

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

AAA Case Number: 01-16-0002-6766

Carmen Small,)
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Claimant,)
)
and)
)
USA Cycling, Inc.,)
)
Respondent,)
)
and)
)
Megan Guarnier)
Evelyn Stevens)
Lauren Stephens)
Mara Abbott)
Kristin Armstrong)
Taylor Wiles)
Amber Neben)
Shelly Olds)
Coryn Rivera)
)
Affected Parties.)

AWARD OF ARBITRATOR

I, the undersigned arbitrator (the **Arbitrator**), having been designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic and Amateur Sports Act (the **Act**) and Section 9 of the United States Olympic Committee (**USOC**) Bylaws, and Part M of the USA Cycling Bylaws, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on July 12, 2016 by telephone, with Claimant, Respondent and Affected Parties Evelyn Stevens, Kristin Armstrong and Amber Neben (collectively, the **parties**), in attendance and offering argument and evidence, do hereby, AWARD as follows:

I. PROCEDURAL BACKGROUND

1. This matter arises as a complaint by Carmen Small (**Claimant or Small**), who is the current United States Women's National Time Trial (the **Nationals**) Champion. Claimant was not selected by the Respondent (**USAC or USA Cycling**)'s USA Cycling Selection Committee (the **Selection Committee**) on June 23, 2016 to fill one of two discretionary spots on the 2016 Women's Time Trial Olympic Team. On July 1, 2016, she filed a USOC Section 9 complaint against Respondent.
2. Affected Party Amber Neben (**Neben**) is a two-time United States Olympic team member and former world Individual Time Trial (**ITT**) champion in the sport of cycling. She placed second in the Time Trial at the 2016 Nationals. Once this arbitration had commenced, on July 8, 2016, Neben filed a "cross-complaint" against Respondent seeking to fill one of two discretionary spots on the 2016 Women's Time Trial Olympic Team.
3. Attending the preliminary hearing held on July 6, 2016 and the hearing held on July 12, 2016 were: Howard Jacobs and Lindsay Brandon from the Law Offices of Howard L. Jacobs, on behalf of Claimant Carmen Small, Steven J. Thompson and Lindsay Fox of Nixon Peabody, on behalf of Affected Party Amber Neben, Stephen Hess and Allison Mikulecky of Sherman and Howard, on behalf of USA Cycling, Inc., with Shane Garman, General Counsel of USA Cycling also present, Scott Baker and James Daire of Reed Smith, on behalf of Affected Party Evelyn Stevens (**Stevens**), Kevin Braley and Gabriel Hamilton of Holland & Hart, on behalf of Affected Party Kristin Armstrong (**Armstrong**), Derek Witte and Tony Mrzlack of Witte Law on behalf of Affected Party Coryn Rivera and Steven Wieland of Wieland Perdue, on behalf of Affected Party Mara Abbott. Also attending the preliminary hearing was Affected Party Lauren Stephens. Gary Johansen, Sara Clark and Leah Cameron (from Marquette University Law School) of the USOC attended the preliminary hearing and most of the hearing as observers. I thank all the parties for their excellent submissions and cooperation in the hearing.
4. Affected Party Coryn Rivera filed a Motion on July 11, 2016 for consideration prior to the hearing on this matter, relating both to this case and AAA Case No. 01-16-0002-6302, Coryn Rivera and USA Cycling, Inc. and the same Affected Parties as in this matter (plus Carmen Small). The motion was to invalidate a portion of Section 1.3 of the "USA Cycling/USAC Athlete Selection Procedures 2016 Olympic Games women's Road/Time Trial Amended November 13, 2015" (the **Selection Procedures**) or, alternatively, to modify the criteria for Time Trial selection and postpone the deadline for the Arbitrator's decision in this arbitration. This was a facial challenge to the process of USAC in selecting first the two time trial spots to fill two of the spots on the Road Race team automatically without considering criteria other than those relating to the time trial event. USAC filed an opposition to the motion and Stevens, Armstrong and Affected Party Abbott opposed the motion. The Arbitrator denied the motion prior to the commencement of the hearing based on the criteria for Time Trial selection having a rational basis and the motion being not timely.
5. Witnesses for Claimant were: Corey Hart, her personal coach and Carmen Small. Witnesses for Affected Party Neben were: Jason Neben, Manager of Neben's team, Tim Cusick, her personal coach, and Amber Neben. Witnesses for Respondent were: Mike McCarthy, member of the Selection Committee, Jim Miller, USA Cycling Vice President

of Athletics, Jack Seehafer, USA Cycling Women's Endurance Program Director for the Road. Kristin Armstrong was the sole witness for herself. Evelyn Stevens was the sole witness for herself.

6. Claimant's request for relief is that the Arbitrator order USAC to award to her one of the two discretionary spots on the 2016 Women's Time Trial Olympic Team. Neben's request for relief is that the Arbitrator order USAC to award to her and Small the two discretionary spots on the 2016 Women's Time Trial Olympic Team.
7. USA Cycling's reply is to request that Claimant's and Neben's requests be denied.
8. Affected Athlete Armstrong and Stevens' reply is to request that Claimant's and Neben's requests be denied.
9. After the hearing, on July 13, 2016, within the deadline requested by the parties, the Arbitrator issued the following Operative Award:
 - A. Respondent did follow its Selection Procedures and fairly applied the criteria as written to each of the Claimant and Affected Parties, both in determining the four athletes, Kristin Armstrong, Amber Neben, Carmen Small and Evelyn Stevens, were each "Medal Capable" and in ranking them to select the two members of the 2016 Women's Individual Time Trial Event Olympic team. USA Cycling did not exercise its discretion in an arbitrary manner and did evaluate whether each Affected Party selected for the Women's Individual Time Trial Event Olympic team had demonstrated the capacity for a medal capable performance at the time of selection and the time of the 2016 Olympic Games more so than the other two Medal Capable athletes, Affected Party Amber Neben and Claimant Carmen Small. USA Cycling exercised its discretion appropriately by applying the Definitions and Criteria of Medal Capable and using the Data to Support Discretionary Nominations and Selections to do so. Each of those require USA Cycling to evaluate the specified objective factors using its discretionary expertise which USA Cycling did without bias or bad faith and consistently as applied to each of the Claimant and Affected Parties.
 - B. Claimant Carmen Small has not sustained her burden of proof that she should have been named to the Women's Individual Time Trial Event Olympic team and her demand for relief is denied;
 - C. Affected Party Amber Neben has not sustained her burden of proof that she should have been named to the Women's Individual Time Trial Event Olympic team and her demand for relief is denied;
 - D. The parties shall bear their own attorneys' fees and costs associated with this arbitration;
 - E. This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly

granted herein are hereby denied.

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

A. Standard of Review

10. The accepted standard of review for an eligibility case under the Act, where the specific procedures require the exercise of discretion by the national governing body (NGB) is whether the NGB breached its approved and published Selection Procedures, applied its Selection Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF at 5 (August 21, 2011); *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014) at 10; and *Casey Tibbs v. United States Paralympics*, AAA 71-190-E-00406 12 JENF (August 28, 2012) at 14. This has also been stated in multiple selection arbitrations under the Act to mean that a decision by USA Cycling which has no rational basis, i.e. is unreasonable, arbitrary or capricious, will not meet the Act's requirements. Claimant and Neben in this case have identified the claimed breach by USAC as a failure to follow its Selection Procedures, applying its Selection Procedures inconsistently to similarly situated athletes and presenting the materials to its Selection Committee in a biased manner.
11. The Arbitrator's role is not to determine whether the NGB chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAC in establishing Selection Procedures. Rather, it is a *de novo* review, with no deference, of the application of the published selection procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015) at 5.
12. USA Cycling has "the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion.... Athletes are entitled to know what standard they have to meet and precisely how such selections will be made." *McConneloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. "The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged." *Klug v. US Ski and Snowboard Association*, AAA 30 190 0056 06 (January 27, 2006) at 2. This principle will apply to both USA Cycling in adopting its Selection Procedures and to the Arbitrator in applying them to these circumstances.
13. Even where "discretionary" factors are included in the athlete selection process, the evaluation of athletes under these factors must be based on objective facts in order to ensure that the factors are fairly applied. *Viola v. USA Diving*, AAA 30 190 00828-05 at ¶28. Clearly defined criteria are necessary to provide guidance to athletes, who are entitled to rely on the criteria as they plan their training and competitive schedules. *Viola* at ¶ 28.

B. Burden of Proof

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

C. Jurisdiction

15. The Arbitrator has jurisdiction over this dispute pursuant to the Act, because this is a controversy involving Claimant's opportunity to participate in the Olympic Games (a "protected competition/event"), which is required to be resolved by final and binding arbitration in accordance with the Commercial Rules of the American Arbitration Association. 36 U.S.C. §§220522(a)(4)(B). Section 9.1 of the USOC Bylaws prohibits an NGB from denying or threatening to deny "any amateur athlete the opportunity to participate in the Olympic Games." Section 9.7 of the USOC Bylaws provides that "[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration." Sections 9.7 and 9.9 of the USOC Bylaws permit the arbitration proceeding to be expedited.

16. No party objected to arbitral jurisdiction to hear this dispute and all parties proceeded without objection in these proceedings.

D. Applicable Law

17. The Act, 36 U.S.C.A. § 220523(a)(7) provides: "a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition . . ."

18. The Act's requirements for an NGB's selection procedures are listed in the Act itself and in the USOC Bylaws which require an NGB to "establish a written procedure, approved by a Designated Committee... of the NGB ... and thereafter approved by the corporation [USOC], to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials". USOC Bylaws, §8.7(g).

19. USA Cycling has promulgated eight discrete selection procedures that govern selection to all the cycling disciplines that are contested in the Olympic Games. These include the Selection Procedures.

20. The United States was allocated two starting spots for the Women's Individual Time Trial Event at the Olympic Games through the Union Cycliste Internationale (UCI) Qualification System.
21. The Selection Procedures provide in relevant part as follows:

DISCRETIONARY SELECTION

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

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

2.2 List the discretionary criteria and explain who they will be used (if any):

See Attachment B

...

Attachment B

PRINCIPLES OF ATHLETE SELECTION

...USA Cycling will be responsible for the nomination and selection of athletes to participate in all protected events. In fulfilling this obligation, USA Cycling will use the principles described in this document. At all times, within the context of the event, USA Cycling will strive to send the best and most prepared team to compete in protected events.

USA Cycling Selection Committee

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

...

Importance of Professional and International Competition

At the elite level (age 19 and over), cycling is a professional sport in which the highest level of competition is represented by top-tier professional athletes racing on the UCI International race calendar... Therefore, whenever

possible in the nomination of any athlete to a protected event, performances in top-level, professional and/or international competition will take precedence over performances in domestic competition.

USA Cycling's Athlete Selection Criteria and Philosophy

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

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

...

Definitions and Criteria

1. **Medal Capable.** A medal capable athlete is one who has demonstrated the ability to produce a medal winning result by:
 - medal finish(es) at the most recent World Championships or Olympic Games; with demonstration of continued ability to perform at that level or higher based on performances in recent top-level international competition and/or
 - producing medal capable times under certified conditions within the past 12 months; and/or
 - consistently beating the World's best in recent (past 12 months) international competition with top-quality fields; and/or
 - other historical performances in International competition that would indicate the athlete is capable of a medal winning performance.

In all cases, the athlete in question must demonstrate that they have the capacity for a medal capable performance at the time of selection and the time of the event to which the athlete has been selected.

...

USA Cycling Principles of Discretion

...

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

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

...

Data to Support Discretionary Nominations and Selections

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

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

III. FINDINGS OF FACT

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

22. The parties considered that the Selection Procedures were the applicable principles to be used for the selection of the two spots at issue.
23. Pursuant to the Selection Procedures, the two athletes selected for the Women's ITT Event are also designated to participate as part of the four-person team in the Women's Road Race. In accordance with the Selection Procedures, the Selection Committee first

selects the two athletes for the Women's ITT Event, and then any remaining spots on the four-person Women's Road Race team are populated by other athletes.

24. If an athlete is properly determined to be "medal capable" in the Women's ITT Event, according to the mandatory priorities specified in the Selection Procedures, then the other discretionary priorities ("enhancing team performance" and "future medal capable") are not considered for that athlete; in no event can an athlete deemed to "enhance team performance" or be "future medal capable" be chosen over a "medal capable" athlete.
25. The "medal capable" definition bullet points are further qualified by the requirement that the athlete demonstrate the capacity to deliver a medal winning performance "at the time of the selection and the time of the event to which the athlete has been selected."
26. The USA Cycling Coaching Staff held a conference call with the "Long Team" in March 2016 to explain the selection process (the **Long Team Call**), and all of the Affected Parties were given the opportunity to ask questions.
27. The Selection Committee determined at its telephonic meeting on June 22, 2016 (the **Selection Committee Meeting**) that four athletes, Neben, Small, Armstrong and Stevens, were all "medal capable" for the Women's ITT Event in accordance with the applicable bullet points (three of the four) under the definition of Medal Capable. The second bullet point ("producing medal capable times under certified conditions within the past 12 months") is not applicable as certified conditions exist in track events only, though some of the parties argued otherwise.
28. Jim Miller, Vice President of Athletics at USA Cycling, is Armstrong's personal coach. He disclosed this conflict of interest to the Selection Committee and recused himself from the preparation of the materials (the **Spreadsheet**) to be submitted to the Committee by the Coaching Staff and withdrew from the Selection Committee Meeting. He provided Jack Seehafer with the template he used in the past for selections and Jack Seehafer completed the data in the template from the submissions of each of the six contending athletes.
29. The Minutes of the Selection Committee Meeting (the **Meeting Minutes**) indicate no discussion of the requirement that the athlete demonstrate the capacity to deliver a medal winning performance "at the time of the selection and the time of the event to which the athlete has been selected."
30. Before the Selection Committee Meeting, the Selection Committee was provided electronically all the submissions from the athletes as well as the Spreadsheet prepared by Jack Seehafer. The Selection Committee evaluated each of the six athletes' data against the Selection Procedures and the Rio ITT course.
31. The Meeting Minutes reflect the Committee's determination of which athletes met which bullet points of the Medal Capable definition according to the Selection Committee: Armstrong is the only athlete to meet bullet 1 which is non-controversial in this case, she also met bullets 3 and 4; Stevens met bullets 3 and 4; Small and Neben met bullet 4.
32. Each of the athletes submitted to USAC and this arbitration extensive data on her personal race results in the ITT, head to head competition among the others and in some cases,

other data to substantiate her capacity to deliver a medal winning performance at Rio, such as a 12 month performance trend, and to meet the criteria set forth in the definition of Medal Capable. These were supposed to be reflected in the Spreadsheet which was circulated to all the Selection Members prior to Selection Committee Meeting. There were errors in the presentation of these data in both the Spreadsheet and the Meeting Minutes.

33. The ITT results of each of the athletes are impressive and extensive. Some of the results are for time trial races which were part of Road Race multi-day events, where the rider is part of a pro cycling team, may have been acting as a support rider and is not trying to win in a particular event. Nevertheless, the ITT stage races were considered by the Selection Committee. On the cycling calendar, there are only a few single day time trial events with a near 30 km course, as in Rio, one of which is the 2016 Nationals.
34. The results of the 2016 Nationals in the ITT were: Small took 1st place, Neben was second, Armstrong was third and Stevens was 6th. This is the only time the four athletes raced head to head in the last 18 months. At the UCI women's Elite Road Racing and Time Trial World Championships (**World Championships**) which were held in September 2015, Armstrong finished 5th, Stevens finished 6th, Small finished 14th, and Neben did not compete. Some of the ITT in which the athletes competed are of a higher level than others, with more competitive international fields. The Nationals included Americans only, is a professional event but is not a competition featuring the world's best even though four Americans who are deemed Medal Capable were competing. The World Championships feature every top ITT competitor in the world.
35. Small and Neben had thought that the Nationals would be an important consideration for the Selection Committee, as it was held close to the time of selection and featured all four Medal Capable riders competing head to head. Small won that race decisively. This is the only recent one day ITT race where all of the four competed head to head. Small had also understood that the most recent (2015) World Championships results would be a big part of the selection process, as it was the sole race used to qualify the top three U.S. finishers for an automatic selection to the Olympic team, but she had been sick during that race and finished 14th. Neben was not selected by USAC to compete in the 2015 World Championships.
36. Armstrong had planned her competition schedule after the Selection Criteria were published knowing she would be competing against the world's best at some of the multi-day events and recognizing that she met the first bullet point having won a gold medal at the 2012 Olympic Games. She did not compete in any of the UCI 1.1 races as they did not fit in her schedule or, with respect to Chrono Gatineau, it was under 20 km and she knew that UCI requires the World Championships or Olympic Games ITT courses be between 20 km and 30 km. She has been off the podium four times in all the ITTs in which she has competed including her 5th place at the 2015 World Championships.
37. Stevens is the only US athlete to have competed in four consecutive ITT World Championships, placing 2nd in 2012, 3rd in 2013, 4th in 2014 and 6th in 2015. In contending for the 2012 Olympic Games discretionary spot, she had set up her schedule based on the published selection procedures, knowing that last time, she was the reigning 2011 ITT Nationals champion, but she was not selected for the 2012 Olympic team. This

time, she concentrated on other races and competing against the world's best in ITT when she could, based on her commitment to her pro racing team.

38. Each of the races in which the athletes competed during the 12 month period referenced in the Medal Capable third bullet point are not of equal importance when one looks at the field of competitors in those events. The UCI 1.1 ITT events do not include "world's best" or "top-quality fields" as referenced in the Medal Capable, third bullet point definition. Stevens testified these are considered development events. Neben targeted these UCI 1.1 ITT events as they were the only ones she could compete in during the twelve month period prior to the Selection Committee Meeting and she did well in those events and improved such that she placed 2nd in the 2016 Nationals. Stevens and Armstrong who competed on professional teams did not compete in these UCI 1.1 ITT events.
39. The Selection Committee looked not just at the most recent results but also at historical results, of both single day ITT events and ITT stages of multi-day events, in evaluating the match against the Medal Capable bullet points. More weight was given to single day ITT events and to those ITT stages against the world's top riders, such as the 2015 World Championships held in September. Since the ITT races are not ridden often, the evaluation focused on the quality of the competition, and weighed international events as more important than domestic events. The Committee gave very little weight to the Nationals. Mike McCarthy, a Selection Committee member and Jack Seehafer testified that the Meeting Minutes reflect the analysis the Selection Committee did in general terms, rather than including every discussion.
40. The Selection Committee did not look solely at results in the past twelve months, but rather looked as required by the Medal Capable bullet points at the most recent Olympic and World Championships winners. The Selection Committee also looked at results over the course of each of the athletes' careers and at recent years' international results primarily to see if the athlete is still achieving results.

IV. SUBMISSIONS OF THE PARTIES

A. Claimant

41. Claimant argues that USAC failed to follow its Selection Procedures in the determination of Stevens and Armstrong as Medal Capable. The objective factors listed in the Medal Capable criteria bullet points need to be followed along with the demonstrated capacity for a medal capable performance at the time the athlete is selected and at the time of the 2016 Olympic Games ITT.
42. Claimant argues that with respect to bullet point 3, she has shown her ability to beat the world's best competitors in the past 12 months, as evidenced by her defeat of Neben, Stevens and Armstrong at the 2016 Nationals as well as impressive finishes at higher rated international events competing against Olympic medalists from other countries. She argues that with respect to bullet point 4, she has competed in an exhaustive list of races that evidence her medal capability against international competition. She also is the superior athlete in head to head ITT competition against both Armstrong and Stevens.

43. Claimant argues that at the time the selection was made, Armstrong's and Stevens' race results over the past year and specifically at the Nationals fail to establish their capacity for a medal capable performance at the 2016 Olympic Games which should have been the controlling consideration. Claimant submits that the data is inconsistent with the Selection Committee's conclusions. With respect to Stevens, though she does have substantial international competition experience as required in bullet 4, Small beat Stevens in head to head ITT performances dating back to 2013, with some exceptions.
44. Claimant argues that the Selection Committee in making the 2016 Olympic team selection did not consider the similarity of the Rio Time Trial course to that of the Nationals which she won. In addition, the two races will be held under climate conditions that are expected to be similar and this is the most recent race featuring all four contenders. Not considering this for the Time Trial selection was treating the athletes inconsistently. It was the only single day ITT close to the date of selection and is the most relevant. The qualifier that the athlete demonstrate her medal capability at the time of selection is not limited to international results and thus the Nationals should have been the most important result.
45. Claimant argues that Armstrong's previous Olympic Games gold medals do not indicate a similar capability for the current Olympic Games and that she has not shown herself to be medal capable for these Games as required.
46. Claimant argues that if the Selection Committee was to consider solely the World Championships, the Selection Procedures should have said so and that results in multi-stage events including road race results should not be relevant under the ITT criteria.
47. Based on all of the above, Claimant has met the selection criteria for the Women's Time Trial team and the Selection Committee erred in not selecting her.

B. Affected Party Neben

48. Neben repeats the arguments made by Claimant and argues that she has also demonstrated she should have been selected according to the criteria for Medal Capable, based specifically on her performances at the 2016 Nationals and in the highest ranked UCI ITT events over the last year. Several of her results were omitted from the data submitted by the Coaching Staff to the Selection Committee, or inaccurately represented. Neben specifically tailored her schedule to compete in the competitions listed in the Selection Procedure's Final Qualification Period list of events which referred to the UCI schedule and included the 1.1 UCI ITT events. These recent results were not considered.
49. She also argues that the Selection Committee was presented with inaccurate and less relevant results than those the Selection Committee should have considered. The Neben data in the Spreadsheet was simply not accurately presented and the Meeting Minutes do not reflect that the Selection Committee was making a decision based on correct information. These are colossal mistakes in the context of this process. They demonstrate a bias against Neben which she had previously experienced with Jim Miller. Based on this presentation, including conclusions presented by the Coaching Staff in the Spreadsheet, the Meeting Minutes then reflect those same conclusions were adopted by the Selection Committee. The Committee thus did not rank the four athletes properly, as they were not using accurate, relevant data and did not apply the criteria in a manner consistent with the

terms of the Selection Procedures. By doing this, the Selection Committee failed to apply the criteria fairly, failed to treat similarly-situated athletes the same, failed to give precedence to international results over domestic results and demonstrated bias against Neben.

50. The Selection Committee did not follow the Selection Procedures priorities, they did not give precedence to international results such as the UCI 1.1 events over domestic results and did not consider the ability to produce a medal capable performance at the time of selection and the time of the event by looking at recent performances and ignored the head to head data provided by the results of the Nationals. They instead chose to favor other factors not identified in the Selection Procedures. Specifically, neither Stevens nor Armstrong had superior recent results in ITT at the time of selection. This ignores the Selection Procedures.
51. Neben argues the Selection Committee did not apply the criteria as written, as they used solely subjective factors and not the objective factors listed in the Medal Capable bullet points. Their emphasis on the results in the 2015 Worlds is not supported by the bullet points. The athletes reading the Selection Procedures had no way to know this would be the emphasis of the Selection Committee. Small and Neben dominated the other two athletes at the Nationals in 2016, the most recent event where they were all head to head and there were four medal capable athletes competing (these are the “world’s best”). Though the Nationals is not an international event, it is a professional event as referenced in the Selection Procedures section entitled “Importance of Professional and International Competition”. The 2016 Nationals showed that Small and Neben were superior at the time of selection to Armstrong and Stevens.
52. Looking at every objective measure, Neben argues that she should have been ranked higher than Armstrong and Stevens in the Medal Capable evaluation by the Selection Committee.

C. Respondent

53. USA Cycling argues that it followed its Selection Procedures to select an athlete capable of winning a medal at the 2016 Olympic Games.
54. The process of weighing the relative merits of each athlete’s medal capability consists of reviewing each athlete’s prior results as listed in the Medal Capable definition bullet points, with an educated understanding of how prior results may demonstrate medal capability based on the specific attributes of the 2016 Rio Time Trial course. This does not mean finding results from a single most comparable course, but rather assimilating all the data as defined in the Selection Procedures and predicting results with the exercise of professional judgment and discretion while balancing all the variables over many prior results. The field that participates in a race is an important consideration in measuring medal capability against international elite, as reflected specifically in the bullet points of the Medal Capable definition.
55. The two athletes selected have demonstrated in international competition that they have the broad skills, athletic ability and racing sophistication to master the difficult Time Trial course in Rio. The Meeting Minutes did not specifically reference the consideration of medal capability at the time of the Selection Committee Meeting because it was

unnecessary. The Selection Committee members all knew they were selecting a Medal Capable athlete for the 2016 Olympic Games. There was no reason to say it separately.

56. Both Small and Neben are capable of winning a medal, but the data they submitted to qualify for selection was thinner than that submitted with respect to Armstrong or Stevens. In addition, the relevance of that data to the evaluation made by the Committee was less important to meet the specific criteria of the Medal Capable definition. The results at the 2015 World Championships were of greater relevance in accordance with the criteria than the 2016 Nationals results.
57. In addition, historic results for all the candidates were considered over several years as required by the bullet points (historical performances). Past results are indicative of future success as expressed in the data themselves. Both Stevens and Armstrong had consistent results over a longer period, whereas there was much more fluctuation in the data relating to Small and Neben.
58. The arguments made by Claimant and Neben are subjective and their results need to be looked at in the context of the criteria, the strength of the field, whether they were domestic or international and their importance, as reflected by the UCI points assigned to the events.
59. Both Small and Neben are great athletes, but they are looking at their performances subjectively. The Selection Committee when looking at international events comparable to the Rio course, and as set out in the criteria, are making an objective evaluation of medal capability.
60. The weight Small places on the Nationals results are not consistent with the criteria, which refer specifically to multiple data points. The Nationals were not designated as Olympic Trials, and they can not be given that level of importance. Neben also relies heavily on her results at the Nationals and at several UCI 1.1 races which are considered development races. The criteria require the consideration of multiple results against the best athletes in the world.
61. The Selection Procedures identify the criteria for the Selection Committee to consider in both bullet points 3 and 4 by focusing on the “world’s best” in “international competition” with “top-quality fields”. This does not exclude consideration of competition in multi-day races. In order for the Selection Committee to consider all results, the competitions where the best cyclists are, on the pro teams, in the stage races, and at the World Championships, are to be considered.
62. Respondent argues that the Coaching Staff and the Selection Committee acted well within their discretion in looking at the historical record, the trends and not treating the 2016 Nationals as de facto Olympic Trials, in selecting Armstrong and Stevens to the Olympic team.

D. Affected Parties Armstrong and Stevens

63. Armstrong and Stevens both argue that the burden of proof is on Claimant and Neben to show that they, more than Armstrong and Stevens, met the bullet points criteria in the definition of Medal Capable. They have not met that burden.
64. The criteria focus specifically on professional and international competition, “beating the world’s best” because that makes the athlete more likely to medal at the Olympic Games. The athletes all had the Selection Procedures, they had the Long Team Call about them and could ask questions. They were able to set up their schedules based on the Selection Procedure’s criteria.
65. Armstrong met all the bullet points in the definition of Medal Capable by a unanimous decision of the Selection Committee. This decision is fully supported by her results. She is still demonstrating her ability to be medal capable, including at recent races as required in the qualifier to the Medal Capable definition. Her historical record has no peer. She is not required independently to demonstrate that she is Medal Capable by one particular race at the time of the selection, but rather by looking at all the results listed in the bullet points.
66. In head to head with both Small and Neben, Armstrong argues that Small has beaten her only once, at the 2016 Nationals and Neben in addition to the 2016 Nationals, has beaten her only in races that did not involve the world’s best. Small and Neben have not raced against the world’s best on a consistent basis and won as Armstrong has.
67. Stevens also points to her record at the World Championships in the last four years as showing a consistent pattern of beating the world’s best and of competing in international competitions. This event takes place at the end of the cycling season, with more athletes than will compete in the Olympic Games and the athletes are all at their peak. Consistency of excellence comes through in Stevens’ results and that is what the Selection Committee was looking for.
68. Both argue the 2016 Nationals is not a predictor of who will be the best at the Olympic Games. The World Championships are a far better predictor based on the level of competition.

V. MERITS

69. Claimant and Affected Party Neben in this case have identified the breach by USAC as a failure to follow and fairly apply its Selection Procedures. In reviewing USAC’s application of its Selection Procedures, I am not substituting my judgment for that of the experts on the USAC Coaching Staff and the properly composed Selection Committee, but rather reviewing *de novo* the application of the Selection Procedures as published to the facts of this particular case. Specifically, the standard of review is that the discretionary criteria must be supported by objective facts to insure the factors are applied fairly. In other words, the discretionary factors need to be clearly defined.
70. In addition, I look to whether the four athletes competing for these spots were aware of the criteria by which they would be judged by USAC in making its selection.

71. The evaluation to be made by the Selection Committee in accordance with the Selection Procedures was whether the athletes were Medal Capable and then once having made a determination, which of the four athletes ranked highest as Medal Capable.
72. The discretionary criteria list objective facts in each of the bullet points under consideration here: bullet point 1 specifically refers to the most recent Olympic Games or World Championships; bullet point 2 is irrelevant for road races; bullet point 3 limits the consideration to international events with the world's best in the past 12 months; and bullet point 4 references historical performances in international competition that indicate the athlete is capable of a medal winning performance. Each of these is qualified by the final paragraph which asks for a subjective evaluation that the athlete has demonstrated a capacity for a medal capable performance at the time of selection and the time of the Olympic Games. Thus, the definition of Medal Capable requires the exercise of discretion as applied to objective facts as required by *Viola*.
73. There is subjectivity to identifying "historical performance" and "the world's best" as well as the "capability for a medal capable performance". USAC identifies similar fields to that expected at the Olympic Games, of the world's best competitors, as the most important factor, Stevens focuses on the time of year as one important element in beating the world's best, Small focuses on the Nationals as a recent head to head competition and Neben focused on the same Nationals and the UCI 1.1 international events. It thus appears that the four athletes are applying the specifics of the criteria in varying ways, and perhaps USAC could have improved the definition by which they would be judged by USAC in making its selection. This is a significant flaw but does not invalidate the Selection Procedures. This Arbitrator still has to apply the Selection Procedures to the facts of the individual case. *Komanski at 5*. As set forth in *McConneloug and USA Cycling*, USA Cycling has "the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion.... Athletes are entitled to know what standard they have to meet and precisely how such selections will be made." Though the athletes have made numerous arguments about the way the Selection Committee applied the Selection Procedures, none have argued they were not "clear, transparent, and easy to apply without confusion". It does seem however that some of the circular logic in looking at past results to demonstrate medal capability in the future, under the definition of Medal Capable, could be eliminated and the standards could be made much clearer by USAC.
74. The Selection Procedures are supported by objective data and those data were considered fairly by the Selection Committee in that the Committee focused primarily on international results and the quality of the field of competitors, which were heavily emphasized in the bullet points. It is unfortunate that the Meeting Minutes are not more clear about the specific evaluation but the testimony and the submissions of the athletes both to the Selection Committee and this Arbitrator are extensive so there was plenty of data to consider and evaluate.
75. The burden of proving that USAC failed to follow and fairly apply its Selection Procedures consistently, acted in bad faith and/or violated applicable federal or state laws is on the Claimant and Affected Party Neben.

76. The two top finishers at the 2016 Nationals did not have sufficient other objective results to support those outstanding results. The weight given to the Nationals versus the World Championships by the Selection Committee was based on the Medal Capable definition and was consistently applied in evaluating, in accordance with the qualifier, whether each of the four were capable of a winning performance at the Olympic Games. This is a subjective evaluation but there was no showing that it was inconsistently applied or applied in bad faith or in an arbitrary manner. To weight the World Championships more heavily than the Nationals is supported by the explicit wording of the bullet points.
77. The primary question identified by the definition of Medal Capable was how to demonstrate capacity for medal capability at the 2016 Olympic Games. Some of the data for the Selection Committee to consider included a consistent record over some historical period, past medals at the Olympic Games, head to head results, and domestic competition, all as set forth in the bullet points and the Data to Support Discretionary Nominations and Selections. The definition of Medal Capable seems to be redundant in pointing to the factors both as predictors of capacity at the 2016 Olympic Games and indicators of past performance. Basically, USA Cycling, under the definition, had to use past performances both to rank medal capability and to determine medal capability. Nothing under the definition requires the usage of the most recent data. Every single bullet point references international results and the Nationals are not international results, though the event is professional. These are certainly of value to consider future performance capacity but they do not seem to fit within any of the objective data in the bullets under the definition of Medal Capable. Domestic competitions are part of the Data to Support Discretionary Nominations and Selections so they can be considered but it certainly did not indicate bad faith or inconsistency for the Selection Committee to weight the World Championships results more.
78. Once the objective facts have been identified, in a discretionary selection, the expertise of the NGB is to be applied fairly and consistently. There is no question that USAC possesses the expertise to make the evaluation of the various data provided in each of the athletes' submissions. The Selection Committee followed the Selection Procedures in evaluating the data for each candidate and had sufficient objective facts in making that evaluation to consider each of these four athletes Medal Capable.
79. Though not listed in the Selection Procedures, the UCI points assigned to the events are relevant in evaluating a particular event's importance on the cycling tour. Since UCI did not use this as a controlling factor, but rather only one indicator of the importance of a competition, this did not consist of an unfair application of the criteria, though it would have been preferable for USAC which controls the writing of the Selection Procedures to specify this as a useful data point.
80. This was not a decision made arbitrarily, but rather one that followed the Selection Procedures as they were written, however flawed. The Selection Procedures were still the applicable criteria for the Selection Committee to use and the Selection Committee exercised its discretion appropriately.
81. Claimant's request is therefore denied. Affected Party Neben's request is therefore denied.

VI. ALLOCATION OF ARBITRATION FEES AND COSTS

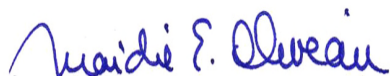
1. Claimant and Respondent each paid half of the arbitration fees and neither made a request for any reallocation of such fees. Under AAA Commercial Rules Section R-50, the Arbitrator has discretion to assess and award such fees and costs in the final award.
2. In determining whether to shift the allocation of these fees and costs, as Arbitrator, I look at the conduct that gave rise to the demand for arbitration in this case which was USAC's exercise of its discretion in making the Nomination. It is noted that USAC acted in good faith and fairly. Thus, there is no basis for reallocating the fees. Accordingly, no reallocation of fees is made.
3. With respect to Armstrong's request for an award of fees, she did not pursue this claim.

Decision

I therefore rule as follows:

- A. Claimant Carmen Small has not sustained her burden of proof that she should have been named to the Women's Individual Time Trial Event Olympic team and her demand for relief is denied;
- B. Affected Party Amber Neben has not sustained her burden of proof that she should have been named to the Women's Individual Time Trial Event Olympic team and her demand for relief is denied;
- C. The parties shall bear their own attorneys' fees and costs associated with this arbitration;

This Award shall be in full and final resolution of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.



Maidie Oliveau
Sole Arbitrator
Dated: July 26, 2016