

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Re: 77 190 0007 10 JENF
Kelly Gunther, Claimant
and
U.S. Speedskating, Respondent
and
Rebekah Bradford, Affected Athlete

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association and in accordance with the U.S. Speedskating and the United States Olympic Committee (“USOC”) Bylaws, having been duly sworn, and having duly heard the proofs and allegations of the Parties, and the Affected Athlete do hereby, AWARD, as follows:

1. This case involves two outstanding speedskaters, only one of whom can go to the 2010 Winter Olympics in Vancouver, Canada (the “Olympics”). The decision by U.S. Speedskating, the national governing body, to select Rebekah Bradford over Kelly Gunther for the Ladies’ 1000 meter race at the Olympics has been challenged by Ms. Gunther.
2. The issue to be determined is whether, by selecting Ms. Bradford on the basis of her Re-skate at the 2010 U.S. Speedskating Championships (“Championships”), which was unofficial for the purposes of the determining the winner of the Championships but was the fastest time in that event and was “official” for “team selection purposes,” U.S. Speedskating has impermissibly denied Ms. Gunther the opportunity to participate in the Olympics.
3. In light of all the evidence and testimony, the Arbitrator determines that, under the U.S. Olympic Athlete Selection Procedures (“Selection Procedures”) adopted by the USOC and the 2009-2010 Long Track Speedskating Regulations (“Long Track Regulations”), Ms. Bradford’s Re-skate time was properly considered official for purposes of Olympic team selection. U.S. Speedskating therefore acted properly in selecting Ms. Bradford for the final position in the Ladies’ 1000 meter race.

BACKGROUND

4. After the completion of the U.S. Speedskating Championships on December 26, 2009, U.S. Speedskating announced the names of athletes selected to compete in the 2010 Olympics scheduled to begin on February 12 in Vancouver, Canada. U.S. Speedskating selected Ms. Bradford for the final spot on the Olympic Team in the Ladies' 1000 meter race on the basis of her Re-skate time in the Championships.
5. Ms. Gunther was awarded the gold medal for winning the Ladies' 1000 meter event at the Championships, but she was not selected for the Olympic team.
6. On January 6, 2010, Ms. Gunther filed a Demand for Arbitration with the American Arbitration Association ("AAA") after submitting a notice of complaint against U.S. Speedskating under Article IX of the USOC Committee Bylaws. Since the selected team was scheduled to be submitted to the USOC on January 11, 2010, parties requested a hearing and decision by January 11, 2010.
7. David W. Rivkin was selected by the AAA to serve as the sole Arbitrator in this case. After receiving certain disclosures from the Arbitrator, the parties agreed to the selection of Mr. Rivkin.
8. Between January 8 and January 11, all parties, including Ms. Bradford, submitted written statements to the Arbitrator. They also submitted documentary evidence.
9. On January 11, 2010, the Arbitrator held a five hour hearing via telephone. The hearing included Ms. Gunther, Ms. Bradford, U.S. Speedskating, legal and other representatives of all three of these parties, and Gary Johansen and John Ruger of the USOC as observers. During the hearing, each of the parties, including Ms. Bradford, was able to present testimonial and documentary evidence and arguments, and each of the athletes made certain statements and was subject to questioning by counsel for all sides. The following individuals testified: Ms. Gunther and Ms. Bradford, the interested athletes ; Derek Parra, Ms. Gunther's coach; Paul Stangl, Chief Referee at the Championships; Jack Mortell, Vice President of U.S. Speedskating; Ryan Shimabukuro and Mike Kooreman, Ms. Bradford's coaches; and Nick Pearson, an athlete who observed the December 30 race.
10. On January 12, 2010, at 12:00 p.m. EST , the Arbitrator issued a ruling by email as follows:

I have considered carefully the written and oral submissions by the parties in this case, as well as the testimony given in yesterday's hearing. I appreciate the

difficulties of the situation, and it is unfortunate that only one of Ms. Gunther and Ms. Bradford can be selected to the Olympic team.

I believe that US Speedskating acted properly in selecting Ms. Bradford for the final position in the women's 1000 meter race. While the Athlete Selection Procedures adopted by the USOC for US Speedskating provide the basis for selection, they do not provide all of the rules of competition. The rules of competition are also set out in the 2009-2010 Long Track Speedskating Regulations. These regulations provide for the possibility of a re-skate in Section C.1 on pages 3 and 4. They further provide that "re-skate times shall be deemed official times solely for team selection . . . purposes." Everyone knew that the US Speedskating Championships were being used to select the team for the 2010 Winter Olympics. Thus, when the Athlete Selection Procedures provide on page 12 that the athlete with the "best time from 1000m #1 or 1000m #2" or the "winner of that distance" at these Championships shall be selected, Ms. Bradford's re-skate time was an official time for these purposes. She had the best time and was the winner for these purposes, even though Ms. Gunther was the national 1000m champion. Moreover, the testimony yesterday made clear that all of the parties knew at the time Ms. Bradford re-skated that this was what the rules provided. Because these rules may be interpreted consistently, there is no conflict between them, and the provision in the Long Track Speedskating Regulations that the Athlete Selection Procedures govern in the event of a conflict does not apply.

Ms. Gunther also challenged the decision to permit Ms. Bradford to re-skate. While there is conflicting testimony about Ms. Bradford's request to re-skate, there is no doubt that she did in fact make such a request and that she did so "immediately following the race in which the skater's performance was impacted," as provided in the Regulations. It may have been unfair that Ms. Gunther was not informed of this request prior to her skating in the last pair of the 1000 meter race, but the rules of competition do not require such notice, and it is not the arbitrator's role or

within my authority to rewrite those rules of competition, especially after the fact.

I have considered all the other arguments made by Ms. Gunther, and my reasons for rejecting them shall be set forth in my Final Award. Accordingly, Ms. Gunther's appeal in this proceeding is denied.

Once again, I thank all parties for excellent presentations on short notice.

I affirm that this is my ruling, to be set out in more detail in a Final Award.

FACTS

The Rules

11. This dispute principally concerns the interpretation of two sets of rules: the Long Track Regulations and the Selection Procedures.
12. U.S. Speedskating publicized these two sets of rules through publication on the U.S. Speedskating website in May 2009 and in *Ice Chips*, the official U.S. Speedskating online publication.
13. The Long Track Regulations govern numerous U.S. Speedskating competitions, including the U.S. Speedskating Championships, the U.S. Team Trials, and American Cup Racing Series Events. These Long Track Regulations also incorporate, with certain exceptions, the International Skating Union ("ISU") Rules and Regulations.
14. The Long Track Regulations contain a disclaimer, which states: "In the event of any conflict or inconsistency between these regulation and the terms and provisions of the Athlete Selection Procedures for the 2010 Olympic Winter Games, the terms and procedure of the Athlete Selection Procedures for the 2010 Olympic Winter Games shall control." Long Track Regulations p. 3.
15. Section C.1 of the Long Track Regulations, titled "Exceptions to ISU Rules and Regulations," provides, in relevant part:
 1. Re-skates.
 - a. If, in the sole judgment of the Referee, a skater's performance in a Competition race is materially and negatively impacted by an unintentional fall, skate

equipment failure, or disqualification with the exception of disqualification due to false starts, in the reasonable determination of the referee the Referee may permit the skater to Re-skate such race in its entirety from a fresh start (a "Re-skate"). Any skater desiring a Re-skate must notify the Referee to request the Re-skate immediately following the race in which the skater's performance is impacted.

b. Unless the Re-skate would otherwise have been permitted under applicable ISU Rules and Regulations, Re-skate times will be considered unofficial times and shall be disregarded in the determination of final Competition standings. Re-skate times shall be deemed official times solely for team selection and training and athlete designation purposes.

Long Track Regulations pp. 3-4.

16. The Long Track Regulations have provided for the use of Re-skate times for purposes of selecting United States teams for international competitions for years. Witnesses stated that this practice is well-known by referees, coaches and skaters. Witnesses further testified that Re-skate times have been used for team selection purposes on many occasions. Mr. Morell testified that the goal of the Re-skate rule is insure that U.S. Speedskating identifies its fastest athletes for the purposes of team selection.
17. The Selection Procedures describe the manner in which skaters will be selected for the 2010 United States Olympic Team. With respect to the final spot on the Olympic Team for the Ladies' 1000 meter event, the Selection Procedures indicate the selection will be based on "results from the 2010 U.S. Speedskating Championships." More specifically, the Selection Procedures states that where, as in this circumstance, the final spot remains open, the person with the "[b]est time from 1000m #1 or 1000m #2" at the Championships, and "the winner of that distance in the 2010 U.S. Speedskating Championships" will qualify for the 2010 Olympic Team.
18. The Selection Procedures make no mention of the availability of a Re-skate time. Although the Re-skate rule has been used to alter the standing for the reserve spots for the Olympic team, there is no evidence that an athlete has previously secured a place on an Olympic team due to a Re-skate.
19. The official U.S. Speedskating announcement of the 2010 Championships stated that "[t]he competition will be held under the 2008 ISU General Regulations, the

2008 Special Regulations & Technical Rules for Speed Skating, and 2009-2010 U.S. Speedskating Long Track Regulations.”

The Championships

20. The U.S. Speedskating National Championships took place from December 26, 2009 through December 30, 2009.
21. On December 26, 2009, at 8:00 a.m., U.S. Speedskating held a meeting for coaches and referees to explain the rules of competition for the 2010 Championships. Mr. Parra, Ms. Gunther’s coach, attended the meeting, at which excerpts from the Long Track Regulations and Selection Procedures were distributed. The first two pages in the packet were Section C of the Long Track Regulations concerning Re-skates.
22. The Ladies’ 1000 meter competition at the 2010 Championships included two 1000 meter races, the first on December 27, 2009 and the second on December 30, 2009. Ms. Gunther posted a time of 1:17.12 in her first race. This time was the fastest time recorded in the 1000 meters before Ms. Gunther skated in her second race. Because she was in the final pair, Mr. Parra told Ms. Gunther that as long as she beat the person with whom she was paired, she would achieve the fastest time. Ms. Gunther achieved a time of 1:17.10 in her second race.
23. Ms. Bradford posted a time of 1:17.31 in her first race in the Ladies’ 1000 meters on December 27, 2009. In her second race, Ms. Bradford fell across the finish line and ultimately finished third with a time of 1:17.86.
24. There is conflicting evidence as to what happened immediately thereafter. It is undisputed that the Long Track Regulations require that “any skater desiring a Re-skate ... notify the Referee to request the Re-skate.” Ms. Bradford herself initially testified that Mr. Stangl had approached her to inform Mr. Kooreman and her that she was eligible for a Re-skate if she requested it, but she later stated that it was not Mr. Stangl but an assistant referee, Susan Sandvig-Shobe, who had spoken to her. Mr. Stangl testified that Ms. Sandvig-Shobe, had radioed him to tell him that Ms. Bradford had requested a Re-skate, and that he did not have a conversation directly with Ms. Bradford. Mr. Kooreman also testified that Ms. Sandvig-Shobe had told Ms. Bradford that she was eligible for a Re-skate on the basis of her fall.
25. There is no dispute that in that initial conversation, after being told she was eligible, Ms. Bradford requested a Re-skate, and that her request was granted. Ms. Gunther was not aware of this request prior to skating in the final pair of the 1000 meter race.

26. After Ms. Gunther had finished skating, but before the Re-skate, Mr. Parra informed Ms. Gunther that Ms. Bradford would receive a Re-skate and would have the chance to beat her time.
27. Under ISU regulations, a skater granted a Re-skate must receive a minimum of thirty minutes rest before a Re-skate. Mr. Stangl set Ms. Bradford's Re-skate for approximately one hour later. During that time, the ice was resurfaced, so that Bradford's race took place on fresh ice. Ms. Gunther testified that fresh, smooth ice could be advantageous to a skater, while Ms. Bradford indicated that it was advantageous to let the ice harden, and that therefore skating shortly after resurfacing was a disadvantage.
28. On her Re-skate, Bradford posted a time of 1:16.36. This time was the fastest time posted by any skater in the Ladies' 1000 meter competition at the Championships.
29. Ms. Bradford, her coaches, Mr. Mortell, Mr. Stangl and Mr. Parra all testified that when they saw that Ms. Bradford had skated a time of 1:16.36, they immediately believed that that time meant she had clinched the final spot on the Olympic team in the Ladies' 1000 meter race. There was further testimony that Ms. Gunther was upset by seeing Ms. Bradford's time.
30. Mr. Parra, Ms. Gunther's coach, testified that he then spoke to Mr. Stangl, the referee, about filing a protest on behalf of Ms. Gunther. Mr. Parra stated that he told Mr. Stangl he wanted to file the protest, but could not do so immediately because he had to coach other skaters. Based on this interaction, Mr. Parra believed that his protest would be accepted even if he could not submit his protest in writing immediately.
31. Following the end of the race, Mr. Parra drafted a written protest based on three grounds: (1) that the ice had been freshly resurfaced before Ms. Bradford's race, while Ms. Gunther had not skated on fresh ice; (2) that Ms. Bradford received the Re-skate after the finish of the Ladies' 1000 meter event, when she knew the time that she would have to beat; and (3) that the USOC Athlete Selection Procedures do not state that a skater may be named to the Olympic team on the basis of a Re-skate. To file the protest, Mr. Parra paid a \$100 fee on behalf of Ms. Gunther.
32. Mr. Stangl promptly denied Mr. Parra's protest on the ground that it was untimely under ISU Rule 123 Section 2(C), which provides that such a protest must be filed "not later than 30 minutes after the completion of the competition concerned. Completion of a competition (for this purpose only) means end of the last race of all races for a single distance in Speed Skating." This petition followed.

Arguments of the Parties

33. Ms. Gunther contends that the Selection Procedures conflict with the Long Track Regulations because the Long Track Regulations apply to team selection generally, while the Selection Procedures are specific to Olympic team selection. In particular, the Selection Procedures make no reference to a Re-skate. Ms. Gunther points to the disclaimer in the Long Track Regulations that provides that in the event of a conflict, the Selection Procedures control.
34. Ms. Gunther argues that the Long Track Regulations should not govern for purposes of team selection for the Olympics. She argues that the word “winner” in the Selection Procedures refers to the official winner from the Championships, rather than the skater with the fastest time from a Re-skate. Ms. Gunther’s position is that the Re-skate would have qualified Ms. Bradford for any team other than the U.S. Olympic team.
35. Ms. Gunther further argues that the administration of the Re-skate was improper because the referees initially approached Ms. Bradford and asked her if she wished to have a Re-skate, rather than requiring Ms. Bradford to initiate the request immediately after the race.
36. U.S. Speedskating and Ms. Bradford argue that the Selection Procedures cannot be read independently and that there is no conflict between the rules. The Selection Procedures, they claim, do not cover all the rules explained in the ISU Rules and Regulations or the Long Track Regulations.
37. U.S. Speedskating and Ms. Bradford emphasize that although the Selection Procedures provide the basis for Olympic team selection, they do not provide all of the rules of competition, which are also set out in the Long Track Regulations and the ISU Rules and Regulations. They contend that “team selection” in the Long Track Regulations nowhere excludes Olympic team selection. Therefore, the “best time” and “winner” under the Selection Procedures refer to the best time for team selection purposes. On this reasoning, such a “best time” can, as indicated in the Long Track Regulations, include the results of a Re-skate because a Re-skate is official for team selection purposes.
38. U.S. Speedskating and Ms. Bradford further argue that there was no impropriety in the actions of the referees, because they informed her of the option of a Re-skate and Ms. Bradford immediately requested that Re-skate.
39. U.S. Speedskating and Ms. Bradford further contend that the referee’s decision to allow a Re-skate is a “field of play decision” outside the Arbitrator’s jurisdiction. Section 9.12 of the Bylaws of the USOC provides: “The final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) shall not be

reviewable through or the subject of these complaint procedures unless the decision is (i) outside the authority of the referee to make..."

Decision

40. The Selection Procedures do not contain all of the rules of competition for the Championships. The official announcement of the 2010 Championships confirms this conclusion. For that reason, the Selection Procedures, as they relate to the 2010 Championships, must be read in conjunction with the Long Track Regulations which, in turn, incorporate the ISU Rules and Regulations.
41. When the Athlete Selection Procedures provide that the athlete with the "best time from 1000m #1 or 1000m #2" or the "winner of that distance" at these Championships shall be selected, Ms. Bradford's Re-skate time was an official time for the purposes of team selection, as provided in the Long Track Regulations. She had the best time and was the winner for these purposes, even though Ms. Gunther was the national 1000 meter champion.
42. Further, the result comports with the parties' expectations. Witness testimony made clear that all of the parties knew at the time Ms. Bradford re-skated that she could win the final spot on the Olympic team for the Ladies' 1000 meter race.
43. Because the Selection Procedures and Long Track Regulations may be interpreted consistently, there is no conflict or inconsistency between them, and the provision in the Long Track Regulations that the Selection Procedures govern in the event of a conflict does not apply.
44. Ms. Gunther also challenged the Referee's decision to permit Ms. Bradford to Re-skate. As to the issue of jurisdiction, I find that Ms. Gunther's challenge is to the Referee's authority under the rules to inform Ms. Bradford of her eligibility for a Re-skate; the challenge is therefore reviewable.
45. While there is conflicting testimony about Ms. Bradford's request to Re-skate, there is no doubt that she did in fact make such a request and that she did so "immediately following the race in which the skater's performance was impacted," as provided in the Long Track Regulations. It may have been unfair that Ms. Gunther was not informed of this request prior to her skating in the last pair of the 1000 meter race, but the rules of competition do not require such notice, and it is not the arbitrator's role or within my authority to rewrite those rules of competition, especially after the fact. Such a change should be considered by U.S. Speedskating.
46. Further, in light of the circumstances surrounding the submission of Mr. Parra's protest, U.S. Speedskating should reimburse Ms. Gunther for the \$100 fee.

Therefore, I AWARD as follows:

U.S. Speedskating's decision to select Ms. Bradford and not Ms. Gunther for the US Olympic Team is upheld.

U.S. Speedskating shall reimburse Ms. Gunther for the \$100 fee for protesting the Re-skate.

The administrative fees of the American Arbitration Association totaling \$750 and the Arbitrator's fees shall be borne by U.S. Speedskating.

This Award is in full settlement of all claims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.

January 15, 2010
Date

David W. Rivkin
David W. Rivkin, Arbitrator

STATE OF NEW YORK)
 :
COUNTY OF NEW YORK)

I, David W. Rivkin, hereby affirm on my oath as Arbitrator that I am individual described herein and executed this instrument, with his my Award.

January 15, 2010
Date

David W. Rivkin
David W. Rivkin, Arbitrator