

AMERICAN ARBITRATION ASSOCIATION

In the Matter of the Arbitration between

Harry Vogel, Claimant
and
US Speedskating, Respondent.

Re: 77 190 00553 09

AWARD OF ARBITRATOR

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

1. This is a difficult case involving an outstanding athlete and his eligibility to compete in Long Track Speedskating events at the 2010 USS Championships, held December 26-30, 2009 in Salt Lake City, Utah. The USS Championships are a qualifying event for the U.S. 2010 Winter Olympic Team and the 2009/2010 U.S. Winter World Cup Team.
2. The issue to be determined is whether the rules regarding when an athlete must meet certain time standards in order to compete in the USS Championships were sufficiently ambiguous to lead to the conclusion that USS impermissibly denied Mr. Vogel the opportunity to participate in these events, and, as a result, the other competitions for which the USS Championships are a qualifying event.
3. In light of all the evidence, the Arbitrator determines that the rules were not sufficiently ambiguous that Mr. Vogel should have been allowed to compete. The Arbitrator therefore denies Mr. Vogel’s claim.

Background

4. The USS’s 2009/2010 Long Track Speedskating Regulations (“Long Track Regulations”) and USOC Athlete Selection Procedure Form (“USOC Selection Procedure”) set forth identical eligibility rules for the 2009 U.S. Speedskating Championships (the “Eligibility Rules”). The Eligibility Rules are laid out in Section C, Qualification Standards, of the Long Track Regulations section on 2010 USS Championships and Team Trials. They state:
 1. **Eligibility to compete.** The following criteria are used for athletes to be eligible to enter the 2010 U.S. Speedskating Championships:

- a. Any skater receiving an automatic invitation to the Senior National Racing Program (top 14 from Order of Eligibility based upon 2008/09 results -see Attachment E for criteria)
- b. Any skater earning Senior Category 1 status for the 2009/2010 season (see Attachment E for criteria)
- c. Any skater who achieves the time standard below shall be eligible to skate the 2010 U.S. Speedskating Championships. Skaters may achieve the time standards at any ISU [International Skating Union] or US Speedskating sanctioned competition or recognized time trial skated between 1 July 2008 and 11 October 2009 and has a published protocol. If handheld timing is used, 0.20 seconds will be added to the final time. A list of sanctioned competitions will be posted at www.usspeedskating.org.
- d. Senior Long Track National Racing Program and Senior Long Track Category 1 skaters, as defined in 1.a. and 1.b. above will be eligible to skate every distance at the 2009/2010 U.S. World Cup/OQC Team Trials -Long Track Speedskating.
- e. Skaters qualifying by achieving one or more of the qualifying times listed in the table below shall be eligible to compete only in the event or events in which such qualifying times are achieved.

Times for Any Track		
	Ladies	Men
500m	43.24	39.00
1000m	1:24.82	1:16.08
1500m	2:11.13	1:57.96
3000m	4:35.15	X
5000m	8:02.03	7:06.68
10,000m	X	14:54.89

These are the 2009 U.S. Speedskating Championships time standards.

Long Track Regulations, p. 11.

- 5. The USOC Selection Procedure was released in final form in a document dated January 14, 2009. The January 14 document included a blank registration form for the 2010 USS Championships on Attachment B-2 stating that “[t]imes must be from official race results between July 1, 2008 and December 16, 2009.” When the USOC Selection Procedure was amended in a document dated November 4, 2009, the USS Championships registration form was modified so that the date range covered only July 1, 2008 through October 11, 2009, thus matching the date range provided in subsection (c) of the Eligibility Rules.
- 6. At races in Calgary, Canada between November 19, 2009 and November 22, 2009, Mr. Vogel achieved the following results, which are all under the times specified in the table above: 36:24 in the 500 meter, 1:10.87 in the 1000 meter, and 1:49.49 in the

1500 meter. (Vogel Exhibits, Attachment D.) It is not disputed that the Calgary races were sanctioned by the ISU.

7. Mr. Vogel registered to compete in the USS Championships on December 3, 2009. The USS website listed Mr. Vogel as registered for the 500 meter, 1000 meter, and 1500 meter races. (Vogel Exhibits, Attachment C.) Mr. Vogel's name continued to appear on the registration lists for these events as of the date of the hearing on this matter. Mr. Vogel stated that he confirmed his registration with a USS employee, Lynn Lawrence.
8. On December 16, 2009, upon arriving in Salt Lake City to train in the days before the USS Championships, Mr. Vogel was informed by his mother that he had received an email from USS informing him that he was ineligible to compete in the event.
9. Mr. Vogel and his representatives began to contact USS regarding his eligibility beginning on December 16. When the USS Championships began on December 26, Mr. Vogel offered to skate under protest, but his request was denied.
10. On December 28, 2009 (the rest day in the Championships), Mr. Vogel filed a Demand for Arbitration with the American Arbitration Association, along with a Statement of Dispute and various exhibits. Mr. Vogel asked to be allowed to compete in the remaining USS Championships events on December 29 and December 30.
11. Also on December 28, 2009, David W. Rivkin was selected by the American Arbitration Association to serve as the sole Arbitrator in this case. The Arbitrator's jurisdiction arises from the USS Bylaws and the USOC Olympic Games Code of Conduct and Grievance Procedures. After receiving certain disclosures from the Arbitrator, the parties agreed to the selection of Mr. Rivkin.
12. Each of the parties had the opportunity to make submissions before a hearing was held.
13. On the evening of December 28, 2009, the Arbitrator held a 90-minute hearing by telephone, as well as a shorter follow-up hearing, also by telephone. The hearings included Mr. Vogel and his mother, USS, and the parties' legal representatives. Gary Johansen and John Ruger of the USOC participated as observers. During the hearings, each of the parties, including Mr. Vogel, was able to present evidence, question witnesses, and make arguments.
14. Shortly after the follow-up hearing, at 12:15 a.m. EST, the Arbitrator issued the following ruling via email:

I have considered carefully the written and oral submissions by the parties in this case. The case raises some issues that will best be treated in my Final Award, which will be issued (as agreed with the parties) within a couple of weeks. In brief, however, I believe that US Speedskating's rules, as set out in its Long Track Regulations, require an athlete qualifying through meeting the qualifying times to have met those times by October 11, 2009.

While I think that the mistaken date in the original entry form may potentially have created some confusion, I do not believe that Mr. Vogel demonstrated reliance on that mistake in order to create an estoppel that would overcome the text of the rule. I must therefore deny Mr. Vogel's claim and rule that he is not entitled to participate in the US Speedskating Championships this week.

I also do not believe that the acceptance of the entry form by US Speedskating from December 3-17 created an estoppel or was a sign of ambiguity in the rule that would overcome the text of the rule and would allow Mr. Vogel to compete. However, it may have created sufficient reliance for him to travel to Salt Lake City to complete training for this week's championships. Therefore, I ask Mr. Vogel to submit, by January 6, 2010, a statement of expenses he incurred by traveling to and training in Salt Lake City from December 17 through tomorrow.

Once again, I thank both 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.

Decision

15. Mr. Vogel claims that he was eligible to compete in the 2010 USS Championships based on his performance at the races in Calgary, Canada between November 19, 2009 and November 24, 2009 where he surpassed the standards set forth in the table under subsection (e) of the Eligibility Rules.
16. Mr. Vogel argues that a typical athlete, who may not have obtained a high level of education, would read each subsection of the Eligibility Rules independently. This would have the result that Mr. Vogel's times from Calgary rendered him eligible to compete under subsection (e), which does not specify a window in which the time standards needed to be met. Mr. Vogel does not assert that he should be eligible based on the criteria in subsections (a) through (d) of the Eligibility Rules.
17. With respect to date restrictions, Mr. Vogel cites to Section D.3 of the USS Rules of Competition in the Long Track Regulations that states, in relevant part:

Unless otherwise provided in the applicable qualification standards, whenever eligibility is conditioned on the achievement of a qualifying time, a skater, to be eligible, must equal or better the prescribed standard in an official Olympic-style competition during the current skating season (after July 1, 2009) and prior to the close of entries for the applicable Competition.

Long Track Regulations, p. 4.

18. Mr. Vogel states that he did not rely on the registration form (Attachment B-1 to the USOC Selection Procedure) that originally stated that athletes' qualifying times must be from official race results through December 16, 2009.
19. USS argues that the Eligibility Rules should be read so that subsections (a) and (b) are read together with subsection (d), and that subsection (c) is read to restrict subsection (e). Under this interpretation, an athlete must meet the time standard set forth in the table under subsection (e) between July 1, 2008 and October 11, 2009.
20. Although USS presented evidence that Mr. Vogel's coach, Robert Fenn, was aware of the October 11 deadline at least as of October 11, Mr. Vogel stated that he did not receive any such notification from Mr. Fenn.
21. It is sufficiently clear from the Eligibility Rules on their face that the date range set forth in subsection (c), which applies to "any skater who achieves *the time standard below*" (emphasis added) restricts the time standards in subsection (e)—the only time standards in the Eligibility Rules—that it was not reasonable for Mr. Vogel to interpret the rules as he did.
22. Mr. Vogel's reliance on Section D.3 of the USS Rules of Competition (Long Track Regulations, p. 4), which states that qualifying times can be from any date within "the current skating season (after July 1, 2009) and prior to the close of entries for the applicable Competition)," is not reasonable in light of its express exception: "[u]nless otherwise provided in the applicable qualification standards." As noted above, the Eligibility Rules contain a specific date by which a qualification had to be made. They thus "provide otherwise" and overrule any provisions in Section D.3 on page 4 of the Long Track Regulations.
23. However, the presentation of the Eligibility Rules could be improved to avoid even the slightest possibility of confusion over their meaning in the future.
24. The two versions of the USOC Selection Procedure form, one listing December 16, 2009 as the last date for qualifying races, might have caused a greater deal of confusion. However, Mr. Vogel did not present any evidence that he had relied on that form, and to the contrary, Mr. Vogel's counsel specifically said that he was not relying on it.
25. USS published the USOC Selection Procedure, including the form with the incorrect December 16, 2009 end date for qualifying events, in Issue 93 of its newsletter *Ice Chips*. Issue 94 of *Ice Chips* contained the USS Long Track Regulations, which did not include the erroneous date—but also did not explain the mistake on the earlier-released form. USS stated that the USOC Selection Procedure had been amended between February and April of 2009, well before the October 11, 2009 deadline, notwithstanding the November 4, 2009 date on the document.
26. Going forward, when dealing with issues as important as qualification standards and changes therein (even if the changes are corrections to supporting documents such as a registration form and not changes to the standards themselves), USS should display and

explain the change more prominently on its website and take greater steps to inform athletes and their coaches.

- 27. Mr. Vogel asks that even if his claim is denied, he receive compensation for his travel expenses because he had not been informed that he could not compete until after he had made his travel arrangements and traveled to Salt Lake City. Mr. Vogel also requests a refund of the \$50 USS Championships application fee.
- 28. USS's acceptance of Mr. Vogel's registration on December 3 and failure to inform him that he was ineligible until December 16 did not create an estoppel or manifest any ambiguity in the rule that would overcome the text and allow Mr. Vogel to compete. However, the late notification to Mr. Vogel of his ineligibility created sufficient reliance for him to travel to Salt Lake City for the USS Championships, and he should be compensated for his reasonable travel expenses. According to a submission by Mr. Vogel, these expenses total \$2,020.17. USS did not object to this submission, but asked that Mr. Vogel provide receipts supporting these expenses.
- 29. USS should also reimburse Mr. Vogel for his application fee.

Therefore, I AWARD as follows:

Mr. Vogel's claim seeking to skate in the USS Championships is hereby denied.

Mr. Vogel's claim for reasonable travel and application expenses is granted.

Also, the administrative fees and expenses of the American Arbitration Association totaling \$750.00 and the Arbitrator's fees shall be borne by USS.

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