

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: 77 190 E 00075 13 JENF
Christopher Kyle Carr (**Claimant**)
and
US Speedskating (**Respondent**)

with
Adam Callister, Keith Carroll, Jr., Landon Hatfield, Travis Jayner, Cole Krueger, John-Henry Krueger, Robert Lawrence, Jake Powers, Ian Quinn, Aaron Tran and SooAn Yoo (**Affected Parties**)

AWARD OF ARBITRATOR

I, the undersigned arbitrator (the **Arbitrator**), having been designated 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 having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on February 28, 2013, by telephone, with Claimant, Respondent and Affected Parties, John-Henry Krueger and Cole Krueger through their counsel, in attendance and offering argument and evidence, do hereby, **AWARD** as follows:

A. Procedural Background

1. This matter arises as a complaint by Christopher Kyle Carr (**Carr** or **Claimant**), a bronze medalist in the 2011 World Championships in the Relay event, and the 5th finisher in the 2013 U.S. Short Track Speedskating Championships, who was not selected by the US Speedskating (**USS**) Short Track Selection Committee (the **STSC**) to be a member of the U.S. team at the 2013 World Short Track Speedskating Championships, a “Protected Competition” as that term is defined under the Act. The 2013 World Short Track Speedskating Championships began March 8, 2013 in Hungary. Rather, the STSC made the discretionary choice to select the 11th place finisher at the 2013 U.S. Short Track Speedskating Championships, John-Henry Krueger, an Affected Party in this case.
2. Carr filed his demand for arbitration with the American Arbitration Association on February 26, 2013. The above listed parties participated in a preliminary hearing telephone conference on February 27, 2013 and in the 8½ hour telephonic hearing which was held on February 28, 2013. The Arbitrator issued the dispositive portion of this Award on the same evening, as the team was scheduled to depart for the Championships the next day, as follows:

The decision of US Speedskating to designate John-Henry Krueger as the fifth member of the 2013 World Championships Senior Team is upheld.

I find that USS has demonstrated that the criteria and evaluation it used to make the selection were reasonable to accomplish its purpose. In addition, there has not been the necessary showing by Claimant that the discretion exercised by USS was unreasonable, arbitrary or capricious. The circumstances surrounding the Short Track Selection Committee's decision are indeed unfortunate for all the parties and certainly the appearance of a possible conflict of interest by two of the committee members is not in USS's favor. Nevertheless the committee made the decision by considering appropriate factors which were rational in exercising the discretion mandated by the USS Regulations.

Because the USS discretionary selection process is unduly vague, none of the USS senior men's skaters had the requisite knowledge of what they had to do in order to qualify for the discretionary slot on the team. Thus, though USS failed to use all reasonable means at its disposal to protect the opportunity to participate of either Claimant or the Affected Parties, as required by the Ted Stevens Olympic and Amateur Sports Act, it failed with respect to them all, not just Claimant. This leaves the arbitrator to examine what the USS did do in selecting Mr. Krueger and as stated above, the USS acted reasonably and there was no demonstration that the committee abused its very broad discretion.

All claims are denied with prejudice.

3. Mr. Carr's request for relief is:
 - i. An Award nullifying the decision of the STSC to exercise a discretionary choice for the fifth entry to represent the United States in the Senior Short Track World Championships, commencing in Hungary on March 8, 2013;
 - ii. An Award designating the Claimant as a non-discretionary choice member of the team to represent the United States in the World Championships inasmuch as Carr was the next athlete in line (the fifth place finisher) following the first four finishers already named to the World Championships Team as a result of their performances in the mandatory selection event, the U.S. Short Track Championships; and
 - iii. An Award taxing the AAA filing fee of \$850 and the arbitrator's fees against US Speedskating; and
 - iv. Granting Claimant such other, additional and different relief, as the arbitrator may deem just and proper under the circumstances.
4. USS's reply is to request that Claimant's requests be denied.
5. The applicable USS selection procedures (USS Regulations – 2012-2013 Short Track Regulations; **2013 World Short Track Speedskating Championships**, pages 46-47) provide:

The U.S. Speedskating Team for the 2013 World Short Track Speedskating Championships shall be selected in accordance with the following:

Eligibility:

ISU Rule 281 determines the eligibility of USA to submit entries for this Championship.

Entry Quotas:

The 2013 World Short Track Championships Team will be comprised of five (5) Ladies and five (5) Men if the U.S. Team is qualified for the Relay event. U.S. Speedskating's ISU entry quotas for the 2013 World Short Track Championships shall be three (3) Ladies and two (2) Men.

ISU. All changes made by the ISU in rules and procedures that affect these Regulations shall be incorporated into these Regulations and go into effect the day the ISU Rule takes effect.

Selection Procedures:

- A) The selection competition will be the 2013 U.S. Short Track Speedskating Championships. From this competition the team will be selected to attend the 2013 World Short Track Speedskating Championships.
- B) The top four (4) Ladies and top four (4) Men from final classification at the U.S. Short Track Speedskating Championships will automatically qualify for the 2013 U.S. World Championship Team. In the event US Speedskating fails to qualify a relay team, an alternate (Man and/or Lady) will travel to the World Championships.
- C) The top four (4) Ladies and top four (4) Men from final classification at the 2013 U.S. Short Track Speedskating Championships will qualify to travel with the team and be considered by the coaching staff in attendance for participation in the relay, assuming US Speedskating qualifies a relay team.
- D) The 2013 Overall U.S. Champion for Ladies and for Men will qualify to skate the individual events at the 2013 World Short Track Championships.
- E) The top one (1) Man and top two (2) Ladies from amongst the skaters ranked 2nd - 4th in the Overall Classification at the 2013 U.S. Short Track Speedskating Championships will qualify to skate the individual distances at the 2013 World Short Track Championships based on the following criteria at World Cups 1-6:
 - 1. Skaters will be ranked based on their best finish in an individual event during World Cups 1-6.

2. Ties will be broken based on the 2nd best individual finish, then 3rd best individual finish, etc.
3. If skaters are still tied after considering all of their individual World Cup finishes from World Cups 1-6, the overall results from the 2013 U.S. Short Track Championships will break the tie.

F) The Short Track Selection Committee shall have the discretion to select one (1) Lady and one (1) Man to fill the fifth (5th) on the World team [sic]. The skater selected must skate in the selection competition unless they have a verifiable illness or injury approved in advance by the Short Track Selection Committee.

Emphasis added. Section F) is the relevant provision of the USS Regulations for purposes of this dispute.

6. Claimant was represented by Edward G. Williams of Stewart Occhipinti LLP. Respondent was represented by Brent E. Rychener, Steven B. Smith and K. Lucinda McRoberts of Bryan Cave HRO, LLP. Gary Johansen and Sara Clark of the USOC attended the hearing as observers. The Affected Parties, Cole Krueger and John-Henry Krueger, were represented by Brian Koeberle of Koeberle Law Firm, LLC.
7. Claimant called the following witnesses: Kyle Carr, Tom Frank, Mark Greenwald, Alex Izykowski, Levi Kirkpatrick and Matt Plummer. Respondent called the following witnesses: Tom Frank, Mark Greenwald, Matt Plummer, Guy Thibault and Steven Gough.

B. Findings of Fact

8. The Complainant is part of a group of skaters who had quit the national training program and trained together as part of the Athletes for a Positive Training Environment (**APTE**) team.
9. In addition, the Claimant is a complaining party on a grievance dated August 30, 2012 against USS alleging violations by USS of the Act, the USOC Bylaws, the USOC Governance Guidelines, the USS Bylaws, the Coaching Ethics Code and the USS Conflicts of Interest and Ethics Policies and the filing by USS of false statements in its Form 990s with the Internal Revenue Service (the **Grievance**). Two of the STSC members, Tom Frank, President of the Board of USS and Mark Greenwald, CEO of USS, were referenced in the Grievance as wrongdoers. The Grievance is pending, awaiting hearing before the USS Grievance Committee.
10. There are also several “Code of Conduct” violations asserted by teammates of the Claimant on the APTE team against Tom Frank, Mark Greenwald, another member of the Board of USS and the former USS Coach, as well as some filed against other

complaining parties on the Grievance. They are all pending (though it appeared one of these had been resolved by USS but the counsel of the charged party was unaware of such resolution).

11. The STSC met on December 22, 2012 after the selection event and evaluated Travis Jayner and Claimant as possible candidates for the fifth slot on the World Team. At the time, the members of the STSC who testified, Messrs. Greenwald, Frank and Plummer all favored Mr. Jayner. The STSC decided at that meeting to defer its decision, because there had been a change in the coaching staff early in December and they wanted to give the new coaches the opportunity to evaluate the skaters and make a recommendation. The upcoming World Cups 5 & 6 were also an opportunity to evaluate the skaters.
12. The vote of the STSC at its next meeting on February 12, 2013 after World Cups 5 & 6 was unanimous in selecting John-Henry Krueger for the fifth slot, based on the recommendations of the two national team coaches. Four of the five duly designated members of the STSC attended this meeting either in person or by phone: Tom Frank, President of the Board of USS, Mark Greenwald, CEO of USS, Matt Plummer, USS Board of Directors athlete representative and Joe Rohraff, as designee of Rusty Smith, Short Track Committee co-chair.
13. The STSC did not have any criteria to guide its selection, other than the provisions of Section F). In 2011-12, there were "Discretionary Selection Criteria" listed on USS stationery but these criteria had not in fact been adopted by the STSC then. It is unclear what that list was used for and who had developed it.
14. The STSC considered the fifth slot to be for a skater on the relay team only and thus wanted to select the best relay skater. At its meeting, the national team coaches, Guy Thibault (head coach) and Steven Gough (racing program coach), presented to the STSC the three skaters they were considering: John-Henry Krueger was their first choice, Travis Jayner second and Kyle Carr third. This recommendation was based on evaluations made after the selection event, the 2012 U.S. Championships, which is when the new head coach, Guy Thibault, started with USS. To make this recommendation to the STSC, Guy Thibault and Steven Gough, between them, analyzed available data, including Mr. Krueger's results from World Cups 1, 2 and 3, Messrs. Jayner and Carr's results from World Cups 5 & 6 (where Mr. Krueger did not compete), various skating techniques deemed essential for relay success and data from a relay practice session of January 22, 2013. The STSC made the actual selection based on this recommendation by unanimous vote.
15. Claimant put on evidence to prove the assertion that Claimant is more qualified than Affected Party John-Henry Krueger to represent the United States in the World Championships by comparing various competition results, including some that occurred after the STSC decision had been made.
16. Respondent countered with data of its own to show that John-Henry Krueger was rationally selected to represent the United States in the World Championships.

17. The allegations contained in the Grievance and the “Code of Conduct” violations are the basis of the conflict of interest asserted by Claimant against Messrs. Frank and Greenwald, in their roles as members of the STSC. Two out of three of the candidates for the fifth spot on the World Championships team were also listed claimants on the Grievance and were teammates with those who made the “Code of Conduct” violation assertions or were charged with “Code of Conduct” violations. The third candidate, John-Henry Krueger, was also a party to assertions of wrongdoing against the USS.

C. Arguments

Claimant

18. Claimant argues that the STSC violated the Act because it had unfettered discretion in making its selection, there were no criteria specified and the STSC itself made up the criteria in its evaluation. Claimant relied on *Viola v. USA Diving*, AAA Case No. 30 190 008 2805 (August 1, 2005 [herein referenced as *Viola 1*] and December 29, 2005 [herein referenced as *Viola 2*]) case because the arbitrator there found that “Unfettered discretion ... would be a violation” of the Act (*Viola 1* at para 41). Accordingly, Claimant argues that the vote of the STSC to exercise a non-mandatory discretionary choice for the fifth spot, and not simply name the first five finishers in the selection event, must be nullified. Once nullified, the Arbitrator must fill the fifth place on the five-person team with Claimant, the 5th overall finisher at the selection event.
19. In addition, Claimant argues that USS Bylaw 7.7.2 mandates that the STSC is to “select and certify discretionary skaters to represent the US Speedskating at international competitions according to regulations as passed by the Short Track Committee and approved by the US Speedskating Board”. The USS Regulations are devoid of any specific criteria to exercise such discretion, whereas in 2011-12, even if the “Discretionary Selection Criteria” were not formally adopted to guide the STSC’s deliberations, at least there were some criteria that the STSC used. Instead of being guided by criteria in making its discretionary selection, each member had his own criteria. Claimant asserts that all he needs to prove is the lack of stated criteria used by the STSC to render its selection null.
20. Further, Claimant argues that the process used by the STSC lacked sufficient clarity to inform the skaters of the basis on which the selection would be made.
21. At the same time, Claimant argued that it is not necessary to get into the merits of the selection as the decision of the STSC is wrought with conflicts. With respect to the determination of a conflict of interest by Messrs. Greenwald and Frank, two of the four voting members of the STSC, Claimant asserts that the standards applicable to arbitrators and other tribunals pertaining to neutrality and conflicts should govern the STSC in their actions. He points to provisions of the Federal Arbitration Act and various decisions interpreting those provisions. These allow an award to be vacated when there was evident partiality or corruption in the arbitrators, or either of them. This

would be the case where the arbitrator was aware that his company was entangled in a dispute adversarial to parties to the arbitration.

22. Further, Claimant argues that the arbitrator's award in *Viola* requires that the members of the STSC not have the *appearance* of a conflict of interest, citing a section of the *Viola* arbitrator's award quoting the Revised Procedures submitted by USA Diving to that arbitrator, which lists the qualification requirements for USA Diving's selection committee members (*Viola 2*, para 12).
23. Claimant asserts that an actual conflict of interest or an admission of bias is irrelevant, but rather the objective nature of the conflict of interest is sufficient to render the decision of the STSC null.
24. As a result of these defects in the selection process, Claimant argues that the decision of the STSC is to be determined to be null and the Arbitrator is to select the next overall finisher at the selection event, the 2012 U.S. Championships, i.e. the Claimant.

Respondent

25. Respondent argues that where, as in this case, Congress has given exclusive jurisdiction to USS to develop procedures for selection of team members for international competition in the sport of speedskating, courts and arbitrators should defer to its decision unless it is unreasonable, arbitrary or capricious with no rational basis. Respondent argues that Claimant has not come close to meeting his burden of proving that the STSC's selection met that standard.
26. Specifically, Respondent argues that there was a rational basis for what the STSC did. The fifth person on the World Team is only eligible to compete in the relay, thus to pick the next best person in the individual events does not make sense. The STSC needed to and did look at what is required to compete in the relay, such as top speed, speed endurance and skating in a crowd and on bad ice. The coaches presented their evaluation of those factors based on observations and on specific data, including overall world rankings.
27. Respondent also points to an arbitrator's decision (*Booth v. US. Rowing Assn., AAA Case No. 30 190 259 07 (March 16, 2008)*) citing case law which provides that its right as a national governing body (**NGB**) to interpret and administer its rules and regulations "is as sacred as the right to make them" (*State ex rel. Givens v. Superior Court of Marion County*, 233 Ind. 235, 117 N.E.2d 533 Ind. 1954, 117 N.E.2d 553, 555 (Ind. 1954)). In *Booth*, the arbitrator states "deference to USRowing's special competence with respect to policy and rule-making decisions for the sport of rowing is required unless there is no rational basis to support the decisions" in a case where the USOC had approved the 2008 US Rowing selection procedures. In that same case, the arbitrator found: "The role of the arbitrators is to determine not whether USRowing or the USOC chose the best process for selecting teams, but only whether all of the eligible athletes were given an "opportunity to participate" or "right to compete"."

28. USS also cites *Beckom, et al. v United States Bobsled and Skeleton Federation, Inc.*, AAA Case No. 77 190 E 00105 10 (February 10, 2010), page 8, where the standard of review is explained as follows:

Claimants must either prove there is no rational basis for [the NGB's] objective and subjective criteria for selecting push cart athletes for the 2010 Olympics (which is not their contention), or that these criteria, if rational, were not followed or were applied arbitrarily in violation of their legally protected opportunity to participate under Section 9. ... As the appointed arbitrator, I have authority only to determine whether Claimants had a fair opportunity to compete for a position on the USA men's bobsled team and whether [the NGB] used and rationally applied [its procedures]. My role is not to determine whether [the NGB] 'chose the best process for selecting teams,' [*Booth v. United States Rowing, supra at 19*], or to substitute my lay judgment for the expert professional judgment of [the NGB] in establishing selection criteria or that of the Team Selection Committee in applying the criteria to individual push athletes.

29. *Viola* was also cited by Respondent because although the NGB in that case had "no clear guidelines for the selection," the arbitrator concluded the record showed there were "sufficient objective factors to support [its] final subjective decisions," and "it cannot be said there was clear error or impropriety in the [NGB's] decision to name [two other athletes to the team]."
30. With respect to the conflict of interest alleged by Claimant, Respondent asserts that there was no evidence of any bias shown against any athletes, including Travis Jayner, who was also considered by the STSC for the fifth slot and was a complainant on the Grievance. The Grievance is against USS and not Messrs. Frank or Greenwald, as individuals, thus neither of these two individuals serving on the STSC are a party to any adversarial proceedings with the Claimant, as required according to the standard posited by Claimant.
31. In addition, even if it were accepted that indeed two of the members of the STSC did have a conflict of interest, that would not taint the entire process, rendering the STSC's decision a nullity. Rather, those conflicted votes would be disqualified and the remaining votes stand in favor of the selection.

Affected Parties

32. The Kruegers, the only Affected Parties who appeared and were heard at the hearing, contended that the coaches and the STSC do not have to justify their decisions. Now that the decision has been made, a passive observer to the process, John-Henry Krueger, is proud and excited to be representing USS at the upcoming World Championships. This proceeding is not just about giving the Claimant an opportunity to participate, but is about giving this young man his opportunity to participate.

D. Standard of Review and Applicable Rules

33. The first inquiry is whether the applicable USS Regulations (F) above) comply with the Act. In accordance with the USOC Bylaws, USS is to use all reasonable means at its disposal to protect the opportunity of an amateur athlete to attempt to qualify for selection to participate in the 2013 World Short Track Championships (Section 9.1). The USS must use reasonable means, i.e. adopt rules that comply with the Act as part of its duty as an NGB under the Act to adopt such rules, and those rules must protect the opportunity of an amateur athlete to attempt to qualify for selection to participate in the 2013 World Short Track Championships.
34. A Section 9 hearing is a *de novo* hearing and no deference is given to the USS in the rule making process itself. In *Viola*, no deference was given to the NGB and the threshold issue was whether the team selection criteria complied with the USOC Guidelines for Olympic Games team selections as well as the Act. That is distinct from this case, as these Regulations were adopted by the USS without any other review. Even in *Booth*, where deference was given to the NGB, the arbitrator also had to determine whether the eligible athletes were given an ‘opportunity to participate’ or the ‘right to compete’. This case differs from *Booth*, in that the rules in question in that case were previously approved by the USOC and thus the arbitrators’ deference was with respect to rules that were adopted and approved both by the NGB and the USOC (counter to *Viola*).
35. The second inquiry is whether the USS applied its rule in a reasonable or rational way or exercised its discretion in a capricious or arbitrary manner. Here, the standard of review of USS’ interpretation of its rules is for the Arbitrator to defer to its decision unless it is unreasonable, arbitrary or capricious (this standard is also stated in some cases, as in *Viola*, as clear error or impropriety; or in *Beckom*, the rational application of the NGB’s procedures). Both the Claimant and USS concur with this standard of review. The burden of proving that the USS failed to apply its rule in a reasonable or rational way or acted in an arbitrary or capricious fashion is to be borne by Claimant.

E. Analysis

36. Claimant argues that the STSC violated the Act because it had unfettered discretion in making its selection. As stated above, this analysis needs to be broken down into two parts: first, whether the Regulations complied with the Act and second whether the USS reasonably exercised its discretion.
37. The USS adopted a rule which granted the STSC unfettered discretion, devoid of any specific criteria to guide the STSC in making its selection. This meant in practice that none of the Claimant or Affected Parties had the requisite knowledge of what he had to do in order to qualify for the discretionary slot on the team. There is abundant precedent among the arbitrators’ decisions reviewing NGB selection regulations, to find that the USS, by adopting this Regulation, failed to use all reasonable means at its disposal to protect the ‘opportunity to participate’ of all eligible skaters. The USS Regulations, to comply with the Act, must include at least some objective criteria for the STSC to make

its selection so that the skaters know what they need to do to qualify for that spot. The subjective criteria should also be provided in advance to the eligible athletes. As stated in *Booth*, “The role of the arbitrators is to determine not whether USRowing or the USOC chose the best process for selecting teams, but only whether all of the eligible athletes were given an “opportunity to participate” or “right to compete.” Clearly, all of the eligible athletes had no idea what specifically it would take to be selected for the fifth slot. This is a violation of the Act.

38. Therefore, we turn to the specific discretion exercised in this case and the appropriate remedy considering that all of the Affected Parties and Claimant were denied their “opportunity to participate” in the World Championships.
39. The STSC conferred in December 2012, and decided to await the recommendation of its new coaches, rather than make a decision without their input. Then, after giving the new coaches an opportunity to observe the skaters, the STSC met again in February 2013, consulted with the coaches, who both made the same recommendation. The STSC followed this recommendation, after evaluating it. There is a rational basis for the STSC’s decision and this Arbitrator will not substitute her judgment for the STSC’s decision considering that any of the Affected Parties and Claimant could possibly have been selected. The STSC decision was not arbitrary or capricious nor was clear error or impropriety shown. The STSC acted based on the information available to its members in making the discretionary selection.
40. The remedy Claimant seeks, based on his assertion that unfettered discretion exercised by the STSC renders its selection null, is not appropriate under these circumstances. All of the skaters were operating with the same impediment, not just Claimant. The selected skater also had no knowledge of the criteria to be used to make the selection. And to substitute the judgment of the Arbitrator when the STSC did in fact have a rational basis for its selection is not an improvement over the situation nor is it required under the standard of review.
41. With respect to the conflict of interest, both Messrs. Greenwald and Frank testified about their perceptions of these allegations and actions against the USS and their roles within the USS. It is not clear that either of them was influenced by these assertions of wrongdoing by Claimant and his teammates in making STSC’s selection. There was no testimony to indicate that either of the national team coaches had any sort of bias or conflict of interest in making his recommendation. Further, it is not necessary for me to rule whether there were disqualifying conflicts with respect to two members of the STSC, as Respondent is correct that the result would have been the same if the two members’ votes were disregarded.
42. The appearance of a conflict cited by Claimant as referenced in *Viola 2*, para 12, is not applicable in this case. In *Viola*, the NGB did have published criteria identifying what qualifications were required for the selection committee members and the lack of an appearance of a conflict of interest was one of the enumerated qualifications. This NGB has no such criteria, so referring to *Viola 2*, does not provide the basis for a finding of the appearance of a conflict.

43. The fact that the USS did not have any standards applicable to its selectors with respect to conflicts does not mean that there were not actual or disqualifying conflicts, or the appearance of a conflict. The difficulty is that if there were conflicts, they applied in relation to each of the candidates the STSC considered for the fifth spot, not just Claimant. It is of the nature of an NGB that the participants in its governance will be subject to criticism and grievances by their members. At what point that criticism rises to the level of a conflict is the issue here. The testimony of the two STSC members in question did not elucidate whether they perceived the conflict when they were making the selection. Nor does the fact that the Grievance and the Code of Conduct violations were pending, under the circumstances here where the sport is clearly embattled, indicate that these two members had an actual bias in particular against Claimant. It is definitely unfortunate that Claimant apparently does not feel that he was assessed without any bias. With published criteria in place, this can and should be avoided. Again, however, because all of the skaters were affected, including the selected athlete, even if the conflict were to disqualify the two members' votes, the remedy sought by Claimant is not appropriate.

F. Allocation of Arbitration Fees and Costs

44. Claimant seeks to have the Arbitrator shift the allocation for his portion of the arbitration fees (50%) and costs (100%) to Respondent. Under AAA Commercial Rules Section R-50, the arbitrator has discretion to assess and award such fees and costs in the final award.

45. Claimant relies on *Christopher Kyle Carr, et. al. v. US Speedskating*, AAA Case No. 77 190 E 00276 12 JENF, in which the arbitrator, in determining whether to shift the allocation of the same fees and costs, looked at the fact that “the conduct that gave rise to the demand for arbitration in this case was directly the result of US Speedskating’s decisions.” (Para. 4.32) In the same case, the arbitrator compared the relative equities and the innocence of the claimants in the underlying facts. He pointed out that the analysis is dependent on the facts, which vary from case to case. I concur that these are the factors to be considered in exercising this discretion.

46. The parties point to the following facts with respect to Claimant’s request:

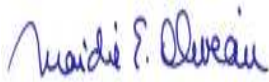
- i. That the Claimant testified during the hearing that he never inquired about the selection process or criteria but rather waited until another skater was chosen before asserting that the process was flawed. Claimant responds that it was USS’s obligation to disclose the selection criteria it would use rather than imposing the obligation on the skaters to ask.
- ii. That counsel for Claimant did not inquire of USS about the selection procedures until the day before filing this grievance/demand for arbitration which created the artificial need for the hearing, which counsel for Claimant contests.

- iii. That Claimant waited 13 days after the STSC decision to file this action which only left three days before the World Championships team was departing in which to hold the hearing and was an unnecessary delay that resulted in an undue burden on USS and the Affected Parties. Claimant contests this argument by pointing out that USS had not posted its Board of Directors meeting minutes of December 12, 2012 (which contained the names of the STSC members) on its website consistent with the USOC's requirements and the USS's own bylaws. Had the USS complied with its transparency requirements, the burden to ascertain the basis for Claimant's demand would not have been placed on Claimant and he would have known it earlier.
 - iv. That Claimant could have determined there is no precedent for this Arbitrator to simply make her own team selection when USS acted with a rational basis. Claimant responds to this by reiterating that Claimant had no idea what the basis of the STSC's selection was until the hearing, therefore he had ample grounds to bring this arbitration.
47. Weighing the relative equities and the conduct of the parties in this matter, as set out above in Section 46, it is noted that Respondent adopted a Regulation which on its face is inadequate under the standards of the Act, Respondent made no effort to develop or publish objective and/or subjective standards by which to exercise its discretion, nor to advise the eligible skaters the names of the STSC members. It should not have been necessary, had Respondent complied with the Act, for Claimant to give Respondent any opportunity to explain its selection, in order to avoid the hearing of this matter.
48. Respondent failed in its duty under the Act and as such must be responsible for the consequences. Thus, the arbitration fees and costs shall be borne 100% by Respondent. Respondent shall reimburse Claimant the \$850 filing fee already paid to the AAA and the \$750 already paid by Claimant as his one half of the arbitration fees.

Findings and Decision

I therefore rule as follows:

1. The decision of US Speedskating to designate John-Henry Krueger as the fifth member of the 2103 World Championships Senior Men's Team is upheld.
2. US Speedskating failed to use all reasonable means at its disposal to protect the opportunity to participate of Claimant and the Affected Parties, as required by the Ted Stevens Olympic and Amateur Sports Act.
3. Respondent shall reimburse Claimant the \$850 filing fee and the \$750 already paid by Claimant as his one half of the arbitration fees. Respondent shall pay to the American Arbitration Association its one half of the arbitration fees in the amount of \$750.
4. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



Maidie E. Oliveau
Sole Arbitrator
Dated: March 27, 2013