

**AMERICAN ARBITRATION ASSOCIATION**  
**Commercial Arbitration Tribunal**

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In the Matter of the Arbitration between

Re: 01-14-0000-4003

Old Blue Rugby (**Claimant**)  
and  
USA Rugby (**Respondent**)

with

Jay Staunton, Paul Unsworth, Ben Bacon, Sam Scroggins, Gari Gatling, Marcus Henderson, Derek Lipscomb, Christian Allen, Stephan Jahanshahi, Andy Kozak, Jeremy Hanson, Kyle Depew (**Affected Parties**)

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**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 the USA Rugby Bylaws Section 12.7, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on May 15, 2014 by telephone, with Claimant, Respondent and Affected Party, Sam Scroggins, in attendance and offering argument and evidence, do hereby, AWARD as follows:

**A. Procedural Background**

1. This matter arises as a complaint by Old Blue Rugby (**Claimant or Old Blue**), one of the oldest U.S. rugby clubs, which plays in multiple competitions and divisions of USA Rugby, and 12 of its players (the **Affected Parties**) who were deemed ineligible to compete in the Division III USA Rugby Championship Event to be held starting on May 17, 2014 in Pittsburgh based on USA Rugby (**Respondent**)'s interpretation of its Eligibility Regulations and a decision rendered by USA Rugby's Appellate Panel dated May 9, 2014 (the **Ruling**).
2. Old Blue filed its demand for arbitration with the American Arbitration Association on May 13, 2014, on the Complaint Form used for filing a United States Olympic Committee (**USOC**) Bylaws Section 9 (**Section 9**) complaint. Old Blue and USA Rugby participated in a preliminary hearing telephone conference on May 14, 2014 and in the 4 hour telephonic hearing which was held on May 15, 2014.
3. Claimant was represented at the hearing by Gary Lee Heavner, also coach of the Old Blue teams. Respondent was represented by Brent E. Rychener, of Bryan Cave HRO, LLP. Sara Clark of the USOC attended the hearing as an observer.

Affected Party, Sam Scroggins, attended the hearing, as did Mike Crafton, president of Empire GU (a Geographical Union (**GU**) of the Northeast Competitive Region (a **CR**) of USA Rugby). Attending the hearing as representatives of USA Rugby were Jim Snyder and Tammy Breckenridge, also a witness.

4. Claimant called the following witnesses: Mike Crafton, Sam Scroggins and Gary Lee Heavner. Respondent called the following witness: Tammy Breckenridge.

5. Old Blue's request for relief is:

That the previous match played v. Life University be considered a League/Qualifying match for purposes of eligibility so that all 12 players are made eligible to play in the championships (either because they played in a specific game, or did not play in a later match.)

6. USAR's reply is to request that Claimant's request be denied. In addition, USAR argued that jurisdiction for this arbitration exists under USAR's Bylaws and the Act, 36 U.S.C. §220522(a)(4), which provides that a National Governing Body (**NGB**) must submit to binding arbitration in any controversy involving the opportunity of an amateur athlete to participate in "amateur athletic competition", not under Section 9.

7. The Arbitrator issued the dispositive portion of this Award on the afternoon of the hearing date, as the team was scheduled to depart for the Championships the next day, as follows:

The below is the operative award in the matter between Old Blue and USA Rowing. A reasoned award will follow in due course.

1. With respect to the question whether the game between Old Blue and Life University held on May 3, 2014, fell within the definition under the USAR Eligibility Regulations, 1.43, as a Championship Event, the arbitrator rules that it did NOT.

2. With respect to the question whether the game between Old Blue and Life University held on May 3, 2014, fell within the definition under the USAR Eligibility Regulations, 1.28 or 1.34, as a Qualifying Match, the arbitrator rules that it DID.

3. With respect to Jay Staunton who was deprived of the opportunity to compete in the subsequent game due to the USAR Grievance Hearing decision of May 9, 2014, the Arbitrator instructs that the USAR consider granting him a waiver from the requirements of the eligibility rules, as permitted by USAR Eligibility Regulations, 1.11.

## B. Standard of Review, Burden of Proof and Applicable Law

8. The accepted standard of review for an eligibility case under the Act, is for the Arbitrator to defer to USA Rugby's decision unless it has no rational basis, i.e. is unreasonable, arbitrary or capricious.
9. The burden of proving that USA Rugby failed to apply its regulations in a reasonable or rational way or acted in an arbitrary or capricious fashion is to be borne by Claimant.
10. The applicable USA Rugby Eligibility Regulations (General Regulations and Event-Specific Regulations, Effective August 15, 2013 - dated 8.27.13) provide:

The following rationale and principles apply to USA Rugby Eligibility Regulations:

....

11. Interpretation ambiguities and waiver allowances are solely the responsibilities of the USA Rugby Eligibility Committees and any appeal board sanctioned by USA Rugby, per USA Rugby rules, practices and procedures.
12. No member club or player is permitted to advance its/their own interpretation to its/their advantage nor to the detriment of an opponent: it is the responsibility of a member club or player to seek resolution of an ambiguity where ambiguity arises and would be reasonably recognized as such by another reviewing the situation. That which is reasonably recognized is within the sole purview of the USA Rugby Eligibility Committee and any appeal board sanctioned by USA Rugby. [sic]

### Section 1. Terms and Definitions

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**1.11 Competition Schedule** – The teams selected to represent the GU/CR Competition in the Competitive Region/'Round of 8' play-offs must be determined on the basis of competition (i.e., rather than allocation by other criteria). Each club must fulfill their USA Rugby/CR stated divisional minimum number of contests (or predetermined goal) competed unless a waiver has been granted by USA Rugby.

**1.28 League (Qualifying/CR) Match** – A match that leads to any post-season/play-off competition which leads to a USA Rugby Championship. In the Senior Club division this applies to all matches leading to the USA Rugby 'Round of 8.'

**1.34 Qualifying (League/CR) Match** - A match that leads to any post-season/play-off competition which leads to a USA Rugby Championship. In the Senior Club division this applies to all matches leading to the USA Rugby 'Round of 8.'

**1.43 USA Rugby Championship Event** – Designates those events under the authority and jurisdiction of USA Rugby, and beyond the jurisdiction and control of CR events. Includes: USA Rugby Playoffs including all Competitive Region Play-offs starting with the CR 'Round of 8' matches, and USA Rugby Semi-Finals and Finals.

### **Section 3.3 Senior Clubs Fielding Multiple Sides.**

The intent of these regulations is to control the movement of players on upper sides to lower sides.

(e) Any player who has played in any USA Rugby Championship Event is not eligible to play for any other division for the remainder of the USA Rugby Championships.

*For purposes of this rule, a USA Rugby Championship Event is defined as those events under the authority and jurisdiction of USA Rugby, including:*

- i) USA Rugby Playoffs (Competitive Region/Round of 8 matches): and*
- ii) USA Rugby Semi-Finals and Finals.*

11. The parties agreed this hearing was a *de novo* hearing.

### **C. Findings of Fact**

12. The USA Rugby Eligibility Regulations (the **Regulations**) were published in August 2013 and have not been updated since. According to the Regulations, Senior Club division players are allowed to switch sides (e.g. play in a Division I match and also a Division III match) during the season, subject to specific criteria. Once a player has participated in a Championship Event (as defined in Regulations 1.43), that player can not switch sides again (Regulations 3.3.e.).
13. Claimant's Division I team played on May 3, 2014 against Life University in a match (the **Life Match**) fielding the Affected Parties, 11 of whom were also eligible to play in the May 17, 2014 Division III Championship Event only if the Life Match is considered to be a League or Qualifying match under Regulations 1.28 or 1.34, rather than a Championship Event under 1.43. The 12<sup>th</sup> Affected Party, Jay Staunton, needed to play in one more Division III match to qualify to play in a Division III Championship Event after the Life Match.
14. After the Regulations were adopted, the USA Rugby Competitions committee determined during a regularly scheduled meeting held in November 2013 that in some CR's, the Division I competitive field was inadequate. As a result, a special 'play-in' or 'repechage' game was accepted for Life University to play the North Atlantic #2 in Atlanta. The committee determined that these special games would fall under the definition of a Championship Event because they are not under the control of any one CR and were set by USA Rugby. Claimant was represented on the Competitions committee through its CR (originally from the Northeast GU and since replaced on the committee by Mike Crafton of Empire GU) and that representative was tasked with informing everyone in his CR of this plan. Tammy Breckenridge of the Eligibility Committee and ad hoc member of the Competitions committee was under the impression that each CR representative advised its membership in November 2013 of this plan. There was no formal amendment of the Regulations, or distribution of the minutes of this committee. Neither Claimant nor Mike Crafton, Empire GU President and the current Northeast CR representative to the Competitions committee was informed of the specifics of the plan at that time.

15. The Life Match was scheduled originally as a “friendly” directly between the two teams. The CR to which Claimant belongs is CR8 or the Northeast CR. The CR to which Life University belongs is the South CR. As of January 2013, the Life Match had already been scheduled between the teams. It is around that time Old Blue became aware that Life University would play the Northeast CR #2 team for qualification to the championship rounds. The week before the Life Match, Old Blue learned its Division I team was the #2 team in the Northeast CR and read in the press that the Life Match would determine which team would go on to the Round of 8. No one from USA Rugby notified Old Blue of this situation or that the Life Match was to be considered a “Championship Event” nor was it clear to Gary Heavner (who is active on multiple committees of USA Rugby in addition to coaching Old Blue) how the plan had been determined.
16. After the Life Match, USA Rugby issued an interpretation of the Regulations identifying the Life Match as a Championship Event by email of May 8, 2014 as follows:

The National Competitions Committee created further Qualifying pathways for clubs unable to meet the USAR play-off eligibility criteria during the regular season. These inter-CR Qualifiers, or play-in (repechage) games, fall outside the scope and authority of a single CR.

As such, these matches are not part of the regular season or the regular CR Championships, but an extension of the 'Round of 8.'

The participation in such contests triggers the restrictions within USAR 3.3-(e) for purposes of eligibility in a different division during the same competitive cycle.
17. Claimant appealed the above interpretation to the president of USA Rugby, under USA Rugby Bylaws, Article XII, on May 9 and was provided with the “USA Rugby Grievance Hearing - Old Blue Emergency Appeal” (the **Ruling**) dated May 9, 2014. The Ruling provided:
  1. By virtue of decisions to allow for play-in by Life made as far back as November 2013, and communicated to the clubs via their Eligibility and Competitions committee representatives, OBNY had actual and/or constructive knowledge that the match with Life was one that could potentially lead to the USA Rugby ‘Round of 8’ for Life. As such, that match was a “Category A” match, as defined in the USAR Eligibility Regulations dated 8/27/2013.
  2. The “interpretation” was not an ex post facto amendment, but rather a response to an inquiry. Furthermore, the “interpretation” was the correct response to the inquiry.
18. The Ruling was a result of a meeting among the Appeal Panel. No hearing was held. Documents and an email outlining the issues sent by Gary Heavner to Nigel Melville, president of USA Rugby, were reviewed and Tammy Breckenridge joined the call “to explain the implementation of the current regulations and notification/participation of committee representatives in the enactment of those regulations.” The Ruling also specified that in the event of

dissatisfaction, anyone may file an appeal to the American Arbitration Association.

19. There is currently no competition organized by the Northeast CR, as the CR system is new and not yet fully implemented. Empire GU, of which Old Blue is a member, and Northeast GU make up the Northeast CR. Each of these GU's has administrative oversight and management responsibility for their competitions. The CR has no formal composition or staff in place. The Championship playoffs are run by the Competitions committee which had contemplated that the Round of 16 game between Life University and the Northeast CR #2 team would take place in Atlanta on or before May 3, 2014.
20. Based on the Ruling, Claimant did not play any of the Affected Parties in its next Division III match, against Seacoast on May 10, 2014. As a result, according to the criteria for eligibility to play on the Division III team in the championship rounds, Jay Staunton had not played a sufficient number of games in Division III. The other 11 Affected Parties having played in a Division I "Championship Event" as determined in the Ruling were ineligible to compete in any Division III event.

#### **D. Arguments**

##### CLAIMANT

21. Claimant argues that it had no knowledge of the USA Rugby determination that the Life Match would be deemed to fall within Regulations 1.43. A plain reading of the language of Regulations 1.43 is that a Championship Event starts at the 'Round of 8'.
22. Claimant argues there is no ambiguity in the Regulations 1.43, which specifically refer to the last 3 games (round of 8, semi-finals and finals) as Championship Events, not to any other games. There was also no involvement of USA Rugby in the Life Match. USA Rugby did not pick the field, the referee or the teams. All were previously scheduled without USA Rugby involvement. Whereas, during the Championships to take place starting the weekend of May 17, everything is done by USA Rugby, such as the selection of the town, the field, review of the rosters, the officials, checkin procedures, etc. All of the trappings of a championship event are present there. For the Life Match to be considered a Championship Event by reference to the words "under the authority and jurisdiction of USA Rugby" under Regulations 1.43 would be overly broad. All events that any USA Rugby team plays are "under the authority" of USA Rugby, not just the Championship Events.
23. Claimant requests that the Arbitrator rule that the Life Match not be considered a Championship Event so the 11 players who played in the Life Match are not ineligible by virtue of having competed in a Division I Championship Event and that Jay Staunton, who did not play in the game after the Ruling and thus has not

accumulated a sufficient number of games in Division III, be granted a waiver and deemed eligible to compete in the Division III Championships.

24. Claimant also argued that this appeal falls under Section 9, as the national team is selected at the Championships and the inability to participate in the Championships could ultimately deny a player the opportunity to compete in a “Protected Competition” on the national team.

#### RESPONDENT

25. Respondent argues that jurisdiction for this appeal rests with the American Arbitration Association under USA Rugby’s Bylaws Section 12.7, but not under Section 9, which applies only to cases where the claim is that an NGB has denied the athlete “the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or such other protected competition as defined in Section 1.3 of these Bylaws.” In this case, Section 9 does not apply as Claimant does not allege that the Affected Parties are currently eligible or scheduled to participate in the “Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or such other protected competition as defined in Section 1.3 of these Bylaws.”
26. Respondent argues that Old Blue knew that the Life Match was being played as a Division I Championship Event because of the decision by the USA Rugby Competitions committee. Under Regulations 1.43, since the Life Match was “under the authority” of USA Rugby by virtue of this decision, and the wording of the Regulations in that section allowed for more rounds than the round of 8 by the use of “Includes”, rather than a limiting description of the competitions defined as Championship Events.
27. Respondent argues this definition created an ambiguity which anyone playing these games should have picked up. Under the principles which apply to the Regulations, #12, “it is the responsibility of a member club or player to seek resolution of an ambiguity where ambiguity arises and would be reasonably recognized as such by another reviewing the situation”.
28. Respondent also argues that even if Old Blue did not know this was a playoff game, they considered it a ‘friendly’ which would not be a League/Qualifying match, i.e. not within Regulations 1.28 or 1.34. The representative of Old Blue tried to reposition it as such (instead of a friendly) when he filed the appeal with USA Rugby.
29. Respondent argues that the claim there was no involvement by USA Rugby in the Life Match is not true. USA Rugby had changed the consequences of that match. By virtue of that involvement, it was no longer a League/Qualifying match.

30. Respondent argues that based upon well-reasoned policy considerations, courts reviewing a private association's disciplinary actions have long declined to interfere in the internal affairs of the association unless it acts in an arbitrary and capricious manner. Under the Act, arbitrators have followed the same doctrine of non-interference in reviewing decisions by NGB's such as USA Rugby. 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 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"."
31. USA Rugby also argues that in arbitrations under the Act, the burden is on the claimant to prove by a preponderance of the evidence the NGB's interpretation or application of its own rules is arbitrary, capricious or was motivated by prejudice, bias or bad faith. USA Rugby cites *Nieto v. USA Track and Field*, AAA Case No. 77 190 00275 08 (July 19, 2008), p. 3 at ¶18 (claimant did not carry burden of persuasion to show that National Governing Body rule lacks rational basis); *Reininger v. U.S. Rowing*, AAA Case No. 72 199 0908 88 (August 30, 1988), p. 3 ("the arbitrator finds that the claimant has the burden of proof to a preponderance of the evidence on all issues material to the outcome of the arbitration"); and *Booth v. U.S. Rowing Assn.*, AAA Case No. 30 190 259 07 (March 16, 2008), p. 20 (same).
32. USA Rugby argues that it can adopt any rules, and under Association law, so long as its interpretation is reasonable, the arbitrator must give deference to such interpretation. The Act does not change this standard of review. Respondent argues that there was a rational basis for its interpretation and for the Ruling and as such, Claimant has not met its burden of proof.

### **E. Analysis**

33. The first inquiry is whether jurisdiction for this appeal is based on Section 9 or USA Rugby's Bylaws Section 12.7. Because there is no "protected competition" involved, as required by the Act for a Section 9 case, jurisdiction for this appeal is based on the Bylaws of USA Rugby. A Section 9 case requires a reasoned award, whereas there is no such requirement for an NGB appeal. Nevertheless, Claimant has requested a reasoned award.



34. This situation is an unusual situation because it occurred in a transition year when the CR's contemplated in the Regulations are not yet operational. Because of this situation, the appeal panel in making its Ruling needed to know additional facts. The panel did not follow its own procedures as outlined in USA Rugby Bylaws, Article XII and relied on factual findings which Claimant had no opportunity to refute. This is specifically stated in the Ruling: "By virtue of decisions to allow for play-in by Life made as far back as November 2013, and communicated to the clubs via their Eligibility and Competitions committee representatives, OBNY had actual and/or constructive knowledge that the match with Life was one that could potentially lead to the USA Rugby 'Round of 8' for Life. [emphasis added]" In addition, the Ruling references a category of match that is not defined in the USA Rugby Regulations. It does not refer to any specific Regulation. "As such, that match was a "Category A" match, as defined in the USAR Eligibility Regulations dated 8/27/2013." The Ruling is based on: i) the internal decision to allow for play-in; and ii) the assumed knowledge by Claimant, neither of which are incorporated in the Regulations.
35. The interpretation that the Life Match was "under the jurisdiction and authority of USA Rugby" pursuant to Regulations 1.43, by virtue of the Competitions committee's plan for a play-in for Life University alone is not rational, since the Regulations specifically refer to a 'round of 8', 'semi-finals and finals' and those are ordinarily conducted by USA Rugby, rather than by the two teams themselves or their GU's. By implication, any other matches to be included within this definition would also be conducted by USA Rugby.
36. The Life Match was scheduled and held by the two clubs themselves and was not "beyond the control of a CR" as required for a "Championship Event". In fact, the match was within the control of the current equivalent of the CR, i.e. Empire GU/Old Blue and Life University. They did everything to "control" the Life Match (scheduling, officials, scoring, etc). It is clear from the facts that the two clubs thought it was a Qualifying match. Though it had been originally scheduled as a 'friendly', they understood it became a Qualifying match when Old Blue became the Northeast CR #2 team.
37. The Ruling assumes that the burden is on the two clubs participating in the Life Match to determine whether their game was a Championship Event when in fact USA Rugby had the opportunity to advise them in advance and make sure this was understood. USA Rugby members such as Claimant should not have to exercise discretion or conduct further analysis to "interpret" the Regulations. Claimant could have guessed, inferred or could have asked USA Rugby prior to the Life Match whether it was to be considered a Championship Event, but since there is no ambiguity in Regulations 1.43, USA Rugby can not place such a burden on a club in Claimant's position.
38. The Regulations were drafted and promulgated by USA Rugby, they are not ambiguous and were not updated, all of which was in the control and purview of USA Rugby.

39. Old Blue received no actual written notice of the plan to have the Life Match be a Championship Event, either at the time the Competitions committee made the decision or prior to the match.
40. Cumulatively, these factors lead to the conclusion that Respondent was not interpreting its Regulations on any rational or reasonable basis, nor did Respondent consider fairness and notice to the Affected Parties but rather in making the Ruling, it acted capriciously based on assumed facts.
41. The remedy sought by Claimant, i.e. that the Life Match be considered a League/Qualifying match so that all 12 players are eligible to play in the Division III Championships achieves this result with respect to 11 of the Affected Parties who played in the Life Match and once it is considered a League/Qualifying match would otherwise be eligible to play in the Division III championship rounds. The twelfth Affected Party (Mr. Staunton) did not play in a sufficient number of Division III games during the season to be so eligible and thus requires a waiver of that requirement. This is a judgment call which is not within the jurisdiction of this Arbitrator, as that is not a legal issue. Under the Regulations, this is for the appropriate USA Rugby officials to exercise their discretion, with their ability to review his playing record, and understanding that Mr. Staunton was unjustly deprived of the opportunity to play in the May 10 game and qualify, as he complied with the Ruling.

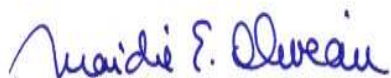
#### **F. Allocation of Arbitration Fees and Costs**

42. Claimant and Respondent each paid half of the arbitration fees and neither made a request for any reallocation of such fees. Under AAA Commercial Rules Section R-50, the arbitrator has discretion to assess and award such fees and costs in the final award.
43. In determining whether to shift the allocation of these fees and costs, as Arbitrator, I look at the conduct that gave rise to the demand for arbitration in this case which was USA Rugby's Ruling. Based on the facts of this case, weighing the relative equities and the conduct of the parties in this matter, it is noted that Respondent interpreted its Regulations in good faith, and acting in a very rushed manner, to accommodate Claimant's appeal. Nevertheless, Respondent gave Claimant no opportunity to be heard during the appeal and did not refer to its own Regulations or Bylaws other than to reference the right to further appeal to the American Arbitration Association. These are basic steps which an NGB is expected to take under the Act. As such, 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.

**Decision**

I therefore rule as follows:

1. With respect to the question whether the game between Old Blue and Life University held on May 3, 2014, fell within the definition under the USAR Eligibility Regulations, 1.43, as a Championship Event, the arbitrator rules that it did not.
2. With respect to the question whether the game between Old Blue and Life University held on May 3, 2014, fell within the definition under the USAR Eligibility Regulations, 1.28 or 1.34, as a Qualifying match, the arbitrator rules that it did.
3. With respect to Jay Staunton who was deprived of the opportunity to compete in the subsequent game due to the Ruling of May 9, 2014, the Arbitrator instructs that USA Rugby consider granting him a waiver from the requirements of the eligibility rules, as permitted by USA Rugby Eligibility Regulations, 1.11.
3. Respondent shall reimburse Claimant the \$850 filing fee and the \$750 already paid by Claimant as its one half of the arbitration fees.
4. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



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Maidie E. Oliveau  
Sole Arbitrator  
Dated: May 29, 2014