

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

GREG WEST,)	
)	
Claimant,)	
)	
v.)	AAA Case No. 01-19-0000-4345
)	
THE UNITED STATES BOBSLED AND)	
SKELETON FEDERATION, INC.,)	
)	
Respondent.)	
)	
and)	
)	
NATHAN CRUMPTON,)	
)	
Affected Athlete.)	

FINAL REASONED AWARD AND DECISION

I, the undersigned arbitrator (the “Arbitrator”), having been designated by the American Arbitration Association (“AAA”), by agreement of the parties, and in accordance with the Ted Stevens Olympic and Amateur Sports Act (the “Ted Stevens Act”) and Section 9 of the United States Olympic Committee Bylaws, and having been duly sworn, and having duly heard the proofs and allegations of the parties, and conducted a hearing on February 11, 2019 by telephone, with legal counsel for Claimant Greg West (the “Claimant” or “West”), Respondent United States Bobsled and Skeleton Federation, Inc. (the “Respondent” or “USABS”) and the affected athlete Nathan Crumpton (the “Affected Athlete” or “Crumpton”) in attendance and offering argument and evidence, do hereby AWARD as follows:

1. INTRODUCTION

1.1 This dispute between West and USABS arises from USABS’s interpretation and application of the single criterion used to select athletes to compete in the final two skeleton World Cup races of the 2018-2019 season.¹

1.2 The Arbitrator views this case as a close call and one in which USABS, the National Governing Body (“NGB”) for the sport of skeleton in the United States, acted in good faith when determining which athletes would compete in the World Cup races in Lake Placid and Calgary. Nonetheless, USABS failed to appropriately apply its rules to the facts at issue.

¹ The case was very well briefed and all parties and their counsel proceeded very professionally, for which the Arbitrator is thankful.

1.3 Accordingly, for the reasons set forth below, the Arbitrator rules in favor of Claimant.

2. THE PARTIES AND PROCEDURAL HISTORY

2.1. West is an accomplished athlete in the sport of skeleton: he is the 2018 USA Skeleton Men's National Champion, has competed internationally for Team USA since 2010, and is an Olympic hopeful.

2.2. Respondent is the NGB recognized by the U.S. Olympic Committee ("USOC") for the sport of skeleton in the United States. USABS is also recognized as the US member of the International Bobsleigh & Skeleton Federation the ("IBSF"), the international federation for the sport of skeleton worldwide that is recognized as such by the International Olympic Committee ("IOC").

2.3. In this matter, Crumpton is the only "affected athlete," as that term is defined in USOC Bylaws Section 9. He was given notice of these proceedings and chose to participate as a party. Crumpton is also an accomplished athlete in the sport of skeleton, having competed internationally for the US since 2015.

2.4. On February 4, 2019, West filed a complaint pursuant to Section 9 of the USOC Bylaws, requesting that he "be selected to represent Team USA in the remaining Skeleton World Cup Events that will allow him to qualify for the World Championships pursuant to the 2018-2019 USABS Skeleton Athlete Selection Criteria."

2.5. On Friday, February 8, 2019, the Arbitrator held a preliminary hearing via conference call to set the briefing and hearing schedule in this matter. The following persons were in attendance: Howard L. Jacobs, Esq. for Claimant, Stephen A. Hess, Esq. for Respondent, Carla Varriale, Esq. for the Affected Athlete, Jen Mora for the AAA, and Kacie Wallace, Esq. for the United States Olympic Committee.

2.6. On Monday, February 11, 2019, an evidentiary hearing was held via conference call in this matter in which the following individuals participated: Howard L. Jacobs, Esq. and Lindsay Brandon, Esq. for Claimant, Stephen A. Hess, Esq. for Respondent, Carla Varriale, Esq. for the Affected Athlete, and Kacie Wallace, Esq. for the United States Olympic Committee. The following witnesses were called to testify at the hearing: Tuffy Latour, Head Coach for the US Skeleton Team; Greg West, Claimant; Ashley Walden, Director of Sport for USABS; and Nathan Crumpton, Affected Athlete. All parties were given the opportunity to examine and cross-examine all witnesses who appeared.

2.7. Having duly heard and carefully considered all of the parties' pre-hearing written submissions and exhibits, as well as the testimony of the parties and their witnesses, and the arguments of counsel at the hearing, the Arbitrator issued an Interim Operative Decision and Award on February 11, 2019, which read as follows:

After considering the submissions, evidence, relevant authorities, and arguments of Greg West, The United States Bobsled and Skeleton Federation, Inc. (USABS) and Nathan Crumpton, which were presented both in writing and in a hearing held via teleconference today (February 11, 2019), I have decided as follows:

The remedy sought by Greg West in the arbitration, namely, to “be named to USABS’s team for competition in the final two World Cup events of the 2018-2019 IBSSF [sic] World Cup Season” is granted. USABS is directed to include West on the roster of athletes who will compete in those two World Cup races.

3. JURISDICTION

3.1. The Arbitrator has jurisdiction to hear this dispute pursuant to the Ted Stevens Act (36 U.S.C. §220501, *et seq.*), because this is a controversy involving Claimant’s opportunity to participate in national and international competition representing the United States. As the NGB for skeleton in the United States, USABS is obligated to “submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition upon demand of the [USOC] or any aggrieved amateur athlete . . . conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the [USOC’s] constitution and bylaws.” 36 U.S.C. §220522(a)(4)(B). No party objected to the Arbitrator’s jurisdiction to hear this dispute.

4. STANDARD OF REVIEW AND BURDEN OF PROOF

4.1. The standard of review applicable to a Section 9 case involving team selection procedures was succinctly stated in *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 (August 21, 2011):

It is well accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is de novo. Section 9 proceedings are not appeals of NGB decisions and there is no requirement for an arbitrator in these proceedings to give deference to any prior decision and in fact it would be incorrect to do so.

See also, Komanski v. USA Cycling, AAA 01 15 0004 9907 (November 15, 2015), *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014). Furthermore,

[i]n the context of selection cases, that review is not one that substitutes the arbitrator’s assessment of performance for that of the NGB experts who are involved in the decision making. Rather, it is a de novo review, with no deference, of the application of the published selection procedures to the facts of the individual case.

Lea v. USA Cycling, Inc., AAA Case No. 01-16-0000-8307; *Komanski*, at 5.

4.2. “The burden of proof rests with the [claimant] athlete to demonstrate by a preponderance of the evidence that the NGB failed to appropriately apply its rules to the facts

at issue.” *Komanski v. USA Cycling*, at 5; *see also Craig*, at 5 (“Because this case involved an athlete selection issue, the burden of proof rests with the athlete to demonstrate that the NGB failed to appropriately apply its rules to the facts at issue.”). “Section 9 jurisprudence requires Claimant to prove the NGB breached its approved and published Athlete Selection Procedures [to choose athletes to participate in the final two World Cup races of the 2018-2019 racing season], applied them inconsistently to athletes similarly situated, acted in bad faith towards or with bias against him, and/or violated applicable federal or state laws (e.g., Ted Stevens Olympic and Amateur Sports Act).” *Komanski*, at 5, *citing Casey Tibbs v. United States Paralympics*, AAA 71 190 E 00406 12 JENF (August 28, 2012), p. 14.

5. APPLICABLE RULES

5.1. Respondent promulgated a document called USABS Skeleton Athlete Selection Criteria (the “Skeleton Athlete Selection Criteria”) to establish a process by which athletes are named to the US National Skeleton Team and selected to compete in various international skeleton competitions organized by the IBSF. West, Ex. 7. The “Selection Criteria Overview” in that document states:

The [USABS] athlete selection process encompasses a number of phases and events such as Combine Test, National Push Championships, National Team Trials and National Championships. The Team Selection committee and the coaching staff will use the criteria for selecting athlete to represent the USABS in IBSF competitions.

Id., at p. 1.

5.2. The Skeleton Athlete Selection Criteria include a section entitled “Goal and guiding principles of the athlete selection criteria for skeleton,” which explains:

It is the goal of this criteria [sic] to ensure the USABS puts forth the most competitive skeleton teams in the pursuit of Olympic and World Championship medals. In keeping with this goal, USABS will ensure the most competitive athletes are chosen for all racing circuits. An emphasis will be placed on optimizing the success of our current teams and development for future Olympic and World Championship success of USABS skeleton teams.

Id., at p. 2.

5.3. In certain circumstances, the Skeleton Athlete Selection Criteria allow for discretion to be used in the selection of athletes according to the following principles:

Discretionary Selection of Athletes:

Opportunities to compete in IBSF events may be based on the USABS coaching staff recommendation and discretion of the Team Selection Committee with consideration given to athletes who are in the Next Generation Program. Factors considered for discretionary selection, listed in no particular order are:

- a. IBSF World Ranking;
- b. Athletes that meet the Injury/Illness Waiver Criteria below and meet the above performance standard;
- c. Next Generation Athletes (per criteria);
- d. Current US National Team Trials results;
- e. Current International or USABS push results;
- f. Attitude, commitment and positive contribution to the team.

5.4. Recognizing that it may be necessary to make changes to the roster of athletes competing on the US Skeleton Team during the middle of the racing season, the Skeleton Athlete Selection Criteria also set forth a process for a “mid-season review,” which states as follows:

Mid- Season Skeleton Team Review (as defined by the winter holiday break) – To ensure that the US Skeleton Team has the strongest team possible in International competition, the minimum standards below must be met by the mid-season break.

World Cup - Must maintain an overall top-six (6) ranking in the IBSF World Cup standings (per current IBSF results) to guarantee their position on the team; If an athlete is ranked below the top-six (6) in the IBSF standings and a change is necessary, the Team Selection Committee may select the replacement athlete via Discretionary Selection Criteria.

ICC/ EC/ NAC - Must maintain an overall top-six (6) ranking in their tour standings (per current IBSF results) to guarantee their position on the team; If an athlete is ranked below the top-six (6) in the IBSF standings and a change is necessary, the Team Selection Committee may select the replacement athlete via Discretionary Selection Criteria.

The Team Selection Committee will seek a recommendation from the Head Coach and Director of Sport.

5.5. Furthermore, skeleton athletes are selected to compete in the World Championships according to the following criteria:

World Championship Skeleton Athlete Selection - Per IBSF rules, athletes qualify quota spots at the World Championships by nation based on the IBSF ranking list prior to the World Championships. The method of qualification can be found at www.IBSF.org (IBSF Rules 4.2).

Race Entry 1: The top-ranked men's and women's skeleton athlete on the IBSF World Ranking list by the World Championship entry deadline will be selected to the World Championship Team.

Race Entry 2: Race entry 2 will be selected via the discretionary criteria above.

Race Entry 3: The next highest ranked athlete on the IBSF World Ranking list by the World Championship entry deadline will be selected to the World Championship Team.

5.6. The Skeleton Athlete Selection Criteria includes a "Saving Clause" that provides as follows:

SAVING CLAUSE

The procedures above are based on IOC, IBSF and USOC rules and regulations as presently published. Any change in the selection procedures caused by a change in IOC, IBSF or USOC rules and regulations will be distributed to all athletes as soon as possible. The desire to field the most competitive teams for international competition are the guiding principles and will determine the administration of the selection criteria. The National Team Selection Criteria are based on the latest information available to the USABS. However, these criteria are always subject to unforeseen, intervening circumstances (weather, budget, war, etc.) and no doubt have not accounted for every possible contingency. In which case, the USABS staff will administer changes with the utmost reverence for fairness, respect of athletes and for honor of the sport. If a scheduled event cannot be held or must be interrupted, USABS will first try to re-schedule the event. Second, USABS will try to change the venue but will not guarantee funding for travel to the new venue. Finally, if a venue change is not feasible, ranking will be based first on the portion of that event completed (at least one race) or if no portion has been completed, then ranking will be based on the most recent USABS national rankings. These Selection Criteria come into force as of the date of their approval by the USABS coaching staff and CEO, and supersede all previous criteria.

The USABS reserves the right to change the selection criteria prior to the start of each competition season based on schedules, coaching, logistics, finances, and other limiting factors. The rules in these criteria will be interpreted by the coaching staff along with the CEO in the way in which they were intended.

6. FINDING OF FACTS

6.1. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows.

6.2. As the international federation for the sport of skeleton, the IBSF organizes and conducts several series of international races: the BMW World Cup series, the Intercontinental Cup ("ICC") series, as well as the Europe Cup and North American Cup series. In addition, the IBSF organizes and conducts skeleton competitions at the IBSF World Championships, Continental Championships, and the Olympic Games.

6.3. Athletes who compete in IBSF races earn points on the basis of order of finish. The BMW World Cup races award the most points, followed by ICC races, and then North American and Europe Cup races. For example, an athlete would earn 225 points for a first place finish at a World Cup race, while only 120 points would be earned for the same finish at an ICC race. The IBSF maintains different ranking lists for each of the skeleton racing tours (BMW IBSF World Cup, ICC, Europe Cup, and North America Cup) that reflect points earned in each of those specific tours.

6.4. In addition, the IBSF maintains a master "IBSF Ranking List," which includes points that athletes earn in races in any of the series. However, since the skeleton races on the various IBSF tours have different schedules over the course of the season, when tallying points for the overall IBSF Ranking List, an athlete can only count as many races as there have been World Cup competitions through the ranking period. For example, in the 2018-2019 racing season, although it was possible for an athlete to compete in four ICC races in November and December 2018, there were only two World Cup competitions during that time period, so only an athlete's two highest point totals would have been used to calculate the athlete's placement on the IBSF Ranking List. Additionally, while skeleton athletes can compete in both World Cup and ICC races during any given season, they are not allowed to compete in races in both series during the same competition week.

6.5. During the 2018-2019 racing season, the schedule for the men's skeleton races on the BMW IBSF World Cup tour ("WC") and the ICC tour was as follows:

November 15	ICC #1	Igls, Austria	
November 16	ICC #2	Igls, Austria	
November 23	ICC #3	Winterberg, Germany	
November 24	ICC #4	Winterberg, Germany	
December 8	WC #1	Sigulda, Latvia	
December 14	WC #2	Winterberg, Germany	
January 4	WC #3	Altenberg, Germany	
January 11*	WC #4	Königssee, Germany	*Cancelled due to weather and rescheduled for Calgary

January 18	WC #5	Igls, Austria	
January 19	ICC #5	Park City, USA	
January 19	ICC #6	Park City, USA	
January 24	ICC #7	Lake Placid, USA	
January 25	WC #6	St. Moritz, Switzerland	
January 25	ICC #8	Lake Placid, USA	
February 16	WC #7	Lake Placid, USA	
February 22	WC #8	Calgary, Canada	
February 24**	WC #4	Calgary, Canada	**Rescheduled Königssee race

6.6. As is typical during the skeleton season, in 2018-2019, the ICC tour was more “front loaded” than the World Cup tour, meaning that there were more ICC races at the beginning of the season than there were World Cup races. This is a function of busy training and racing schedules at tracks, which need to accommodate three sliding sports (bobsled, luge and skeleton).

6.7. The USABS Skeleton Athlete Selection Criteria sets forth the procedures by which, *inter alia*, athletes are named to the US National Skeleton Team and selected to participate in various IBSF-organized competitions.² National Team Trials were held at the beginning of the season and then the Skeleton Team Selection Committee conducts a “mid-season review” just before the winter holiday break subject to the Skeleton Athlete Selection Criteria:

To ensure that the US Skeleton Team has the strongest team possible in international competition, the minimum standards below must be met by the mid-season break.

World Cup - Must maintain an overall top-six (6) ranking in the IBSF World Cup standings (per current IBSF results) to guarantee their position on the team; If an athlete is ranked below the top-six (6) in the IBSF standings and a change is necessary, the Skeleton Team Selection Committee may select the replacement athlete via Discretionary Selection Criteria.”

Id., at p. 7

6.8. In the 2018-2019 racing season and the athletes who earned the right through National Team Trials to compete in the two World Cup races prior to the 2018 winter holidays were Kyle Brown, Greg West, and Nathan Crumpton for the Sigulda World Cup and Kyle Brown, Greg West, and Austin Florian for the for the Winterberg World Cup.

² While the IBSF is the international federation for both bobsled and skeleton and USABS is the NGB for both bobsled and skeleton, the two are different sports and the athletes in each sport are subject to different team selection criteria.

6.9. In 2018, the Mid-Season Review took place after the first two of eight World Cup races of the tour (Sigulda and Winterberg). The remaining six races of the World Cup tour were scheduled for after the winter holidays (Altenberg, Königssee, Igls, St. Moritz, Lake Placid, and Calgary). The Skeleton Team Selection Committee met on or about December 17, 2018 to assess athletes' performances and to determine how athletes would be selected for the World Cup and ICC teams for the second half of the season.

6.10. Since no American male skeleton athlete was ranked in the top six in the IBSF World Cup rankings "to guarantee their position on the team," the Skeleton Team Selection Committee was allowed to name athletes to the team pursuant to certain "Discretionary Selection Criteria":

Factors considered for discretionary selection, listed in no particular order are:

- a. IBSF World Ranking;
- b. Athletes that meet the Injury/Illness Waiver Criteria below and meet the above performance standard;
- c. Next Generation Athlete (per criteria);
- d. Current US National team Trials results;
- e. Current International or USABS push results;
- f. Attitude, commitment and positive contribution to the team.

Skeleton Athlete Selection Criteria, at p. 6.

6.11. In an email dated December 18, 2018 (the "December 18 email"), Ashley Walden, the Director of Sport for USABS, on behalf of the Skeleton Team Selection Committee, informed skeleton athletes as follows:

Team,

Yesterday the Team Selection Committee met to review the first half race results and make any necessary changes for the second part of the season. Attached are the selections for the upcoming races, the following items were taken into consideration.

- Athletes who met the minimum standards on their respective tours
- Next Generation Athletes
- Future potential

If you have any questions please don't hesitate to reach out to any member of the Team Selection Committee.

Thanks,
Ashley

Skeleton Team Selection Committee

Ashley Walden
Tuffy Latour
John Daly

Ashley Walden

Director of Sport

USA Bobsled & Skeleton

6.12. Attached to the December 18 email was a one-page document (the “Mid-Season Review Document”) that: 1) identified the skeleton athletes selected to compete in the World Cup races in Altenberg, Königssee, Igls, and St. Moritz (the “World Cup Team”) and those skeleton athletes selected to compete in ICC races (the “ICC Team”); and 2) set forth the single criterion pursuant to which athletes would be selected to compete in the final two skeleton World Cup races of the 2018-2019 racing season, namely, “*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary.”



2018/2019 Skeleton Mid Season Review

World Cup Team (Altenberg, Königssee, Igls and St Moritz)

*The top 2 ranked athletes per discipline after St Moritz will race in Lake Placid and Calgary

Kyle Brown

Greg West

Austin Florian

Kendall Wesenberg

Savannah Graybill

ICC Team

Meg Henry (all races)

Sam Culiver and Veronica Day (split Park City and Lake Placid races)

Kelly Curtis (Park City)

Sara Roderick (Lake Placid)

Nathan Crumpton and Mike Rogals (all races)

Andrew Blaser (Park City)

Stephen Garbett (Lake Placid)

West, Ex. 2.

6.13. West was named to the World Cup Team (for “Altenberg, Königssee, Igls and St. Moritz”) and Crumpton was named to the ICC Team (for “all races”). While these selections seem to have been made pursuant to the three criteria listed in the December 18 email (Athletes who met the minimum standard on their respective tours, Next Generation Athletes, and Future potential), there was only one criterion identified to select athletes for the final two World Cup races of the season: “*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary.”

6.14. After receiving the December 18 email, West was concerned that the sentence “*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary” was ambiguous, since it did not identify a specific date or time on which the rankings would be calculated, did not state which IBSF ranking list would be used, did not refer to any other competitions aside from “St. Moritz,” did not take into account other races on the IBSF schedule (such as ICC races), and did not account for the fact that there would be fewer World

Cup races than ICC races by the completion of the St. Moritz World Cup race (which meant that all of West's World Cup results would count toward his points total, while athletes competing in ICC races would have competed in more races and would therefore have had the opportunity to drop their lowest race results).

6.15. West raised his concerns about the meaning of "after St. Moritz" with Latour the day that West received the December 18 email. Latour told West that he shouldn't worry about the criteria and should focus on his upcoming World Cup races. Since the 2018-2019 season was a post-Olympic year, Latour told West that he should be focused on the long-term plan rather than short-term results. West heeded his coach's advice.

6.16. While West knew that he would have fewer opportunities to compete (and earn points) than those athletes participating in ICC races, he did not know – and could not have anticipated – that one of the four World Cup races (that would count toward the ranking used to select athletes for Lake Placid and Calgary) would be cancelled due to severe weather issues. While sometimes sliding-sport races are delayed because of snow storms, the volume of snowfall in Königssee was so extreme as to cause the German government to declare a state of emergency. As a result, a "make-up race" for the Königssee skeleton World Cup race was rescheduled for the final week of the BMW IBSF World Cup tour in Calgary on February 22-24.

6.17. The cancellation of the skeleton race in Königssee raised additional concerns for West about the meaning of selection criterion in the Mid-Season Review Document because it meant that he would have competed in only five rather than six World Cup races at the completion of the St. Moritz World Cup race, while athletes competing in ICC races would have had eight results by that point. Had West known that USABS would include points from the second ICC race in Lake Placid (ICC Race #8) in the ranking to determine which athletes would compete in the World Cups in Lake Placid and Calgary, he could have – and would have – discussed other options with his coaches, such as competing in the ICC races in Park City and Lake Placid, where he had performed well previously. However, West's coaches advised him to focus on the upcoming World Cup races, which he did.

6.18. As decided by the Skeleton Team Selection Committee at the mid-season break, West competed at the World Cup races in Igls and then St. Moritz, while Crumpton competed in the ICC races in Park City and Lake Placid. The skeleton race at the World Cup in St. Moritz was held on January 25. The two ICC races in Lake Placid were held on January 24 (ICC Race #7) and January 25 (ICC Race #8).

6.19. The IBSF updated its IBSF Ranking List immediately after the skeleton race in St. Moritz, at which time West had a total of 448 points and Crumpton had a total of 416. Both West and Latour saw this update to the IBSF Ranking List on January 26. The American skeleton athletes appeared on that IBSF Ranking List in the following order:

1. Kyle Brown
2. Greg West (448)
3. Austin Florian

4. Nathan Crumpton (416)

6.20. The IBSF Ranking List was updated again after the completion of ICC Race #8 in Lake Placid, which resulted in the following change to the order of American athletes on the IBSF Ranking List:

1. Kyle Brown
2. Nathan Crumpton (452)
3. Greg West (448)
4. Austin Florian

6.21. After seeing the IBSF Ranking List that included points from ICC Race #8, West asked Latour how he thought the criterion in the Mid-Season Review Document (“*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary”) should be interpreted. Latour indicated that he was not clear as to how the sentence should be construed and that he was only one third of the Skeleton Team Selection Committee, so suggested that West confer with Walden, the Director of Sport for USABS. West requested a meeting with Latour and Walden, but by the time a meeting could be scheduled, the team selection for the World Cup races in Lake Placid and Calgary had already been made.

6.22. In an email dated January 28, 2019, Walden informed the US skeleton athletes as follows:

Team,

Based on the email that was sent on December 18th below are the selections for the Lake Placid and Calgary Races. The Konigssee WC will be made up in Calgary and will be given to the athletes that were originally entered in the Konigssee WC. Please don't hesitate to reach out to the Team Selection Committee with any questions.

Thank you,
Ashley,

Women's Skeleton

Kendall Wesenberg
Savannah Graybill

Men's Skeleton

Kyle Brown
Nathan Crumpton
Austin Florian
Greg West (Konigssee make up race)

West, Ex. 6.

6.23. In that e-mail, West was listed as the fourth athlete and the only World Cup race he was selected to participate in was the “Königssee make up race.” West later learned that Crumpton was ranked as the second American skeleton athlete because points that Crumpton earned at ICC Race #8 in Lake Placid on January 25 (which took place after the St. Moritz skeleton World Cup race) were included in his total.

7. SUMMARY OF WEST'S POSITION

7.1. West's Section 9 complaint is based on the alleged failure of USABS to correctly interpret and appropriately apply the single criterion by which skeleton athletes were selected to participate in the final two World Cup races of the 2018-2019 racing season: "*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary." West asserts that the language in the Mid-Season Review Document was plain and clear, and the only reasonable reading of the phrase "after St. Moritz" is that it means "immediately after" the skeleton race in St. Moritz.

7.2. Although the term "immediately after" was not expressly used in the December 18 email or the Mid-Season Review Document attached thereto, it was entirely reasonable and appropriate for West to interpret that the language "after St. Moritz" meant that USABS would only count the point totals for each athlete at the conclusion of the St. Moritz skeleton race, and no further competitions after that. Any other reading would arguably require USABS to recalculate the top two-ranked skeleton athletes after each successive race, as each such race would still be "after St. Moritz." Such a reading would be illogical.

7.3. West notes that the IBSF updated the IBSF Ranking List immediately after the skeleton World Cup race in St. Moritz, which included points from all of the various racing series (World Cup, ICC, Europe Cup, and North American Cup) up to that point. West saw that updated IBSF Ranking List on January 26 (as did Latour) and noted that he was the second-ranked American skeleton athlete. As such, West submits that based on that ranking, USABS should have selected him for the World Cup races in Lake Placid and Calgary.

7.4. West asserts that USABS misapplied its own Skeleton Athlete Selection Criteria by not using the IBSF Ranking List that was published immediately after the skeleton race in St. Moritz and by not designating West as the second-ranked American skeleton athlete after the St. Moritz World Cup race. He was the second ranked athlete in his discipline (men's skeleton) immediately following the skeleton race in St. Moritz (even without points from the Königssee World Cup event that was cancelled), which meets the specific criterion set forth in the December 18 e-mail to US skeleton athletes.

7.5. Therefore, Claimant submits that had USABS properly applied its selection criteria as expressly stated in the Mid-Season Review Document, he would have been selected to compete in the World Cup races in Lake Placid and Calgary.

8. SUMMARY OF RESPONDENT'S POSITION

8.1. USABS argues that the only reasonable meaning of the phrase "after St. Moritz," as used in the Mid-Season Review Document attached to the December 18 email, was "after the St. Moritz World Cup event concluded and the points athletes accrued in all events held prior to the conclusion of said event were included in the IBSF rankings."

8.2. The phrase “[t]he top two ranked athletes per discipline after St. Moritz” refers to the two skeleton athletes who were the highest on the “IBSF Ranking List” after completion of the IBSF BMW World Cup competition contested in St. Moritz January 20-27, 2019, who were Kyle Brown (18th) and Crumpton (23rd). After including Crumpton’s points from ICC Race #8, West (24th) was not in the top two American athletes on the IBSF Ranking List.

8.3. The only sense in which West ranked higher than Crumpton “after St. Moritz” was in the slight lag in IBSF’s calculation of rankings. IBSF updates rankings after each World Cup race, and updates its IBSF Ranking list no later than Tuesday of each week to reflect any other (non-World Cup) competitions. In this case, the IBSF World Cup skeleton race in St. Moritz was held on January 25, as was the ICC race in Lake Placid. Although West would have earned a spot on the World Cup team for Lake Placid and Calgary if the rules compelled USABS to cut off the consideration of races immediately after the last skeleton athlete crossed the line in St. Moritz (which was about five and a half hours before competition started in Lake Placid, that construction of the phrase “after St. Moritz” is not what the drafters intended, it makes no sense in the bigger scheme of promoting the nation’s interests in international competition, and it places arbitrary importance on geography and IBSF’s order of competition as determining the composition of the USA skeleton team.

8.4. Therefore, USABS argues that it interpreted and applied the language in the Mid-Season Review Document correctly and that its selection of Crumpton for the final two World Cup races of the 2018-2019 season should stand.

9. SUMMARY OF CRUMPTON’S POSITION

9.1. Like Respondent, Crumpton asserts that the meaning of “after St. Moritz” should mean after the entire World Cup event in St. Moritz, not just the skeleton race. As such, points that Crumpton earned in ICC Race #8 were properly included in the calculation to determine the “top 2 athletes.” Crumpton was the second ranked American male athlete after the entire St. Moritz World Cup event (including the bobsled races), which concluded on January 27 and was correctly named by the USABS as one of the two athletes to compete in the final two World Cup events of the 2018-2019 racing season.

9.2. Crumpton argues that this interpretation of the December 18 email and Mid-Season Review Document is supported by several points. First, fundamental legal principles must be applied when deciding Section 9 Complaints, a fact which has been recognized in arbitrations. *See Beaman v. USA Shooting*, AAA Case No. 01-16-0002-3596 (Aug. 5, 2016). It has long been recognized that “words and phrases shall be construed according to the commonly approved usage of the language” when interpreting statutes and rules. *See, e.g., Kaye v. Westport*, 1990 Conn. Super. LEXIS 897 (Super. Ct. CT 1990); *Pierce v. Commonwealth*, 21 Va. App. 581, 466 S.E.2d 130 (Ct. App. Va. 1996). Moreover, when interpreting a statute or rule, the interpretation must be “consistent and harmonious as to effectuate the ... goal” of the statute or rule. *See Pierce; see also Suggs v. Life Ins. Co.*, 207 Va. 7 (Sup. Ct. Va. 1966). The word “after” means “later than a particular time or period of time” (*see Pierce, citing Suggs*) and the word “has a very elastic meaning and should be determined from its context... and subject matter in

any particular case” (*New York Trust Co. v. Portland R. Co.*, 197 A.D. 422, 1921 N.Y. App. Div. LEXIS 7475 (1st Dep’t 1921)).

9.3. Crumpton asserts that as applied here, the only reasonable view of the phrase “after St. Moritz” is “after the St. Moritz World Cup event concluded and the points athletes accrued in all events held prior to the conclusion of said event were included in the IBSF rankings.” This, he suggests, is based on the context and the subject matter of the directive in question.

10. ANALYSIS

10.1. While the Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by all of the parties in the present proceeding, only the submissions and evidence considered necessary to explain the Arbitrator’s reasoning are referred to herein.

10.2. The issue before the Arbitrator is a narrow one: whether USABS correctly interpreted and applied the criterion by which the Skeleton Team Selection Committee determined athletes would be selected to compete in the final two World Cup races of the 2018-2019 season. This criterion was set forth in one sentence (“*The top 2 ranked athletes per discipline after St. Moritz will race in Lake Placid and Calgary”) and communicated to US skeleton athletes via the December 18 email and the attached Mid-Season Review Document.

10.3. The facts of this case are not in dispute; rather, the one point of contention is whether the phrase “after St. Moritz” should mean that athletes’ positions on the IBSF Ranking List should be calculated immediately after the skeleton race at the World Cup in St. Moritz or at some other time thereafter.

10.4. As part of its status as the NGB for skeleton, USABS has the exclusive authority within the United States to sanction events that are involved in international competitions and to select athletes for international competitions such as World Cup and World Championship events. *See* Ted Stevens Act, 36 U.S.C.A. § 220523(a)(7) (“a national governing body may . . . designate individuals and teams to represent the United States in international amateur athletic competition”); *see also* USOC Bylaws, § 8.7(g).

10.5. One function of the Ted Stevens Act, and the oversight of the USOC generally, is to inject as much objectivity and accountability into the selection process as is consistent with the promotion of Olympic and international medal-winning capability. As a consequence, an NGB is required as part of its delegation of authority from Congress, to

“establish a written procedure, approved by the [USOC], to fairly select athletes and team officials for the Olympic, Paralympic or Pan American Games teams, and, upon approval, timely disseminate such procedure to the athletes and team officials.”

USOC Bylaws, § 8.7(f). This objectivity and accountability should also apply to the selection of athletes for other protected competitions such as World Cup and World Championship races.

10.6. Regarding the athlete selection process, USABS has “the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion.... Athletes are entitled to know what standard they have to meet and precisely how such selections will be made.” *McConneloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. “The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA 30 190 0056 06 (January 27, 2006) at 2. Arbitrators in Section 9 disputes are therefore obligated to apply the selection criteria as written. See *Craig* at p. 6.

10.7. Unfortunately, the criterion by which skeleton athletes were selected to compete in the final two World Cup races of the season was not “clear, transparent, and easy to apply without confusion.” US skeleton athletes were informed via the December 18 email from USABS’s Director of Sport that the “top 2 ranked athletes . . . after St. Moritz” would qualify for the final two World Cup races of the season. However, neither the email nor the attached Mid-Season Review Document identified a specific date or time on which the rankings would be calculated, stated which IBSF ranking list would be used, specified whether “St. Moritz” meant the skeleton race or the World Cup event as a whole, or specified whether the points from any other IBSF races (such as the ICC races in Lake Placid) would be included in the points calculation.

10.8. Walden, USABS’s Director of Sport and a member of the Skeleton Team Selection Committee, agreed that although she thought the language in her December 18 email was clear at the time she wrote it, in hindsight, it “was not as specific as it should have been” and “could have been more clear.” Likewise, Latour, the Head Coach for the US Skeleton Team and a member of the Skeleton Team Selection Committee, Walden, also conceded that the language in the Mid-Season Review Document was not as clear as it could have or should have been.

10.9. As previous arbitration panels have found in disputes involving selection procedures, “[c]learly defined criteria are necessary to provide guidance to athletes, who are entitled to rely on the criteria as they plan their training and competitive schedules.” *Rivera* at 4, citing *Viola v. USA Diving*, AAA 30 190 00828-05 at ¶28. Recognizing that the language (“after St. Moritz”) was vague and ambiguous, West sought clarification with respect to the selection criterion. He was told by his coaches to focus on the World Cup races that he had been selected to compete in (Altenberg, Königssee, Igls and St. Moritz). Had West known that USABS would use the IBSF Ranking List that included points from the ICC Race #8 in Lake Placid, he could have consulted with his coaches and made changes to his training and competition schedule. However, West’s coaches advised him to focus on the upcoming World Cup races and West confirmed that he followed the directions of his coaches.

10.10. The words and phrases at issue here should be construed “according to the commonly approved usage of the language” and should also be “consistent and harmonious as

to effectuate the goal” of the selection procedure promulgated by the USABS Skeleton Team Selection Committee. According to the Merriam-Webster Dictionary, the word “after” means “following in time and place” and according to Black’s Law Dictionary means “later, succeeding, subsequent to, inferior in point of time or of priority or preference.” However, accepting either of these definitions of the word “after” does not resolve the issue at hand, since the other part of the relevant phrase that must be interpreted is “St. Moritz” and whether that means the skeleton race or the entire World Cup event in that location.

10.11. The context and subject matter here are instructive: the December 18 email and Mid-Season Review Document were sent to skeleton athletes to provide them with information about who was selected to compete in skeleton World Cup races in Altenberg, Königssee, Igls and St. Moritz, as well as in the post-holiday break skeleton ICC and North American Cup races. The athletes were also informed how they could qualify to compete in the skeleton World Cup races in Lake Placid and Calgary. The criterion was a decision of the Skeleton Team Selection Committee and the communication was from the Skeleton Team Selection Committee to skeleton athletes about which skeleton races they had been selected to compete in and how they could qualify for the final two skeleton World Cup races of the season. There was no reference to the rankings for skeleton athletes being calculated after the bobsled World Cup race in St. Moritz or after the World Cup event as a whole. As such, the Arbitrator agrees with West’s interpretation of “after St. Moritz” to mean “immediately after the conclusion of the skeleton race at the World Cup event in St. Moritz.”

10.12. Furthermore, according to the IBSF Ranking List published immediately after the skeleton race in St. Moritz, West was the second-highest ranked American. The points tally immediately after the skeleton race in St. Moritz was not merely a result of West adding up points from all of the IBSF races to date; the international federation for skeleton updated and published its overall ranking list, which both West and Latour confirmed they saw on January 26.

10.13. The Arbitrator also finds that to the extent there are any ambiguities in the meaning of term “after St. Moritz” in the Mid-Season Review Document, those ambiguities must be construed against the drafter, which here is the NGB for the sport of skeleton, USABS. The doctrine of *contra preferentem* - that ambiguities in a contract or agreement must be construed against the drafter – is well settled. *See, e.g., Bank of New York Mellon v. Commerzbank Capital Funding Trust II*, 65 A.3d 539 (Del. 2013); Restatement (Second) of Contracts § 206 (1981). Therefore, the ambiguity in the meaning of the phrase “after St. Moritz” must be read against USABS; or stated otherwise, the ambiguities require that the ambiguous phrase “after St. Moritz” be read as “immediately after the skeleton race at the World Cup event in St. Moritz.”

10.14. While the Skeleton Team Selection Committee could have chosen to specify that it would select the top two ranked athletes “after all races at the St. Moritz World Cup event were completed” or “after the ICC skeleton races in Lake Placid were completed” or “after all IBSF competitions (including ICC races) scheduled prior to the 2019 Lake Placid World Cup were

completed” or “after the last skeleton sled crossed the finish line at the World Cup event in St, Moritz” or “when the IBSF updated the skeleton ‘IBSF Ranking List’ after the St. Moritz World Cup,” it did not. The onus is on USABS “to make the rules clear, transparent, and easy to apply without confusion.” West was “entitled to know what standard [he had] to meet and precisely how [team] selections w[ould] be made.”

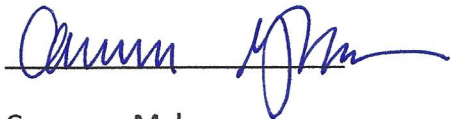
11. DECISION AND AWARD

11.1. On the basis of the foregoing findings of fact and legal analysis, the Arbitrator renders the following decision:

- a. The arbitration claim of Greg West is granted and USABS is directed to include West on the roster of athletes to compete in the final two World Cup races of the 2018-2019 season, namely the World Cup races in Lake Placid and Calgary;
- b. The USABS and Greg West shall share equally in the costs of the AAA and the fees of the Arbitrator. Nathan Crumpton shall bear no responsibility for the costs of the AAA or the compensation of the Arbitrator in this proceeding;
- c. All parties shall bear their own attorneys’ fees and costs associated with this arbitration; and
- d. This Award shall be in full and final resolution of all claims submitted in this Arbitration. All claims not expressly granted herein are hereby denied.

IT IS SO ORDERED, AWARDED, AND DETERMINED.

Dated: March 19, 2019



Cameron Myler

Arbitrator