

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

TRISTAN MANDERFELD

v.

USA CYCLING, INC.

and

DAVID DONOMOSKE

ANDERS JOHNSON

BRENDAN RHIM

EDDY HUNTSMAN

GRANT KOONTZ

PETER JASPER

COLBY LANGE

GAVIN HOOVER

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AAA Case No. 01-22-0004-0893

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 Tristan Manderfeld (“**Claimant**” or “**Manderfeld**”), USA Cycling, Inc. (“**USAC**”), and David Donomoske, Anders Johnson, Brendan Rhim, Eddy Huntsman, Grant Koontz, Peter Jasper, Colby Lange, and Gavin Hoover (collectively “**Affected Athletes**”) (individually “**Party**” or collectively the “**Parties**”) hereby finds, concludes, determines, and awards as follows:

I. Procedural History

On September 27, 2022, Claimant submitted his *Commercial Arbitration Rules Demand for Arbitration* and *Section 9 of USOPC Bylaws Complaint Form*.

On September 28, 2022, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On October 3, 2022, a pre-hearing conference was held to discuss the exchange of information, a briefing schedule, and a date and time for the evidentiary hearing. The Parties agreed to conduct the evidentiary hearing on October 7, 2022 commencing at 9:30 a.m. CT and requested that an operative award be issued on October 8, 2022. 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.

On October 3, 2022, AAA issued the *Notice of Hearing* confirming the evidentiary hearing to be held on October 7, 2022 beginning at 9:30 a.m. CT.

On October 3, 2022 at 2:52 p.m., Shane Garman of USAC sent an email to the Affected Athletes titled *Notice of Section 9 Complaint Tristan Manderfeld v USA Cycling Inc.* The contents of this email are referenced below.

The final hearing was held via Zoom conference on October 7, 2022 commencing at 9:30 a.m. CT and concluding at 4:08 p.m. CT. During the hearing, Tristan Manderfeld appeared along with his 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 The Law Office of Stephen A. Hess P.C. and Shane Garman of USAC, and the following Affected Athletes attended intermittently: Anders Johnson, David Domonoske, and Peter Moore. In addition to Parties and counsel, the following individuals attended the telephonic hearing: Sara Pfilpsen (USOPC), Kacie Wallace (USOPC Office of the Ombuds), and Emily Azevedo (USOPC Office of the Ombuds). 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-19 and such exhibits included the following:

- Exhibit C-1: USA Cycling Athlete Selection Procedures – 2022 UCI Track Cycling World Championships
- Exhibit C-2: Tristan Manderfeld’s Discretionary Selection Submission
- Exhibit C-3: August 30, 2022 Email to Anders Johnson
- Exhibit C-4: September 6, 2022 Instagram Post of Eddy Huntsman
- Exhibit C-5: September 6, 2022 Emails with Jim Miller
- Exhibit C-6: Selection Committee Meeting Minutes

- Exhibit C-7: 2022 Elite Track World Champs Nomination Worksheet
- Exhibit C-8: Athlete Discretionary Selection Petitions
- Exhibit C-9: USA Cycling Discretionary Selection Process
- Exhibit C-10: Craig v. USA Taekwondo (AAA 77 190E 00144 11 JENF)
- Exhibit C-11: Lea v. USA Cycling (AAA 01 16 0000 8307)
- Exhibit C-12: Komanski v. USA Cycling (AAA 01 15 0004 9907)
- Exhibit C-13: Hyatt v. USA Judo (AAA 01 14 0000 7635)
- Exhibit C-14: McConnelloug and USA Cycling (AAA 30 190 00750 04)
- Exhibit C-15: Klug v. US Ski and Snowboard Association (AAA 30 190 00056 06)
- Exhibit C-16: Viola v. USA Diving (AAA 30 190 00828 05)
- Exhibit C-17: Marable v. USA Wrestling (AAA No. 01 15 0004 1998)
- Exhibit C-18: Audio of Conversation between Jim Miller and Tristan Manderfeld
- Exhibit C-19: August 8, 2022 Pan Am Race Video

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

1. Tristan Manderfeld

B. USAC

USAC submitted exhibits labeled R-1 - R-8 and such exhibits included the following:

- Exhibit R-1: USA Cycling Athlete Selection Procedures – 2022 UCI Track Cycling World Championships
- Exhibit R-2: USA Cycling Discretionary Selection Process
- Exhibit R-3: 2022 Elite Track World Championships Nomination Worksheet
- Exhibit R-4: 2022 Elite Track World Championships Discretionary Petition Form
- Exhibit R-5: 2022 Elite Track World Championship Meeting Minutes dated September 8, 2022

Exhibit R-6: 2022 Elite Track World Championship Meeting Minutes dated October 1, 2022

Exhibit R-7: Lima Pan-American Data dated August 10, 2022

Exhibit R-8: Selection Data in Narrative Form

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

1. Gary Sutton
2. Adam Duvendeck

C. Affected Athletes

Anders Johnson, David Domonoske, and Peter Moore intermittently attended the hearing, but did not testify or offer evidence.

III. Notice to Affected Athletes

As stated above, on October 3, 2022 at 2:52 p.m. CT, Shane Garman of USAC issued written notice via email to the Parties. A copy of the notice is set forth verbatim as follows:

Dear Athlete: Tristan Manderfeld has filed a Section 9 Complaint with the USOPC and a Demand for Arbitration with the American Arbitration Association, both of which are attached. Mr. Manderfeld requests that he be placed on the World Championship Team Pursuit Team, and if he prevails in his Complaint there is a possibility that you could lose your spot on the team or, if you were not chosen, the right to argue that you should have been on the team. **As a result, you are considered and "Affected Athlete" under Section 9 of the USOPC Bylaws and you have the right to participate in the complaint procedures and the hearing. The hearing is set for 8:30 a.m. Mountain Time on Friday, October 7, 2022.** You have the right to appear and participate as a party in the arbitration, and to be represented by counsel or another individual of your choice, if you so desire. You are not required to appear. However, having now been given notice of the arbitration and hearing, and your right to appear and participate as a party, **you shall be bound by the results of the arbitration regardless of your decision to appear.**

We strongly encourage you to reach out to the USOPC Athlete Ombuds as soon as possible at 719.866.5000 or ombudsman@usathlete.org to better understand your rights and resources or to discuss your role in this hearing.

If you wish to participate in this hearing, you must notify the American Arbitration Association by emailing Jen Mora at JenMora@adr.org.

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 a Protected Competition 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 will, 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 will consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Any reference to athlete in this Section 9 will also equally apply to any coach, trainer, manager, administrator or other official.

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

USAC is the NGB for cycling in the United States and is recognized as such by the USOPC and Union Cycliste Internationale (“**UCI**”). UCI is the International Federation recognized by the IOC to govern the sport of cycling. UCI sanctions international competitions including the 2022 UCI Track Cycling World Championships (“**World Championships**”). USAC is authorized as the NGB for the sport of cycling to “designate individuals and teams to represent the United States in international amateur athletic competition....” 36 U.S.C. § 220523(a)(7).

USAC adopted certain policies and procedures for qualification for the World Championships. USAC published the *USA Cycling Athlete Selection Criteria: 2022 UCI Track Cycling World Championships* and *USA Cycling Discretionary Selection Process* (collectively “**Procedures**”). *Ex. C-1, Ex. C-9*. The Parties agree that the discretionary selection criteria of the Procedures is

applicable to the dispute at issue. In pertinent part, the discretionary selection criteria of the Procedures provides as follows:

USA Cycling may choose to fill open quota positions through the discretionary selection criteria below.

Due to the nature of sport of cycling, whereby strategy, tactics and teamwork often dictate results, and where the course demands can vary significantly from event to event USA Cycling has determined that the use of discretionary selection is essential to maximize Team USA's medal chances overall. While it has established automatic criteria by which athletes, through extraordinary achievement, have demonstrated very clear evidence of high potential for winning a World Championship or Olympic medal, USA Cycling will use a discretionary selection process to nominate athletes who have not qualified automatically.

Discretionary Criteria

If quota positions remain after the automatic criteria have been applied, the USA Cycling Coaching Staff may nominate athletes for discretionary selection according to the criteria below. The USA Cycling Selection Committee will review and approve the nominations. The Selection Committee will also review data from all petitioning athletes when considering the nominations.

The USA Cycling Coaching Staff and Selection Committee will consider the following criteria in priority order A through D when making selections for team-based events. When making selections for individual events, only A, B and D will be considered in that order.

A. Medal Capable Athletes– 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:

a) Winning a medal (top 3 finish) within the last 24 months at the World Championships or Olympic Games and demonstrating the continuing ability to perform at that level or higher based on results and performances in International Competition in the last 12 months or,

b) Beating the previous year's World Championship or Olympic medalists or the current top UCI world ranked athletes in International Competition on courses similar to the event for which the athlete is being selected on multiple occasions in the past 12 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, intersects the future World Championship or Olympic standard for the event under consideration; or
- Winning medals at Junior or U23 World Championships in the last 24 months with additional supporting results in the last 12 months in International Competition demonstrating the athlete is competitive with the top UCI ranked Elite athletes.

C. Athletes Who Maximize Team Performance- These selections are essential for team-based events where the USA Cycling Coaching Staff have devised a race strategy that may designate one or more athletes as team leaders, and another athlete's contribution may assist a team leader in achieving a top performance. For example, even though the Road Race event is scored individually, athletes who sacrifice their own individual result to execute a team strategy for the designated team leaders can have a profound impact on the ability of a team leader to achieve a top performance. These selections are also essential in assembling a team that will likely produce the best possible performance in team events such as Team Pursuit, Team Sprint and the Madison on the track.

An athlete who can maximize team performance is one who, based on her or his experience, tactical proficiency, physical abilities, and willingness to work selflessly for the team objective, is expected to contribute to the performance of a medal capable team or designated team strategy. An athlete who can maximize team performance must have the right combination of physical ability, skill, knowledge and attitude. Athletes will be selected to play specific roles within the team based on their demonstrated physical capacities, skillset and experience fulfilling their roles. The coaching staff's judgement will be supported as much as possible by objective data, described below, will be used to differentiate between athletes being selected for team event roles.

D. Coaching Staff Discretion- If quota positions remain the USA Cycling Coaching Staff may nominate athletes to the team based on any of the following in any order.

- Strong recent International Competition performances
- Strong trend of improving International Competition performances
- Strong historical International Competition performances with evidence of high current potential for the event in question
- Alignment with the specific performance demands of the event
- Alignment with the planned strategy execution
- Building a team with increased future medal potential
- Building a team with multiple strategy execution options in the present and near future
- Building a team with increased depth in the present and near future

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 competition that the discretionary selection is for. 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 cycling nations around the world), not the location of the event.

Data to Support Discretionary Selections

When petitioning athletes are eligible for discretionary selection, due to the availability of quota positions after automatic nominations, petitioning athletes and the USA Cycling Coaching Staff 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 following may be considered for discretionary selections, as appropriate to the discipline:

- For all selections – Validated 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; athlete power data; or aerodynamic drag data (if relevant); or event and specific role demand data.
- For “Athletes Who Maximize Team Performance” selections – Documentation of successful execution of relevant race tactics and/or evidence of being able to meet the physical requirements of the event being selected for when considering key factors like course profile, environmental conditions, and levels of competition.
- For choosing between two or more athletes in a selection category – 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 different from event to event as determined by the USA Cycling Coaching Staff and the USA Cycling Selection Committee.
 1. Race results in top international competitions;
 2. Race results in top national level competitions;
 3. Head to head competition results or performances between multiple athletes in consideration for a discretionary position;
 4. Coaching staff assessment of an athlete’s ability to meet the performance demands related to the course and event;
 5. Coaching staff assessment of an athlete’s ability to meet the performance demands related to the execution of a specific strategy or race plan.

USA Cycling Selection Committee

Discretionary nominations will be made by the USA Cycling coaching staff. The USA Cycling Selection Committee (see the USA Cycling website for the list of Selection Committee members) will review and approve all athlete nominations applying the criteria outlined above.

Conflict of Interest

Any member of the selection committee that has a possible conflict of interest must disclose it. Another member of the Selection Committee may also raise a potential conflict of interest of another member. For any conflict raised, the remainder of the selection committee will decide if the conflict is material by vote. In the case of a tie, the tie will be broken by the USA Cycling Chief of Sport Performance. 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, 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.

Ex. C-9.

VI. Discussion and Analysis

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

A. Standard of Review and Burden of Proof

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass'n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding his claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (i.e., not arbitrary or capricious) and in good faith (i.e., without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June

20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his or her claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

In *Quigley v. Union Internationale 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 Internationale 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 judgment 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 allocated one team in Team Pursuit to compete at the World Championships, which includes a maximum of five (5) athletes to compete in Team Pursuit of which USAC will select four (4) athletes to compete in a given race. *Ex. C-1*. Athletes could qualify for the team in Team Pursuit in any one of the following five (5) ways:

Men's and Women's Team Pursuit – Long Team

1. Any athlete who is a member of a Team Pursuit team placing in the top three (3) at the 2021 World Championships will be nominated to the Long Team.
- 2.
3. Any athlete who is a member of a Team Pursuit team which earns a top-three (3) result at a 2022 UCI Nations Cup will be nominated to the Long Team.
- 4.
5. Any athlete who is a member of a Team Pursuit team (teams made up of International athletes are excluded) that rides a 2022 International Elite Time Standard in a UCI or USAC sanctioned event will be nominated to the Long Team. Time standard Men: 3:52.47 or faster. Time Standard Women: 4:18.15 or faster.
- 6.
7. Any athlete who is a member of the winning Team Pursuit team of the 2022 Pan American Track Championships provided that race is held in its entirety and run under UCI regulations will be nominated to the Long Team.
- 8.
9. Additional athletes may be nominated to the Long Team by the USA Cycling Coaching Staff following the Discretionary Selection Process.

Ex. C-1. There is no dispute that none of the athletes met the criteria for any one of the selection criteria identified in one (1) through four (4) above and, thus, the discretionary criteria is applicable to this review. *Ex. C-9*.

In accordance with the Procedures, the following deadlines and dates applied to the selection of the team in Team Pursuit to compete at the World Championships: 1) deadline for submission of petitions: September 1, 2022; 2) selection of discretionary nominations: September 8, 2022; 3)

confirmation of intent to participate: September 10, 2022; and 4) final announcement of the team: September 13, 2022. *Ex. C-1*. Despite the above-referenced deadlines, interestingly, Manderfeld presented evidence that Anders Johnson received an email on August 30, 2022 from USAC asking “when [do] you want to return from Track Worlds” and, on September 6, 2022, Eddy Huntsman posted on Instagram “we’re off to the velodrome at Sangalhos, Portugal for a few weeks of preparation before transferring to Paris in October for @uci_cycling World Track Championships.” *Ex. C-3, Ex. C-4*. Nonetheless, on September 8, 2022, the USA Cycling Selection Committee (the “**Committee**”)¹ met and, ultimately, stated in the meeting meetings that the “Committee Approved” the nominations for the World Championships without further explanation. *Ex. C-6*. The Committee selected David Domonoske, Anders Johnson, Brendan Rhim, Eddy Huntsman, and Grant Koontz to represent the United States at the World Championships.

Manderfeld noted an initial objection to the selection of the World Championships team and, specifically, noted that there was bias in the decision. Manderfeld indicated that Rob Stanley, the Head Coach of the USAC Men’s Endurance Team, was his former personal coach and there relationship was negative. In this arbitration, Manderfeld produced an audio recording of a telephone conversation with Jim Miller, the USAC Chief of Sport Performance, where the negative relationship between Manderfeld and Mr. Stanley was discussed at length. In sum, Mr. Miller implored Manderfeld to fix his relationship with Mr. Stanley if he wanted to continue to be a competitive cyclist. *Ex. C-18*.

After Manderfeld objected to the selection of the team for the World Championships and filed this arbitration, on October 1, 2022, the Committee re-convened. USAC initially argued that the October 1, 2022 meeting of the Committee was the final selection of the team for the World Championships and the September 8, 2022 meeting was merely a predecessor meeting even though the Procedures clearly stated the “final announcement of the team” was to be made on September 13, 2022. *Ex. C-1*. However, on cross-examination, Garry Sutton, the Head Coach of the USAC Women’s Endurance Team, confirmed the October 1, 2022 meeting was called because “[Manderfeld] was going to arbitrate” and due to a “conflict of interest between [Mr. Stanley] and [Manderfeld].” Mr. Sutton testified that he presented information and data analyzing each of the athletes, which consisted of race data from one (1) race and notes on each athlete. *Ex. R-7, Ex. R-8*. Oddly, the data and notes presented to the Committee were compiled and written by Mr. Stanley (*i.e.*, the individual with an acknowledged conflict). Additionally, it was discovered that the data presented was not accurate pertaining to Manderfeld and different from what was expressly provided by athletes in their discretionary submissions to the Committee. *Ex. C-8, Ex. R-7, Ex. R-8* (indicating “power data” submitted by David Domonoske was different than what appeared in *Ex. R-8*). Mr. Sutton was unaware of where the data presented derived from, when it was gathered, or whether the information could be verified.

Mr. Sutton testified that he presented the “power data” and other attributes of the athletes to the Committee. He concluded that Manderfeld was a smaller athlete without less power and technical skills and, thus, recommended other athletes to the Committee during the October 1, 2022. Mr. Sutton confirmed, as did Mr. Duvendek, that race video and analysis was not

¹ The Committee consisted of Jan Bolland Tanner, Christine Thorburn, Adam Duvendek, Stephen Ettinger, and Timmy Duggan.

presented to the Committee for review although both Mr. Sutton and Mr. Duvendeck have reviewed race video in preparation for the arbitration. Mr. Duvendeck, a member of the Committee and a two-time Olympian, testified that he “relied solely” on the information provided by Mr. Sutton during the October 1, 2022 meeting of the Committee.

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 Manderfeld.

All witnesses uniformly testified that all of the athletes considered for the team in Team Pursuit are younger riders with potential, but they do not yet present the skills and timework to compete for medals at the World Championships. The selections will give the athletes an opportunity to compete against talented athletes on the World stage. The discretionary selection procedures expressly that discretionary selections “will be supported as much as possible by objective data....” *Ex. C-9*. Additionally, the coaching staff should take into account the following when nominating athletes:

Coaching Staff Discretion- If quota positions remain the USA Cycling Coaching Staff may nominate athletes to the team based on any of the following in any order.

- Strong recent International Competition performances
- Strong trend of improving International Competition performances
- Strong historical International Competition performances with evidence of high current potential for the event in question
- Alignment with the specific performance demands of the event
- Alignment with the planned strategy execution
- Building a team with increased future medal potential
- Building a team with multiple strategy execution options in the present and near future
- Building a team with increased depth in the present and near future

With a conflict acknowledged as the reason for the second meeting of the Committee on October 1, 2022, it is difficult to ascertain why all of the information provided, including notes about each athletes, was provided exclusively by Mr. Stanley without supporting objective data. *See generally, Rau v. United States of America Wrestling Association, AAA Case No. 01-21-0003-7287 (June 1, 2021)*(stating “[i]mpartiality 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.”). The notes provided by Mr. Stanley and used by Mr. Sutton in presentation to the Committee reference “power data”, speed, and various times, but do not indicate where, how, or when the information was gathered. *Ex. C-8*. Mr. Sutton testified he did not know where, how, or when the information was gathered and did not verify the accuracy of the data. In fact, upon further review during cross examination, Mr. Sutton confirmed that data attributed to Manderfeld in the notes provided Mr. Stanley was incorrect. *Ex. C-7*.

Unlike other Section 9 cases where cyclists are determined exclusively to perform as an individual, this case presents the complicating factor of selection for the team in Team Pursuit. *Huck v. USA Cycling*, AAA Case No. 01-21-0004-3201 (June 29, 2021)(remanding selection of the athletes to the selection committee to apply selection procedures as written). Mr. Sutton testified that USAC is attempting to put together the best combination of athletes for team success, which requires considering not only “power data” and speed, but also matters like height and technical skill that may affect other athletes on the team when riding in the Team Pursuit event. Although coaches and NGBs are granted discretion, such discretion “must be supported by objective facts to ensure that these factors are applied fairly.” *Viola v. USA Diving*, AAA Case No. 30 190 00828-05 (Dec. 29, 2015)(internal citations omitted).

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....”).

Here, the Committee was not presented with sufficient objective data. The data presented derived exclusively from the notes of Mr. Stanley with no back up or support. In fact, the data presented for Manderfeld was inaccurate and was not verified before Mr. Sutton presented the data to the Committee. Section 9 precedent and the express terms of the Procedures require the Committee to consider objective data. As noted during the hearing, the arbitrator was surprised at the lack of objective data present especially in a sport where there is an abundance of data related to speed, power, and many other things. Rather than relying on a summary prepared by Mr. Stanley, a conflicted individual, the Committee must be presented with underlying data and information to make a decision expressly using the discretionary criteria listed in the Procedures.

By coming to this conclusion, the Arbitrator does not find Manderfeld to be a superior athlete to the Affected Athletes or Affected Athletes to be a superior athletes to Manderfeld. When applying the Procedures to the facts and circumstances presented here, the Committee failed to follow the express language of the Procedures and was not provided with objective data. Mr. Duvendek confirmed the Committee “relied solely” on what was presented by Mr. Sutton. 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 selection criteria as written.

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 selection criteria; 2) the Committee shall eliminate the notes presented by Mr. Stanley and shall presented with objective data analyzing the attributes of the athletes; 3) Mr. Stanley shall not take part in the presentation to the Committee and shall not present notes to the Committee; and 4) once the above-referenced orders have occurred, the Committee shall apply the discretionary selection criteria as expressly written in the Procedures. In conclusion, this matter is remanded to the Committee for reconsideration applying the terms of the Procedures as written using objective facts and data to ensure that the factors set forth in the Procedures are applied fairly.

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 selection criteria; 2) the Committee shall eliminate the notes presented by Mr. Stanley and shall presented with objective data analyzing the attributes of the athletes; 3) Mr. Stanley shall not take part in the presentation to the Committee and shall not present notes to the Committee; and 4) once the above-referenced orders have occurred, the Committee shall apply the discretionary selection criteria as expressly written in the Procedures.
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- The Parties shall bear their own attorneys' fees and costs associated with this arbitration.
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- The administrative fees and arbitrator compensation for AAA are to be borne as incurred.
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- 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: October 8, 2022