

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 30 190 00235 06
Michael Farry
and
US Rowing, N.G.B. for the Olympic Sport
of Rowing

ORDER OF ARBITRATION PANEL

WE, THE UNDERSIGNED ARBITRATORS, having been designated in accordance with Section 8.5 of the Bylaws of the United States Olympic Committee, and having been duly sworn, and having carefully considered the written submissions of both parties, as well as the written submissions of the United States Olympic Committee ("USOC") in respect of the application by Respondent to dismiss this arbitration for lack of jurisdiction, do hereby render this, ORDER, as follows:

For the reasons and subject to the conditions and reservations set forth below, we are granting the motion of Respondent to dismiss this arbitration for lack of jurisdiction and will not, at this juncture, hear the dispute on its merits. We trust that both the parties and the USOC will be guided by this ruling in any continued proceedings.

The statutory basis for this motion is 36 USC 220527(b)(1) and the USOC Bylaws that reflect its requirement that a claimant either exhaust administrative remedies available through the National Governing Body ("NGB") or show, by clear and convincing evidence, that doing so would have resulted in unnecessary delay. There is no dispute that Claimant here did not exhaust any NGB remedies. Because we have granted Respondent's motion to dismiss, the issues of whether any such avenues, if they exist at all, would have afforded Claimant a meaningful hearing and whether Claimant has met his burden of establishing unnecessary delay is not squarely before us.

Claimant alleges that Respondent is required to reasonably reflect the views of athletes but is failing to do so. He seeks to require Respondent to change the method by which it selects the crews for four person boats. He believes that time trials, rather than a selection camp (with its opportunities for the application of subjective, and possibly biased, criteria) should be used. Respondent does not agree, although it is unclear how much, if any, athlete input was considered in reaching this decision. It is equally unclear what steps, if any, Claimant took with Respondent prior to filing with the USOC. What is apparent to this panel is that the USOC appears not to have followed its own rules in rejecting Claimant's attempts to have that body take substantive action on his complaint to it. Instead, in a series of communications between Claimant and the General Counsel of the USOC, Claimant was informed that his filing was deficient. No USOC panel was constituted to determine whether that was so or to hear the merits of his complaint.

Section 8.1F. of the USOC Bylaws states clearly that it is for the USOC hearing panel to consider any motion to dismiss on precisely the grounds that its General Counsel relied on in rejecting the filing. Claimant has not been afforded the right to present his complaint to such a panel. He has been left in a procedural limbo not entirely of his own making.

Claimant and Respondent are hereby ordered, and it is our view that the USOC would be well served, to take the following actions:

1. Claimant is granted leave to file a new complaint with the USOC within 10 days of the date of this Order containing the prerequisites for a complaint set forth in Article VIII of the USOC Bylaws, including but not limited to describing in detail how he has exhausted all remedies available to him under the organic documents of Respondent or why doing so would have resulted in unnecessary delay. Alternatively, if Claimant remains convinced that the complaint he has already filed meets all prerequisites contained in Article VIII the USOC Bylaws, then Claimant may renew his pending complaint by written notice to the USOC within 10 days of the date of this Order. If Claimant fails or refuses to either file a new complaint or renew his pending complaint within such 10 day period, then our grant of Respondent's motion to dismiss shall become final and unconditional.
2. If Claimant files a new complaint or renews his pending complaint within such 10 day period, then the USOC will convene a panel pursuant to Article VIII of its Bylaws as rapidly as possible to consider the complaint. Respondent is granted leave to file with the USOC any motions or objections to the complaint to be heard by the USOC hearing panel. The USOC shall make its ruling on the complaint and issue a written decision on its findings within thirty (30) days of the date of this Order.
3. This arbitration will remain open and in abeyance pending any renewed request for arbitration.

Date

Date

7/14/06

John F. Allgood, Arbitrator

Robert C. Pfeilsicker, Jr., Arbitrator

Date

Richard K. Jeydel, Arbitrator, Dissenting Opinion

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John F. Allgood, Arbitrator

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DISSENTING OPINION

Although I agree with my fellow arbitrators that the lack of jurisdiction arguments presented to us here should have been heard, in the first instance, by a USOC panel, I believe that the "remand" proposed rests on an overly narrow focus on procedure, and ignores the underlying defects of the complaint. Mr. Farry may be correct in asserting that his NGB has failed reasonably to take into account the views of its athletes, but he makes essentially no mention of what steps he or other athletes took with the NGB in support of those views, or why doing so would have resulted in unnecessary delay. No complaint under the cited provisions of the Act and the USOC bylaws is facially valid without such a statement. Neither we nor a USOC panel can act on a claim of this type, regardless of its merits, unless that claim has been pursued through every avenue of consideration and appeal offered (subject to relevant time constraints) by the NGB. Accordingly, I respectfully disagree with the majority ruling; this panel has, in my opinion, the authority to dismiss this complaint without further proceedings.

7/13/06
Date


Richard K. Jeydel, Arbitrator