI Elite World Cup #1 has been postponed-cancelled and will no longer count toward this criterion. If The 2021 UCI Elite World Cup in Nove Mesto, CZE #1 occurs between January 1, 2021 and May 24, 2021 it shall be the event applied to this criterion.~~
2. If quota slots remain after considering the preceding criteria, up to one (1) athlete per gender who wins the 2019 UCI Elite World Championships XCO race in Mont-Sainte-Anne, CAN will be nominated to the 2020 Olympic Games Team.
3. If quota slots remain per gender after considering the preceding criteria, then up to one (1) athlete per gender who finishes in second (2nd) through eighth (8th) place in the 2020 UCI Elite World Cup Cross-Country event in Nove Mesto, CZE, will be nominated to the 2020 Olympic Games Team. If more than one athlete meets this criterion, then the highest placed athlete will earn the nomination. ~~Revised – the 2020 UCI Elite World Cup #1 has been postponed cancelled and will no longer count toward this criterion. If The 2021 UCI Elite World Cup in Nove Mesto, CZE #1 occurs between January 1, 2021 and May 24, 2021 it shall be the event applied to this criterion.~~
4. If quota slots remain per gender after considering the preceding criteria, then up to one (1) athlete per gender who finishes in second (2nd) through eighth (8th) place in the 2019 UCI Elite World Championships XCO race in Mont-Sainte-Anne, CAN will be nominated to the 2020 Olympic Games Team. If more than one athlete meets this criterion, then the highest placed athlete will earn the nomination.
5. If quota slots remain per gender after considering the preceding criteria, then the highest ranked athlete per gender, provided they are in the top ten (10) overall, in the final 2019 UCI World Cup overall ranking will be nominated to the 2020 Olympic Games Team.
6. If quota slots remain after considering the preceding criteria, then an athlete may be nominated to the 2020 Olympic Games Team from the Long Team by the USA Cycling National Team Coaching Staff

and approved by the USA Cycling Selection Committee, following the discretionary criteria described in Section 2.

LONG TEAM CRITERIA

The Long Team will be comprised of any athlete who achieves at least one of the following finishes:

- a. The 2019 or 2020 UCI Elite Cross-Country World Championships in the top thirty (30); or
- b. The 2021 ~~2020~~ UCI Elite World Cup #1 Cross-Country event in Nove Mesto, CZE (May 15-16, 2021) in the top thirty (30) provided that event takes place between January 1, 2021 and May 24, 2021; or
- c. A 2019, 2020 or 2021 UCI Elite World Cup Cross-Country event (provided they take place prior to May 24, 2021) in the top fifteen (15) places; or
- d. A 2019, 2020 or 2021 UCI U23 World Cup (provided they take place prior to May 24, 2021) in the top three (3) places. USA Cycling Coaching staff may also nominate up to two (2) athletes per gender to the Long Team according to the discretionary criteria in Section 2 and approved by the USA Cycling Selection Committee.

2. DISCRETIONARY SELECTION (if applicable)

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

USA Cycling may choose to fill quota slots through the selection criteria in section 1.3.6.5. in order to select athletes with medal capability, future medal capability, or athletes who can achieve the best result for Team USA.

- b. List the discretionary criteria and explain how they will be used (if any):

If quota slots remain after the automatic criteria numbers 1 through 5 in Section 1.3. have been applied, the USA Cycling National Team Coaching staff will recommend athletes, according to the criteria below, to the USA Cycling Selection Committee for selection to the Olympic Games Team through discretionary selection. The Selection Committee will review data on all Long Team athletes when considering the recommendations. The USA Cycling Selection Committee will consider the following criteria in priority order A through C:

- A. Medal Capable Athlete– A medal capable athlete is one who has clearly demonstrated the ability to produce a medal winning result in the competition for which the athlete is being selected for by achieving one of the following criteria:
- Winning a medal (top 3 finish) within the last ~~24~~ 36 months at a UCI World Cup or World Championships and demonstrating the continuing ability to perform at that level or higher based on performances in International Competition in the last ~~12~~ 24 months or
 - Beating previous year’s Worlds or Olympic medalists or current top UCI world ranked athletes in International Competition on multiple occasions in the past 12-24 months;
- B. Future Medal Capable Athletes – An athlete who is future medal capable is one who has the potential to produce a medal winning result within two to three years at a World Championship or Olympic Games by:
- Demonstrating a trend of improving performance in International Competition that, when logically extended out two to three years, in consideration of the athlete’s development path, intersects the future World Championship or Olympic standard for the event under consideration; or
 - Winning medals at U23 World Championships in the last 24 36 months with ongoing additional supporting results in International Competitions competitive with the top ranked Elite athletes.
- C. Best Predicted Finish - If positions for the Team remain open after the application of all Automatic Selection and Discretionary Selection principles A. and B. above, the USA Cycling Selection Committee may choose the athlete or athletes who are most likely to finish the highest in the event based on the data below in the “Data to Support Discretionary Selections” section.

Importance of International Competition

As used herein, “International Competition” includes any competition in which the field of athletes is sufficiently strong that performances in that competition are indicative of how an athlete can perform in the Olympic Games. International Competitions need not occur outside the United States, as “international” refers to the competitiveness of the field (i.e., includes many of the best riders from leading MTB cycling nations around the world), not the location of the event.

Data to Support Discretionary Selections

When athletes on the Long Team are eligible for discretionary selection, due to the availability of quota slots after automatic selection, Long Team athletes and the National Team coach will be given the opportunity to submit data to the Selection Committee for consideration in the discretionary selection.

In addition to performances in International Competition or competitions specified in the Athlete Selection Procedures, the Selection Committee may consider for discretionary selections, as appropriate to the discipline, the following:

- For all selections – Validatable and credible performance data such as times on courses (or portions of courses) of similar length or course profile and/or in similar environmental conditions to the event being selected for.
 - For choosing between two athletes within a selection category (medal capable, future medal capable, or best predicted finish) – Data 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 determined by the USA Cycling Coaching staff and USA Cycling Selection Committee.
 1. Race results in top international competitions (primarily 2018, 2019, 2020 and 2021 UCI U23 and Elite World Cups and 2018, 2019 or 2020 U23 and Elite World Championships);
 2. Race results in top domestic competitions (primarily 2019 and 2020 USA Cycling Elite Cross-Country MTB National Championships);
 3. Head to head competition results or performances between multiple athletes in consideration for a discretionary position;
 4. Technological data on athlete and or event which is validatable and credible. By way of example this could include, but is not limited to: times on the same courses in the same events or event demand data.
- c. Provide the name of the committee that will be responsible for making discretionary selections, along with a complete list of the members' titles currently serving on the committee:

USA Cycling Selection Committee

Recommendations for discretionary nominations will be made by the USA Cycling National coaching staff to the USA Cycling Selection Committee. However, the USA Cycling Selection Committee (see [list of members' titles in Section 11](#) below) will review data on all athletes in the Long Team, including those not recommended by the coaching staff, and approve athlete nominations using the discretionary criteria described in section 2.b.

- i. Specify the process that will be used to identify and handle any potential conflicts of interest involving a member of the committee.

Any member of the selection committee that has a possible conflict of interest must disclose it. If such conflict exists, the selection committee member must recuse him/herself from committee discussions and voting. Further, the committee member should not otherwise influence other members of the committee in the nomination process. However, a committee member who recused him/herself, but who has relevant and necessary information with respect to athlete performance, for example a national team coach or high performance director, may, if requested by the selection committee, provide such information to the committee so long as such information is provided in a fair and unbiased manner and the committee member who declared the conflict of interest does not vote toward the final decision.

VI. Discussion and Analysis

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

A. Standard of Review and Burden of Proof

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass'n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding [her] claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (i.e., not arbitrary or capricious)

and in good faith (i.e., without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his or her claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

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

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

Quigley v. Union International de Tir, CAS 94/129 (Apr. 20, 1995). “The 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 Case No. 30 190 0056 06 (Jan. 27, 2006).

The arbitrator must determine whether USAC breached the approved and published Procedures, applied the Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Hyatt v. USA Judo*, AAA Case No. 01 14 0000 7635 (June 27, 2014); *Tibbs v. United States Paralympics*, AAA Case No. 71-190-E-00406 12 JENF (Aug. 28, 2012). Other arbitrations filed under the Act have determined this review to mean that a decision by USAC must have no rational basis, i.e. is unreasonable, arbitrary or capricious, will not meet the Act’s requirements. *Rivera v. USA Cycling, Inc.*, AAA Case No. 01 16 0002 6302 (July 26, 2016). The Arbitrator’s role is not to determine whether USAC chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAC in establishing the Procedures. *Id.* Rather, it is a *de novo* review, with no deference, of the application of the Procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

When “discretionary” factors are used in the athlete selection process, there shall be objective facts used in order for the factors to be applied fairly. In *Viola v. USA Diving*, the arbitrator explained as follows:

While it is acceptable for USA Diving to include discretionary factors in the Team selection process, such factors must have an objective basis in order to comply with USOC guidelines. Having an objective basis does not mean that there are objective reasons for

including them as selection criteria. Rather, it means the Selectors' evaluations of athletes on these factors must be supported by objective facts to ensure that these factors are applied fairly. Additionally, given the critical requirement of communicating understandable selection criteria to the athletes, the discretionary factors—like all factors in the selection process—need to be clearly defined. Clearly defined criteria are necessary to provide guidance to 'competitive athletes, who . . . use enumerated criteria to evaluate their training and performance. Such criteria also ensure that the Selectors share a common understanding of what the criteria mean and how they are to be applied.

Viola v. USA Diving, AAA Case No. 30 190 00828-05 (Dec. 29, 2015)(internal citations omitted).

B. Whether USAC breached the approved and published Procedures.

USAC was awarded three (3) places for American women's mountain biking athletes to compete at the Olympics. Haley Batten met the automatic nomination criteria, as set forth in the Procedures, by finishing in second (2nd) place at the 2021 UCI Elite World Cup in Nove Mesto, CZA. Kate Courtney also met the automatic nomination criteria, as set forth in the Procedures, by being the highest American finisher in the top 8 at the 2019 Mont Sainte Anne World Championship. Accordingly, one (1) position remained for a women's mountain biking athlete to represent the United States at the Olympics. Four (4) candidates -- Huck, Woodruff, Lea Davison, and Hanna Finchamp -- were reviewed by USAC as contenders for the last remaining spot. USAC determined that none of the four (4) remaining candidates met the criteria to receive an automatic nomination for appointment to the Olympic team.¹

The USAC Selection Committee (the "**Committee**") focused on Section 2 of the Procedures titled "Discretionary Selection". See *Ex. C-1*. Section 2 of the Procedures has three (3) separate criteria for selection to the Olympic team under "Discretionary Selection" including: 1) "medal capable athlete"; 2) "future medal capable athletes"; and 3) "best predicted finish". The Committee determined that none of the four (4) above-referenced athletes met the criteria for "medal capable athlete" and/or "future medal capable athletes". None of the athletes suggested or argued that they met the criteria for "medal capable athlete" and/or "future medal capable athletes". Accordingly, the Committee focused its attention on the "best predicted finish" criteria. The applicable "best predicted finish" criteria, as set forth in the Procedures, is as follows:

- C. Best Predicted Finish - If positions for the Team remain open after the application of all Automatic Selection and Discretionary Selection principles A. and B. above, the USA Cycling Selection Committee may choose the athlete or athletes who are most likely to finish the highest in the event based on the data below in the "Data to Support Discretionary Selections" section.

¹ Woodruff indicated that she believes she met the criteria for automatic nomination to the Olympic team in 2019. She was informed in November 2019 that she did not meet the criteria. As of the time of the hearing, Woodruff had not filed a Section 9 Complaint. Whether Woodruff meets the definition of an automatic nomination, as set forth in the Procedures, is not before the Arbitrator.

Importance of International Competition

As used herein, “International Competition” includes any competition in which the field of athletes is sufficiently strong that performances in that competition are indicative of how an athlete can perform in the Olympic Games. International Competitions need not occur outside the United States, as “international” refers to the competitiveness of the field (i.e., includes many of the best riders from leading MTB cycling nations around the world), not the location of the event.

Data to Support Discretionary Selections

When athletes on the Long Team are eligible for discretionary selection, due to the availability of quota slots after automatic selection, Long Team athletes and the National Team coach will be given the opportunity to submit data to the Selection Committee for consideration in the discretionary selection.

In addition to performances in International Competition or competitions specified in the Athlete Selection Procedures, the Selection Committee may consider for discretionary selections, as appropriate to the discipline, the following:

- For all selections – Validatable and credible performance data such as times on courses (or portions of courses) of similar length or course profile and/or in similar environmental conditions to the event being selected for.
- For choosing between two athletes within a selection category (medal capable, future medal capable, or best predicted finish) – Data 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 determined by the USA Cycling Coaching staff and USA Cycling Selection Committee.
 1. Race results in top international competitions (primarily 2018, 2019, 2020 and 2021 UCI U23 and Elite World Cups and 2018, 2019 or 2020 U23 and Elite World Championships);
 2. Race results in top domestic competitions (primarily 2019 and 2020 USA Cycling Elite Cross-Country MTB National Championships);
 3. Head to head competition results or performances between multiple athletes in consideration for a discretionary position;
 4. Technological data on athlete and or event which is validatable and credible. By way of example this could include, but is not limited

to: times on the same courses in the same events or event demand data.

The Committee collected information presented by the athletes setting forth their arguments for candidacy for the Olympic team and also compiled data analyzing each of the above-referenced candidates. The Committee focused on Huck and Woodruff as the best possible candidates for the third (3rd) and final place on the Olympic team representing the United States in women's mountain biking. On May 27, 2021, the Committee met via Zoom to discuss selections for the Olympic team. *See Exs. C-9, C-22.* After reviewing data, discussing, and debating selections, the Committee selected Woodruff over Huck to have the "best predicted finish" by a vote of 5-1. *See Exs. C-9, C-22.*

Huck argued the data established that she had the "best predicted finish" and, thus, she should have been selected to be the third (3rd) and final athlete competing on the women's mountain biking team at the Olympics. Huck argued that 1) the Committee "impermissibly discounted and/or failed to consider the 2021 UCI Elite World Cup results in Nove Mesto, CZA in determining the 'best predicted finish,' as the elimination of that result was the only way the [Committee] could objectively conclude that [Woodruff] would have a higher predicted finish than [Huck]"; 2) the Committee "failed to include all 'international competitions' in its 'best predicted finish' analysis"; 3) the Committee "failed to consider head to head competition results in its 'best predicted finish' analysis"; and 4) the Committee "failed to consider 'beating previous year's Worlds and Olympic medalists ... on multiple occasions in the past 24 months' in its 'best predicted finish' analysis".

In reviewing the Procedures, the Arbitrator does not substitute his judgment for the experts on the Committee even if the Arbitrator does not agree with the selection made, but rather reviews the application of the Procedures as applied to the facts and circumstances presented *de novo*. The burden of proving that USAC failed to follow and fairly apply the Procedures consistently, acted in bad faith and/or violated applicable federal or state law rests with Huck.

Both Huck and Woodruff are elite mountain biking athletes who have been two (2) of the top American mountain biking athletes over the course of the last several years. The data sets provided present three (3) predicaments that are difficult to weigh: 1) Huck badly injured her ankle requiring three (3) surgeries in 2019 and, thus, she missed a large portion of the 2019 racing season; 2) Woodruff experienced a concussion in 2021 and missed time racing during the 2021 racing season; and 3) due to the pandemic, there were not as many racing opportunities in 2020 and Woodruff did not race at the World Cup events in 2020. On May 27, 2021, the Committee weighed and reviewed the data presented. *See Exs. C-9, C-22.* Initially, the Committee summarized Huck and Woodruff as follows:

Woodruff – Very strong 2019 with 4 top 10's in World Cups, did not compete in 2020 season, did not come out very strong in first two events of 2021 with 30th and 64th. Average placing of 19.9. Average of 12.5 if consider Nove Mesto 2021 an outlier. 1-2 in World Cup H2H vs. Huck, 5-2 vs Davison.

Huck – Very consistent World Cup performer in 12-18th range with a 15th average placing. Next best results after Batten and Courtney in 2021 World Cups with 15th and 16th. 2-1 World Cup H2H vs both Davison and Woodruff.

See Ex. C-22. The data presented shows that Huck finished 35th at the World Championships in 2019 and 17th at the World Championships in 2020 whereas Woodruff finished 15th at the World Championships in 2019, but did not compete in 2020. In World Cups during the relevant time period, Huck finished 12th on September 6, 2019, 18th on September 29, 2020, 14th on October 2, 2020, 15th on May 9, 2021, and 16th on May 17, 2021, which resulted in an average World Cup place finish of 15th. *See Ex. R-D.* In World Cups during the relevant time period, Woodruff finished 6th on May 17, 2019, 18th on May 24, 2019, 6th on August 2, 2019, 9th on August 9, 2019, 6th on September 6, 2019, 30th on May 9, 2021, and 64th on May 17, 2021, which resulted in an average World Cup place finish of 19.9. *See Ex. R-D.* Over the course of the last ten (10) head-to-head races, Huck has placed ahead of Woodruff eight (8) out of ten (10) races.

The Procedures were modified on two (2) occasions as a result of the pandemic. The rationale for the changes to the Procedures was set forth on the first page and stated, in pertinent part, as follows:

These are the USA Cycling principles guiding the revisions.

3. Ensure all performances and work by athletes already completed continue to count toward Tokyo 2020 discretionary selection, i.e., no selections start over.
4. Create a balance between protecting those athletes who were close to qualifying based on the previous 2020 deadlines and also ensuring the participation of the best athletes at the Olympic Games Tokyo 2020 by providing opportunities for the top performers of the 2021 season to qualify.

See Ex. C-1. Mr. Pierce and Ms. Hernandez testified that they took the rationale for revisions to heart when evaluating Huck and Woodruff. It was hotly disputed, however, whether the Committee correctly determined the “athlete...who [is] most likely to finish the highest in the event based on the data below in the ‘Data to Support Discretionary Selection’ section.” Huck established, and Mr. Pierce and Ms. Hernandez, agreed that she was the more consistent performer when comparing herself to Woodruff. However, the Committee was swayed by Woodruff’s four (4) top 10 finishes at 2019 World Cup events. *See Ex. C-22.* Ms. Hernandez stated the Committee was not looking for the most consistent athlete or statistical averages of performance. The Committee was focused on the “top results” at the most competitive events (*i.e.*, World Championships and World Cups). The Procedures state “[t]he inclusion and order of priority for any data set may be determined by the USA Cycling Coaching staff and USA Cycling Selection Committee.”

As per the Procedures, the Committee was to review “[d]ata [including] any or all of the following in no specific order of priority”, which includes: 1) “Race results in top international competitions (primarily ~~2018~~, 2019, 2020 and 2021 UCI U23 and Elite World Cups and ~~2018~~, 2019 or 2020

U23 and Elite World Championships”); 2) “Race results in top domestic competitions (primarily 2019 and 2020 USA Cycling Elite Cross-Country MTB National Championships)”); 3) “Head to head competition results or performances between multiple athletes in consideration for a discretionary position”; and 4) “Technological data on athlete and or event which is validatable and credible. By way of example this could include, but is not limited to: times on the same courses in the same events or event demand data”. The data provided evidences all of Huck’s and Woodruff’s competition results from 2019 through May 1, 2021. *See Exs. R-D, R-G, R-H, R-I*. The Committee focused their review on highly competitive international events (*i.e.*, World Championships and World Cups). USAC argued it is permitted discretion and the Procedures clearly set forth that the Committee must “primarily” review World Cups and World Championships. However, the Procedures also require the Committee to review race results in “top international competitions” and “top domestic competitions” as well as head-to-head competition results. *See Ex. C-1*. The Procedures define “International Competition” as “any competition in which the field of athletes is sufficiently strong that performances in that competition are indicative of how an athlete can perform in the Olympic Games” and further notes that an “International Competition” need not occur outside of the United States. *See Ex. C-1*. When questioned, neither Mr. Pierce nor Ms. Hernandez could indicate which events set forth in the data sets met the definition of “International Competition”.

The Committee also reviewed head-to-head competitions and noted that head-to-head competitions favored Huck. However, as confirmed in testimony by Ms. Hernandez, the Committee failed to take into account that both Huck and Woodruff raced on the course in Tokyo where the Olympics will be held. On October 6, 2019, Huck placed 23rd at the course in Tokyo whereas Woodruff placed 31st. Ms. Hernandez admitted that such race was not discussed by the Committee and would have been a good comparator being that the Tokyo course is the course to be used during the Olympics.

Ms. Hernandez testified, and Mr. Pierce confirmed, that she requested additional “technological data” that showed how far Huck and Woodruff finished from first (1st) and third (3rd) places. Additionally, Ms. Hernandez testified, and the meeting notes confirmed, that the Committee discussed removing “outliers” from the analysis. In sum, the Committee analyzed the data by removing the worst place finishes for Huck and Woodruff. Ms. Hernandez acknowledged the removal of “outliers” does not appear in the “discretionary criteria” set forth in the Procedures. The removal of “outliers” does not constitute additional “technological data” as referenced in the Procedures; however, time data analyzing the distance each athlete finished behind first (1st) and third (3rd) places does constitute additional “technological data”.

USAC has been the subject of multiple Section 9 arbitrations. In *Rivera v. USA Cycling, Inc.*, the claimant athlete argued that USAC failed to “follow and fairly apply its Selection Procedures” in application of the “medal capable” criteria within the selection procedures. The arbitrator indicated the evaluation of whether an athlete is “medal capable” “is not in a vacuum looking at the applicable criteria/bullet points, but rather in the context within which it is made” considering “both the objective factors (results and data) and the specific event for which the nomination is made.” *Rivera v. USA Cycling, Inc.*, AAA Case No. 01-16-0002-6302 (July 26, 2016). The arbitrator concluded “USAC did not breach its Selection Procedures in evaluating the criteria/bullet points listed objective results of each athlete and their data, by considering

specifically and only the Rio course.” *Id.*; see also *Small v. USA Cycling, Inc.*, AAA Case No. 01-16-0002-6766 (July 26, 2016)(concluding it would have been “preferable for USAC” to specify a “useful data point”, but it was not an “unfair application of the criteria” and, thus, the USAC selection committee used “exercised its discretion appropriately” when applying the criteria in the selection procedures); *Guarnier v. USA Cycling, Inc.*, AAA Case No. 77 190 E 00198 JENF (July 9, 2012)(concluding USAC “properly applied the selection criteria for its women’s cycling team for the 2012 Olympics as set out in its Athlete Selection Procedures....”).

In *Komanski v. USA Cycling, Inc.*, the claimant athlete argued, among other things, the selection committee failed to “give precedence to results achieved in top-level international competition” and failed to “appropriately apply the criteria to assess” the discretionary criteria for “medal capability”. *Komanski v. USA Cycling, Inc.*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015). The evidence was “undisputed” that the claimant athlete competed in six (6) UCI international races whereas the affected athlete had not competed in any international races. *Id.* The claimant athlete had more podiums at UCI events and a better average finish at UCI events. *Id.* The arbitrator concluded USAC “simply failed to give sufficient primary consideration to international results and performance over domestic results and performance, instead choosing to favor other factors not identified in the Selection Criteria.” *Id.* The arbitrator, thus, appointed the claimant athlete over the affected athlete.

This matter presents aspects of both *Rivera v. USA Cycling, Inc.* and *Komanski v. USA Cycling, Inc.* The objective data under the discretionary criteria, as set forth in the Procedures, gives the Committee the discretion to “choose the athlete...who [is] most likely to finish the highest in the event based on the data....” The Committee is free to apply the objective data in “no specific order of priority” including the “inclusion and order of priority of any data set”. The Committee was provided a detailed set of data that analyzed both Huck and Woodruff (and others). Although much of the criteria favored Huck and the data showed Huck to be a more consistent athlete, the Committee based its decision to appoint Woodruff to the Olympic team as a result of her four (4) top 10 finishes at World Cup events in 2019. The discretionary criteria state the Committee is to “primarily” review World Cup and World Championship finishes. In 2019, Woodruff excelled at these events and, thus, the Committee concluded she gives the United States a better opportunity to win a medal at the Olympics. Admittedly, Mr. Pierce and Ms. Hernandez testified this was a very difficult decision.

The Arbitrator accepts that USAC is attempting in good faith to apply the Procedures in a manner to obtain success at the Olympics and earn the maximum number of medals for the United States in mountain biking. The Procedures certainly could have been clearer, but there is no evidence USAC acted in bad faith towards or with bias against Huck. However, USAC considered criteria and data that is not set forth in the Procedures. First, the Committee discussed and analyzed “outliers” in coming to its decision to name Woodruff to the Olympic team. There is no mention of “outliers” in the Procedures and the Arbitrator concludes “outliers” (*i.e.*, events where an athlete performs poorly in comparison to other more successful place finishes) do not fall within the definition of other “technological data” as used in the Procedures or any other provision of the Procedures. Second, the Committee was not made aware and did not address whether the submitted competitions qualify as “International Competitions”. In fact, neither Mr. Pierce nor Ms. Hernandez could determine which of the submitted events during the relevant time period

constituted “International Competitions” as defined in the Procedures. Although the Committee has some discretion in making the selection at issue, it must use “objective facts to ensure that these factors are applied fairly” as set forth in *Viola v. USA Diving*. Based on the review of data outside of the four corners of the Procedures that does not constitute other “technological data” and failing to determine the events that constitute “International Competitions”, the Arbitrator concludes the Procedures were not followed as written and the team representing the United States in the Olympics was not selected using the language expressly set forth in the Procedures, which resulted in a breach of the approved and published Procedures. *Awotunde v. USA Track & Field, Inc.*, AAA Case No. 01-19-0002-1085 (July 19, 2019)(remanding selection of the athletes to the selection committee to apply selection procedures as written).

By coming to this conclusion, the Arbitrator does not find Woodruff to be a superior athlete to Huck or Huck to be a superior athlete to Woodruff. When applying the Procedures to the facts and circumstances presented here, the Committee failed to follow the express language of the Procedures. The Arbitrator cannot supplant the judgment of the Committee when the Procedures are followed, but the Procedures were not followed as written. Whether the Arbitrator would have weighed the data differently is not the query presented and, thus, the Arbitrator must remand this matter to the Committee for application of the “discretionary criteria” as written in Section 2(c) of the Procedures.

The Arbitrator finds and orders as follows: 1) USAC breached the approved and published Procedures and, thus, this matter shall be remanded to the Committee for further review of the “discretionary criteria”; 2) the Committee shall not eliminate certain results as “outliers” for review of the athletes, because there is no such language in the Procedures; 3) the Committee shall determine the events that constitute an “International Competition” and a “domestic competition”, as set forth in the Procedures; and 4) once the above-referenced orders have occurred, the Committee shall apply the “discretionary criteria” for “best predicted finish” as expressly set forth in Section 2(c) of the Procedures. In conclusion, this matter is remanded to the Committee for reconsideration applying the terms of the Procedures as written using “objective facts to ensure that [the] factors [set forth in the Procedures] are applied fairly.”

C. Whether Stephen Ettinger was partial in favor of Woodruff.

Next, Huck asserted that Stephen Ettinger “is not a listed member of the [Committee]” and “should have recused himself/been removed based on a clear conflict of interest as a former teammate of [Woodruff].” Mr. Ettinger was not initially a member of the Committee. *See Ex. C-21*. He was, however, appointed as a “mountain bike expert” after another member of the Committee could no longer serve. Woodruff testified that she and Mr. Ettinger were teammates in 2011 and also in various competitions representing the United States. Mr. Ettinger and Huck were also teammates representing the United States in various competitions.

Huck argued that Mr. Ettinger advocated for Woodruff during Committee deliberations and swayed other Committee members to vote in favor of Woodruff and against Huck. The notes from the Committee’s May 27, 2021 meeting reflect that Mr. Ettinger voted in favor of Woodruff and stated “[Woodruff] has shown that she has a better potential for position than [Huck] has.” *See Ex. C-22*. Mr. Ettinger has served as the athlete representative for mountain biking on the Board

of Directors for USAC and, thus, is aware of the skillsets possessed by both Woodruff and Huck. He did not testify at the hearing.

In *Rau v. United States of America Wrestling Association*, the arbitrator set forth the standard for impartiality as follows:

Impartiality involves open-mindedness , but does not mean there are no preconceptions as long as there is a willingness to consider views that oppose those preconceptions and remain open to persuasion. Actual bias arises where a prejudice in all probability prevents one from dealing fairly with another. Disqualification requires more than a mere relationship. Determining factors are the closeness of the relationship and its bearing on the underlying matter.

Rau v. United States of America Wrestling Association, AAA Case No. 01-21-0003-7287 (June 1, 2021)(internal citations omitted).

Both Huck and Woodruff know and were Mr. Ettinger’s teammates. Although it was argued that Mr. Ettinger advocated for Woodruff during Committee deliberations, sufficient evidence was not presented to establish that Mr. Ettinger advocated for Woodruff based on a close relationship or nefariously. Mr. Pierce and Ms. Hernandez testified the Committee freely and openly debated both Huck and Woodruff. There was not enough evidence presented to support a finding that Mr. Ettinger was partial in favor of Woodruff and, thus, Huck did not carry her burden of establishing that Mr. Ettinger was partial in favor of Woodruff. Mr. Ettinger’s connection with Woodruff is too attenuated to establish bias without more. Accordingly, the undersigned finds the evidence does not support a finding of partiality.

VII. Decision

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

- The Arbitrator finds and orders: 1) USAC breached the approved and published Procedures and, thus, this matter shall be remanded to the Committee for further review of the “discretionary criteria”; 2) the Committee shall not eliminate certain results as “outliers” in review of the athletes, because there is no such language in the Procedures; 3) the Committee shall determine the events that constitute an “International Competition” and a “domestic competition”, as set forth in the Procedures; and 4) once the above-referenced orders have occurred, the Committee shall apply the “discretionary criteria” for “best predicted finish” as expressly set forth in Section 2(c) of the Procedures;
- The Arbitrator finds and concludes that Huck failed to meet her burden to establish that Mr. Ettinger was partial in favor of Woodruff during the Committee deliberations and selections;
- The Parties shall bear their own attorneys’ fees and costs associated with this arbitration.
- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.

- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb
Arbitrator

Date: June 29, 2021