

AMERICAN ARBITRATION ASSOCIATION

January 30, 1998

In the Matter of the Arbitration between

STACEY BLUMER
Claimant

v.

UNITED STATES SKI &
SNOWBOARD ASSOCIATION
and THE UNITED STATES
OLYMPIC COMMITTEE
Respondents

JIM MORAN
Claimant

v.

UNITED STATES SKI &
SNOWBOARD ASSOCIATION
and THE UNITED STATES
OLYMPIC COMMITTEE
Respondents

EVAN DYBVIG
Claimant

v.

UNITED STATES SKI &
SNOWBOARD ASSOCIATION
and THE UNITED STATES
OLYMPIC COMMITTEE
Respondents

CASE NUMBER: 30 190 00027 98

In this arbitration proceeding the claimants are Stacey Blumer, Jim Moran and Evan Dybvig, and the respondents are the United States Skiing and Snowboard Association, the national governing body of the amateur sport of freestyle aerial skiing, and the United States Olympic Committee. The complainant Stacey Blumer appeared through Mark Levinstein of the District of Columbia bar. Jim Moran was represented by Ross Anderson of the Utah bar. Evan Dybvig appeared through his father Richard Dybvig. The respondent United States Skiing and Snowboard Association was represented by Todd Wakefield of the Utah Bar. The United States Olympic Committee, respondent, appeared at the hearing through Ronald T. Rowan, who is a member of the committee.

Pursuant to a telephone conference call on January 28, 1998 at 5 PM, that lasted approximately two hours, the parties agreed that an expedited arbitration proceeding would be held on January 29, 1998, at the American Arbitration Association office at 1660 Lincoln Street in Denver, Colorado and that the proceedings would commence at 10 AM, and that a court reporter would transcribe the proceedings. Justice William H. Erickson was appointed by the American Arbitration Association to serve as the Arbitrator. Those participating in the conference call were the arbitrator, Mark Levenstein, counsel for the complainant Stacey Blumer, Ross Anderson, counsel for the complainant Jim Moran, Todd Wakefield, counsel for the respondent United States Skiing and Snowboard Association (USSA), Ron Rowan, counsel for the United States Olympic Committee (USOC) and India Johnson, an executive of the American Arbitration Association. 36 USC 382(b) directs that there be swift and equitable resolution of disputes involving amateur athletes. See also 36 USC Secs. 374 (8) and 391 (11) (12). The goal dictated by Congress is to obtain the most competent amateur representatives in the Olympic games 36 USC Sec. 374 (a).

Arbitration by the American Arbitration Association is authorized by the Constitution of the United States Olympic Committee and the Amateur Sports Act of 1978. The Commercial Arbitration Rules as amended and effective on July 1, 1996, and the Arbitration Rules for the Resolution of United States Olympic Committee Disputes, effective July 1, 1996, will govern this proceeding.

The testimony of witnesses was taken under oath and documents and exhibits were presented to the arbitrator. Stipulations by the parties were also considered by the arbitrator.

The arbitrator concludes that it has jurisdiction to determine the claims made by the complainants, Stacey Blumer, Evan Dybvig, and Jim Moran, against the respondent United States Skiing and Snowboard Association and the United States Olympic Committee. The complainants assert that they were denied the opportunity as world class athletes to participate in the 1998 Winter Olympic Games in Nagano, Japan.

The issues center on whether the procedures utilized in selecting the members of the United States Freestyle ski team to participate in the Winter Olympics at Nagano, Japan in 1998. Stacey Blumer, an aerial freestyle skier, Evan Dybvig, and Jim Moran, mogul freestyle skiers, are amateur athletes that are highly qualified to participate in freestyle skiing competition. Neither of them was selected to participate on the United States Ski team in the winter olympic competition at Nagano Japan in 1998.

The competition which provided the basis for the selection of the team was held on January 24, 1998 and the selections were announced on January 26, 1998 although the claimants deny notice until January 28, 1998. The release of the selections made by the USSA on January 26, 1998, deprived the complainants of the appeal to the USSA Judicial Committee granted by the bylaws of the USSA. Not all of the places on the ski team were filled and both claimants sought to have an interim order entered naming them to the team, subject to later removal after a full arbitration hearing. The arbitrator denied the claimants interim relief at the conclusion of the telephone conference call on January 28, 1998.

The arbitrator makes the following findings of fact. The criteria followed by the USSA in making selections is set forth in (Exhibit A). The parties stipulate that the November 1-2, 1997 resolution of the USOC (item 9.11) was approved (Exhibit B). The parties also stipulate the following:

1. If the slots that are presently open on the U.S. Olympic Freestyle Team were to be filled, they would be filled by Jim Moran, Evan Dybvig and/or Stacey Blumer.
2. Jim Moran, Evan Dybvig and Stacey Blumer are world-class competitors who would be possible contenders for medals at the 1998 Winter Olympic Games at Nagano, Japan.
3. Jim Moran, Evan Dybvig and Stacey Blumer will testify they were never advised that there would be, or may be, unfilled slots on the 1998 U.S. Olympic Winter Freestyle Team until the selection announcement was made.
4. The criteria – in particular the specified date when the decision would be announced – made it impossible for the athletes to exercise any right under Article IX. C. to seek review of the team selection decisions by the USSA Judicial Committee.
5. Bruce Erickson was not involved in the decisionmaking concerning which athletes would be given discretionary selections.
6. Alan Ashley and Bill Marolt communicated to the coaches who were involved in the decision that the standards to be applied with respect to discretionary selections were designed to ascertain whether the athlete was likely to be a medalist at the Nagano Olympic Games.
7. Alan Ashley and Bill Marolt reviewed the decisions about which people, if any, should be given discretionary selections and give their approval to those selections.

The arbitrator makes the following conclusions of law:

Congress has delegated the coordination and regulation of amateur skiing to the USSA and the USOC. Barnes v. International Amateur Athletic Federation 862 F Supp 1537(SDWVa1993), The Amateur Sports Act requires that procedures be resolved by the USOC and the USSA the national governing board be provided to swiftly resolves disputes. Michels v. United States Olympic Committee, 741 F2d 155(7th Cir 1984).

The January 26, 1998, announcement of the selection of the members of the 1998 Olympic freestyle skiing team deprived the complainants of review by the USSA Judicial Committee.

The expedited review granted by the arbitrator provided the only means to resolve the disputes in this case in a timely manner.

The manner in which the appointments by USSA were made in this case under the Criteria set forth in Exhibit A constituted an abuse of discretion and denied the complainants a fair and equitable opportunity to be considered for a place on the 1998 Freestyle Olympic Team.

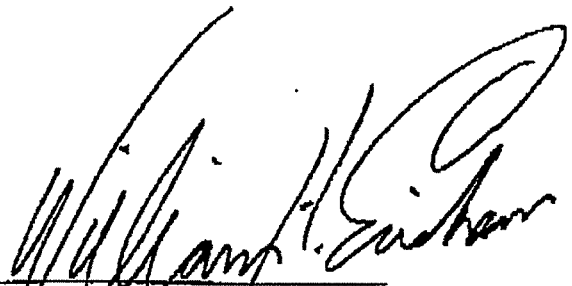
The arbitrator may not substitute his judgment or conclusions regarding the qualifications of the complainants for that of the USSA or the USOC. In this case, however, the respondents have stipulated as to qualification of the complainants as possible contenders for metals in the 1998 Olympic Winter Games and agreed that if the slots that are presently open on the United States Olympic Freestyle team were to be filled they would be filled by Jim Moran and Evan Dybvig (mogul freestyle skiers) and Stacey Blumer (aerial freestyle skier) who are world class competitors.

The testimony presented at this hearing supports the stipulation, and brings into question the fairness and clarity of the U.S. Freestyle Ski Team Olympic Winter Games Athlete Selection Criteria for the Nagano Winter Olympics. Ambiguities in the procedures, and recognition that two of six competitive events that provided a basis for automatic qualification, and the ambiguities relating to the discretionary procedures, supports the stipulation and the conclusion that the complainants should not be deprived of a place on the freestyle Olympic team.

The procedures in place for selection of the freestyle Olympic team and time constraints limit the type of relief that can be granted by the arbitrator. The arbitrator cannot order that the slots be filled by the USSA and USOC naming the complainants to the U.S. Olympic freestyle team, but the arbitrator can direct that the USSA and USOC use their best efforts to cause Jim Moran, Evan Dybvig, and Stacey Blumer be named to the vacancies on the 1998 U.S. Freestyle Olympic team to participate in the Nagano Olympics.

Accordingly, utilizing equitable powers, the arbitrator's award is that USSA and USOC be directed to name Jim Moran and Evan Dybvig (mogul freestyle skiers) and Stacey Blumer (aerial freestyle skier) to the vacant spots on the U.S. Freestyle Olympic Team for the 1998 Winter Olympics at Nagano, Japan.

Costs are assessed against the respondent USSA.



William H. Erickson
Arbitrator
January 30, 1998

**U.S. FREESTYLE SKI TEAM
OLYMPIC WINTER GAMES ATHLETE SELECTION CRITERIA
Nagano, Japan
February 7-22, 1998**

1. PHILOSOPHY

The U.S. Freestyle Ski Team will select only the most qualified athletes with the GREATEST OPPORTUNITIES FOR WINNING MEDALS at the 1998 OLYMPIC WINTER GAMES or FUTURE OLYMPIC WINTER GAMES. Selection criteria will stress World Cup performance in the 1997-98 season.

2. TEAM SIZE

The total team size may be up to fourteen (14) with a maximum of eight (8) per sex.

3. START RIGHT

Four (4) U.S. Athletes may start in each of the Aerials and Moguls disciplines in each sex. USSA will make every effort to fill the available start rights with the most qualified athletes.

4. ELIGIBILITY

All USSA and FIS licensed competitors with a valid US Passport and who have earned at least one FIS point are eligible for consideration.

5. NAMING OF THE TEAM

The U.S. Olympic Freestyle Team, men and women, will be named on January 27, 1998; the team will be announced at the USSA offices.

6. INTERNATIONAL FEDERATION RULES

All qualifying competitions are governed by the international federation rules of competition. The international federation for snow sports, as recognized by the IOC, is the FIS. All criteria as they relate to rules, regulations, and competition calendars, are subject to changes based on changes by the FIS, the USOC, and the IOC.

7. SELECTION PROCEDURES - SUMMARY OF SELECTION

a. Athletes who earn a start position in a specific event will be automatically named to the team. The first two start positions in Aerials and Moguls, men and women, will be filled objectively using the following criteria listed as 1 through 5. The third start position in Aerials and Moguls, men and women, will be filled objectively, providing all three start positions can be filled using criteria listed as 1, 2, and 3. The following criteria is listed in order of selection and importance.

- 1) Winner of a discipline at the U.S. Ski Team Gold Cup
 - 2) One top 3 World Cup finish
 - 3) Two top 5 World Cup finishes
-

- 4) Three top 10 World Cup finishes
- 5) Highest World Cup finish in a discipline

Athletes who have met the criteria listed as 1, 2, or 3 in a discipline will be selected ahead of all other athletes for that discipline provided quota spots and/or start positions are available.

- b. The Sports Medicine Staff will determine fitness and availability for competition in the case of any injured athlete(s).
- c. Athletes not fit to compete at the time the team is selected will not be included in rankings for objective slots.
- d. The Balance of the team will be selected at the discretion of the coaching staff. Selections made by coaches discretion will not comprise more than 25% of the total team size.

8. SELECTION CRITERIA FOR MEN AND WOMEN, AERIAL AND MOGULS

Selections will be based on the results of World Cup competitions held between November 20, 1997 and January 27, 1998 with reference to World Cup results and World Cup standings as below.

1) Winner of a discipline competition at the USSA Olympic Trials,
(tentatively scheduled for December 29 - January 4, 1998)

2) One top 3 World Cup finish in a discipline.

As needed to break ties, use the following:

- a) Best World Cup finish
- b) Next best World Cup finish
- c) Ranked by total World Cup points in the discipline

3) Two top 5 World Cup finishes in a discipline.

As needed to break ties, use the following:

- a) Best World Cup finish
- b) Next best World Cup finish
- c) Ranked by total World Cup points in the discipline

4) Three top 10 World Cup finishes in a discipline.

As needed to break ties, use the following:

- a) Best World Cup finish
- b) Next best World Cup finish
- c) Ranked by total World Cup points in the discipline

5) Highest World Cup finish in a discipline.

As needed to break ties, use the following:

- a) Next best World Cup finish
- b) Ranked by total World Cup points in the discipline.

6) Mogul selections will be from single format competitions only.

9. COACHES DISCRETION

Discretionary selection will be given to those athletes who have exhibited potential for future success, yet have received relatively limited competition opportunities thus far in their careers.

In general, discretionary selections will focus on individuals who are improving their international results. Based upon this rationale for selection, athletes who have exhibited potential for success, may be selected ahead of higher ranked athletes who are not improving.

The following objective criteria will be used when evaluating athletes for possible discretionary selections:

- a) Athletes who were sick or injured during the period of the selection events but who have demonstrated international excellence in the most recent past or in past seasons will be considered for a position on the team and a start position in the event if the illness or injury is not expected to interfere with top performance at the Olympic Games.
- b) Other outstanding results in international competition and selection events.
- c) Opportunities previously provided to an athlete in relationship to results
- d) Physical fitness level as determined by physical testing and conditioning (Moguls).

UNITED STATES OLYMPIC COMMITTEE

EXHIBIT

B

ITEM: 9.11
DATE: 10/17/97
PAGE: 1 of 2

RESOLUTION FOR BOARD OF DIRECTORS ACTION

ORLANDO, FLORIDA
NOVEMBER 1-2, 1997

SUBMITTED BY:

Sandy Baldwin, USOC Vice President
Executive Committee Liaison to the Review Committee for International Games
and Games Preparation and Services Committee

BACKGROUND INFORMATION:

President Hybl established the Review Committee for International Games to review the USOC participation and support strategies for all current and future multi-sport Games at which the U.S. Olympic Committee is eligible to compete. The Committee met June 27, 1997. At that meeting a request was considered from the Games Preparation and Services Committee to review the current USOC Games Participation Policy.

SPECIFIC ACTION REQUESTED:

WHEREAS the International Olympic Committee (IOC) has directed the International Federations (IFs) to devise qualifying standards for each sport to insure quality participation and cap the total athlete numbers at Games and;

WHEREAS the USOC should protect the athletes' right to qualify and participate within these standards at any Games;

THEREFORE, BE IT RESOLVED, THAT the USOC Board of Directors approve the revised USOC Games Participation Philosophy as outlined on the attached document to reflect current IOC and IF qualification policies.

BUDGETARY IMPACT:

Minimal or a possible cost savings. It is anticipated that the United States will continue to earn and qualify Olympic participation quotas for future Games under this "representative" team concept just as it had utilizing the "full" team policy.

UNITED STATES OLYMPIC COMMITTEE

REVISED USOC GAMES PARTICIPATION PHILOSOPHY

(as recommended by the Games Preparation and Services Committee and Review Committee for International Games, 1997)

The U.S. Olympic Committee (USOC) has traditionally sent full teams, or entered as many athletes as they are eligible for, in Olympic and/or Pan American Games. However, beginning in this past quadrennium (1993-1996), the International Olympic Committee (IOC) required that the International Federations (IF) devise qualifying procedures (i.e. quotas) and/or standards for such Games in order to ensure world class participation. These standards were also enacted to ensure that the Olympic Games have reasonable athlete numbers in order to conduct elite competition in a multi-sport environment.

Based on these changing times in international sport, the ability of National Olympic Committees (NOCs) to set their own policies to enter athletes at Olympic Games and/or hemispheric Games (i.e., Pan Am Games) on their own has changed dramatically. Therefore, it is suggested that the USOC as an organization needs to re-evaluate its participation and funding requirements for its National Governing Bodies (NGBs) according to international standards compared to current Constitution and By-Laws language that was developed several decades ago when participation at Games was done as an entitlement and decisions regarding levels of participation could be more independently by the NOCs.

Specifically, it is the recommendation of the Games Preparation and Services Committee (GPSC) and International Games Review Committee (IGRC) that those NGBs whose IFs do not have a required qualifying process (i.e. quotas via World Championships), or impose specific qualifying performances (i.e. distance and/or mark in sports such as Track and Field and Swimming), be allowed to include additional performance criteria in their selection process in order to ensure their best possible representation at a Games.

Both committees support, the above scenario, provided that all NGBs guarantee minimum representation in each event to ensure that no U.S. athlete would be denied the right to compete for an opportunity to make an Olympic team. Also, all Games selection procedures must be carefully submitted and reviewed by GPSC and properly disseminated to an NGB's athlete membership well in advance.

In addition, the Committees would also mandate that the U.S. always be represented in all relay/team events in which we are eligible for regardless of what the teams level of ability might be. This should include any reserve personnel that IOC and IF regulations allow (at least one person per event) in order to protect against illness and/or injury so that U.S. participation will occur in these events.

Very few USOC NGBs are actually afforded the ability to select athletes as most have qualification processes to the Games strictly defined by their International Federations. However, due to the fact that the USOC is a limited resources organization and that NGBs are now held accountable for their High Performance Plan, it is recommended that NGBs be allowed to submit selection criteria with additional requirements other than what are published by their International Federation where allowed.