

AMERICAN ARBITRATION ASSOCIATION

WILLIE GAULT, GREG HARRELL,  
EDWIN MOSES AND BRIAN SHIMER,

Claimants,

and

UNITED STATES BOBSLED & SKELETON  
FEDERATION,

Respondent.

CASE NO. 72 E190 0002 92

ARBITRATION AWARD

THE PARTIES

The parties to this arbitration are Claimants WILLIE GAULT, GREG HARRELL, EDWIN MOSES and BRIAN SHIMER (hereafter "Claimants"), athletes attempting to qualify for the United States Olympic Bobsled Team for the XVI Winter Olympic Games scheduled to commence in February of 1992 in Albertville, France, and Respondent UNITED STATES BOBSLED & SKELETON FEDERATION (hereafter "USBSF"), the National Governing Body for Bobsled & Skeleton in the United States and a member of the United States Olympic Committee (hereafter "U.S.O.C.").

NATURE OF DISPUTE

GAULT, MOSES and HARRELL (hereafter sometimes referred to collectively as "Push Claimants") contend that they have been effectively denied a fair opportunity to qualify for selection to participate as competitors in the Olympic Games as members of the Mens Olympic Bobsled Team as a result of what Push Claimants believe is a failure on the part of the USBSF to select the eight

individuals making up the bobsled push athlete portion of the 12-man Bobsled Team on an objective and fair basis under equal conditions with full, timely and fair notice of all selection criteria for all athletes competing for spots on the team. Push Claimants contend that the bobsled trials and selection process were conducted improperly and with irregularities, thereby unfairly and unjustly preventing them from participating in the Olympics.

SHIMER (hereafter sometimes referred to as "Driver Claimant") contends that, although he has been selected as one of four drivers on the 12-man Olympic Bobsled Team<sup>1</sup>, he was effectively denied selection as a 4-man driver as a result of alleged oral assurances by former USA Bobsled Team Coach Tony Carline at the final Olympic trials for drivers in Lake Placid, New York in March of 1991, that, contrary to written selection criteria for drivers providing that the top two 2-man and the top two 4-man drivers would be selected to the Team, all Mr. Shimer had to do was finish third in the 4-man driver trials to qualify for an opportunity to be a 4-man driver on the 1992 Olympic Team.

The USBSF contends that Claimants were given an equal and fair opportunity to qualify for the Team and simply failed to qualify. The USBSF denies any irregularities or impropriety in the selection process or the trials.

#### THE ARBITRATION HEARING

The arbitration hearing occurred on January 9 and 10, 1992 at the offices of the American Arbitration Association located at 443

---

<sup>1</sup>SHIMER has been selected as driver for USA I 2-man.

Shatto Place, Los Angeles, California commencing at 10:30 A.M. on January 9, 1992 and concluding at 2:30 A.M. on January 10, 1992 before Arbitrator Ross R. Hart. Claimants were represented by Attorney Joel Chizever. Respondent was represented by Attorney David Kurtz. Testifying on behalf of the Claimants were WILLIE GAULT, EDWIN MOSES, GREG HARRELL, TYRONE JONES, M.E. WILSON, SR., MIKE PLANT, and NEIL RICHARDSON. Testifying on behalf of Respondent were MARK DAPAS, BRIAN RICHARDSON, CHRISTOPHER COLEMAN, JOSEPH SAWYER, JAMES HICKEY, JOHN PHILBIN, RALPH W. HALE, M.D. (via telephone conference call), MIKE ALJOE (via affidavit), THOMAS ALLEN (via written statement), and FORREST DEWDROP MORGAN (via written statement). Numerous written and videotape exhibits were offered in evidence by the parties.

The proceedings were transcribed by a stenographic reporter.

The hearing proceeded in accordance with the Commercial Rules of the American Arbitration Association on an expedited basis as provided by the arbitration provisions of the applicable law, constitutions and by-laws of the U.S.O.C. and USBSF. The parties stipulated the hearings were open to the public and press. All oral and written testimonial evidence offered by each party at the time of hearing was received by the Arbitrator. All documentary evidence offered by each party at the time of the hearing was received by the Arbitrator.

#### BURDEN OF PROOF

Claimants have the burden of proof to a preponderance of the evidence on all issues material to the outcome of the arbitration.

## RELIEF SOUGHT

Claimants seek to have the Arbitrator make an award reaching one of the following results:

1. Award Claimants a spot on the 1992 United States Winter Olympic Bobsled Team as one of two 4-man teams, or
2. Order new trials to select the United States Winter Olympic Bobsled Team.

Respondent seeks to have the claim denied, thereby confirming the existing selection of 12 individuals and two team alternates for the 1992 Olympic Bobsled Team.

## PROCEDURAL HISTORY

On or about July 19, 1991, shortly after the conclusion of the July 1991 National Bobsled Push Championships, Claimants filed a grievance with the U.S.O.C. and the USBSF concerning the selection method for the 4-man Bobsled Team. While there was some delay in addressing the grievance due to scheduling problems on both sides and turnover of administrative personnel within the USBSF, a three-person hearing panel appointed by the USBSF Board of Directors conducted a grievance hearing on December 17, 1991 in Los Angeles, California. The hearing panel unanimously recommended to the USBSF's Board of Directors that an additional "final trial" be conducted prior to finalizing the 1992 Olympic Bobsled Team.

On December 20, 1991, the USBSF Board of Directors voted 7 to 5 with one abstention to defeat a motion to accept the recommendation of the three-person hearing panel.

Claimants, pursuant to rights afforded under the relevant USBSF and U.S.O.C. constitutions and by-laws, filed a Demand for Binding Arbitration under the auspices of the American Arbitration Association on January 3, 1992. Because of the proximity of the upcoming Winter Games and deadlines for designating a Bobsled Team to the U.S.O.C. and other related acts, the arbitration was conducted on an expedited basis to produce a decision sufficiently early to minimize injustice to the affected parties.

#### WHAT IS AND WHAT IS NOT AT ISSUE

There is within the overall Olympic community a strong division of opinion over whether or not professional athletes in one sport who possess superior athletic gifts and skills but who do not devote themselves full time or nearly full time to an Olympic sport should be permitted to compete with and perhaps displace amateur athletes who have devoted years of their time and resources in pursuit of the Olympic Dream. That issue is not before the Arbitrator. The applicable U.S.O.C., I.O.C., and USBSF constitutions and bylaws permit such competition. In the specific dispute here involved, the rules provide that, if such a professional athlete qualifies for the World Cup and United States Olympic Bobsled Team but is unable to participate in many of the regular training camps and World Cup Tour events which the National Team participates in leading up to the Olympic Games due to contractual obligations to play football or other pursuits, a waiver from the requirement to participate with the Team in such pre-Olympic events may be obtained without depriving the

professional athlete of the right to compete in the Olympics. The issue before the Arbitrator is whether, under the totality of circumstances and specific requirements of the U.S.O.C., Claimants were improperly denied an opportunity to obtain the positions on the United States Olympic Bobsled Team which they seek.

DISCUSSION, FINDINGS OF FACT AND CONCLUSIONS OF LAW

The overriding object and purpose of the U.S.O.C. is to see that the United States obtains the most competent representation possible in each competition and event for the Olympic Games. The U.S.O.C. must also protect the opportunity of any athlete to participate in the competition by insuring that the selection process is fair and equitable.

Among other duties of the U.S.O.C. is to ensure, either directly or by delegation to appropriate National Governing Bodies, that athletes are informed of policy matters. The U.S.O.C. is also obligated to reflect the view of athletes in policy decisions.

The U.S.O.C. is required to and has established a Games Preparation Committee to advise and assist the Executive Board of the U.S.O.C. in all matters concerning the selection and participation of United States athletes and Team officials in the Olympic Games. Among other functions, the Games Preparation Committee is to analyze and evaluate selection programs and criteria proposed by National Governing Bodies for selection of athletes to be recommended for final appointment to the Olympic Teams.

Each National Governing Body, including the USBSF, has the

authority and duty to devise and determine the method of selecting athletes who will be recommended to the U.S.O.C. for appointment to the team to represent the United States in the Olympic Games. The National Governing Bodies must also announce the selection method to the athletes as early as practicable.

Because of the level of Olympic competition and the extreme demands placed upon athletes in preparing for Olympic qualification and competition, clear, understandable and equitable selection criteria sufficiently in advance of final Olympic trials to permit candidates to properly train and prepare for the trials is an essential ingredient in assuring that the mandate of the U.S.O.C. to select the most competent representation for the United States is carried out.

During the 1989 through Spring of 1991 time period, the USBSF had serious administrative problems. There was a lack of direction and disorganization within the USBSF. This occurred during the critical period when selection criteria for the 1991-1992 World Cup Team and 1992 Olympic Team should have been finalized.

In March of 1991, the Board of Directors of the USBSF resigned and Head Coach Tony Carlino was relieved of his duties. John Philbin was appointed as Head Coach and James Hickey acted as Team Leader and Executive Director of the USBSF. Messrs. Philbin and Hickey, working with U.S.O.C. Games Preparation Committee, used their best efforts to try to put the USBSF back together and minimize the negative impact of the administrative problem on the athletes. From approximately the first quarter of 1991 through the

National Push Championships in July of 1991, the U.S.O.C. was much more involved in the day-to-day operations of the USBSF than would normally be the case for National Governing Bodies in other sports.

During the period of Fall 1990 through March of 1991, the F.I.B.T. International regulations were such that the Nations competing on the World Cup Tour were permitted three 4-man sleds and three 2-man sleds. Until April of 1991, it was reasonably anticipated by the USBSF that the same number of sleds would be permitted at the Olympic competition in February of 1992. Selection criteria for the 1992 USA Olympic Bobsled Team established during the Fall of 1990 through March 1991 time period was based upon this assumption.

The relevant sections of the U.S.O.C. approved selection procedures for Bobsled athletes for the XVI Winter Olympic Games as of February 7, 1991 (hereafter "original selection criteria") provided as follows:

"1.2.4. Final Olympic Trials for Drivers

The Final Olympic Trials for drivers will be held March 4-17, 1991 in Lake Placid, New York. The top two 2-man and the top two 4-man drivers will advance.

"1.2.5 Olympic Team Candidate Drivers

The top 2-man, the top 4-man and the second ranked 2-man and the second ranked 4-man drivers after the Final Trials shall be

designated as Olympic Team candidates and are qualified to continue into Phase Two Training.

No additional drivers will be named as candidates. If one or both drivers qualify in both 2-man and 4-man disciplines they will be the designated candidates for both disciplines."

The drivers trials went forward at Lake Placid in March of 1991, and the following four individuals were selected as drivers as follows:

USA I 2-MAN	BRIAN SHIMER
USA II 2-MAN	BRIAN RICHARDSON
USA I 4-MAN	CHARLES LEONOWICZ
USA II 4-MAN	RANDY WILL

The relevant portions of the original selection criteria for Bobsled push athletes provided for a Phase 1 period between November of 1990 and March 20, 1991 to establish a pool of Push athletes qualified to compete for the Push athlete positions on the 1992 Olympic Team. The Push Claimants (GAULT, MOSES and HARRELL) all met the minimum requirements and were in the pool of Push athlete candidates. By May 20, 1991, the pool of Phase 2 Push athlete candidates consisted of thirty-three athletes. The original selection criteria provided that all Phase 2 push activities would take place between March 21, 1991 and September 22, 1991 to establish the 1991-1992 World Cup Team (along with the four team drivers already selected). The original selection

criteria provided that those athletes who thereby attained membership on the 1991-1992 World Cup Team and either competed on that team or exercised an option to obtain a waiver from World Cup competition because of contractual, educational, personal, injury or other reasons would then be the push athletes eligible for final evaluation and selection to the 1992 Olympic team. In the original selection criteria, the final evaluation was to take place between January 8 and 21, 1992 in Europe, only weeks before the Olympic Games.

Had the selection process proceeded under the original selection criteria, the three Push Claimants would have been eligible for a waiver had they made the 1991-1992 World Cup Team but would have had to participate in the final evaluation process in January 1992 in order to secure a spot on the 1992 Olympic team.

In the February and March, 1991 time period, all of the Push athlete pool candidates were clearly advised of the original selection criteria described above.

The original selection criteria further provided that the Olympic Team Coaching Staff would individually rank the Push athletes based upon 1991 Push Clinic Performance Results, the 1991 US National Push Championships (3-man and either brakeman or side-push or both) and physical requirements (e.g. body weight relating to F.I.B.T. total sled and team weight requirements). Based upon the evaluation of such relevant data, the Olympic Team Coaching Staff was to individually rank the eligible athletes to establish the 1991-1992 World Cup Team and alternates to that Team. Again,

it was anticipated in the February-March 1991 period that there would be three 2-man sleds and three 4-man sleds for the World Cup and Olympic teams.

The original selection criteria provided that the Olympic Team would be selected at the end of a final evaluation period between January 8 and 21, 1992 by the Olympic Team Coaching Staff. During the final evaluation period, the athletes was to be individually tested by push time trials on ice from both the brakeman and side positions. The athletes were also to be tested as 3-man push teams. In order to make the final Olympic team selection, the coaching staff was to rank all qualified Push athletes individually based upon the following data in the following order of priority:

- "A. Final Evaluation competition results;
- B. 1991-1992 World Cup 50-meter times;
- C. and, 1991 Push Championship results."

The original selection criteria further provided that "the top 8 to 10 (12 minus the number of Olympic Team Drivers) ranked push athletes would be named as members of the 1992 Olympic Team".

On or about March 19, 1991, following the selection of four drivers and at the time of the resignation of the Board of Directors and dismissal of the Coach, notice went out to all Push athletes notifying them of certain training and competition camps (some mandatory, some non-mandatory) and designating July 5-14 as the dates for the National Push Championships as a mandatory event for all Olympic Team Push candidates. The purpose of the National Push Championships in the notice was stated to be "selection to a

group of 12-15 push athletes for designation as A National Team". The Memorandum stated that the top two 3-man teams would be selected, the top three brakemen would be selected and the top four to eight side pushers would be selected. This A National Team would constitute the 1991-1992 World Cup Team described in the original selection criteria.

Unfortunately, in April of 1991, the F.I.T.B. Sports Committee voted to recommend to the full international bobsledding body that the number of sleds for selection on the World Cup Tour would be reduced from three to two in each of the 2-man and 4-man categories for each Nation. This reduction occurred over the objection of the United States through James Hickey. Thus, Mr. Hickey was aware in late April of 1991 of these changes in the international rules. The F.I.T.B. adopted the recommendation of its Sports Committee on May 16, 1991 at a meeting in Japan. This reduction on the World Cup circuit impacted the original selection criteria for the 1992 USA Olympic Bobsled Team since there would be fewer sleds and thus fewer spots on the team. One of the push athletes testified at the hearing that the USBSF was "forced to iron out something that was fair but was contemporaneous in the constant state of flux in the world of bobsledding" which existed as a result of this change in the international rules. At this point in time, the USBSF found itself approximately six weeks away from the National Push Championships which had theretofore been identified as only one of the factors (and least important in order of priority) to be considered in ultimate selection of the Olympic Team.

Faced with this change of circumstances, the USBSF, through its Executive Director and Coaching Staff, began to consider modification of the original selection criteria. As early as May 7, 1991, the USBSF communicated with the U.S.O.C. on the issue of modifying the original selection criteria for Push athletes for the 1992 Olympic Team. The original selection criteria was described as somewhat confusing, very cumbersome and in need of modification due to the changes in the international rules. One significant feature of the modifications proposed by the USBSF to the U.S.O.C. on May 7, 1991 was to eliminate the requirement of a scheduled final evaluation competition on a Push track in Europe during January of 1992.

The Arbitrator finds that the elimination of the scheduled final evaluation competition in January of 1992 was a significant and material change in the selection criteria.

No written notice went out to the Push athletes selection pool of this change in the International Rules, the impact it would have upon the original selection criteria for the Push athletes or the need to modify the original selection criteria. Rather, at a "mandatory" training camp in late May of 1991, the issue of the need to modify the existing selection criteria was first raised orally in meetings with the 26 push athletes present at the May camp. While the camp was designated as a "mandatory" camp in certain materials sent to the Push athletes, waivers of the camp attendance requirement were available and in fact were obtained by two of the three Push Claimants (EDWIN MOSES and WILLIE GAULT) who

were not at the May camp<sup>2</sup>.

At a May 24 meeting with 26 athletes in attendance, several modifications, changes and additions to the original selection criteria were discussed and voted upon by the athletes. Among other changes and modifications voted upon and discussions had were the following:

1. The scheduled July National Push Championships would result in selection of eight athletes to be added to the existing four drivers to go on the World Cup Tour. Those eight athletes were to be selected by taking the top three-man Push team, the top two brakemen, and the top three side pushers. The vote of the 26 athletes present on selection of the eight Push athletes for the World Cup Team in this fashion was unanimous. This, in effect, transformed the July National Push Championships into the final Olympic trial event.

2. The 26 athletes voted 16-9 to add a cone at the 45-meter mark of the Push track and further provided that, if any athlete stepped beyond that point, the push would automatically be disqualified and no

---

<sup>2</sup>Only 26 of the 33 push athlete selection pool athletes were present at the May camp.

additional pushes would be permitted. The split vote reflected a dispute among the athletes over the effect of the presence of the cone at 45 meters. Those voting against in large part felt that the presence of the cone would diminish or effect the ability of sprinters (like WILLIE GAULT and EDWIN MOSES) to push the sled to or beyond the 45-meter mark. Coach Philbin proposed the 45-meter cone for the dual purpose of avoiding the possibility of serious injury to the athletes who did not load onto the sleds before the 45-meter mark and, as a forced training technique, to discourage the Push athletes from pushing beyond 45 meters where Coach Philbin felt as a matter of bobsled theory that a drag or detriment to the overall sled performance would be created rather than performance being enhanced.

3. There was also a split vote to add weight to the sled to more nearly approximate ice conditions. The vote was 15-10 in favor of adding the weight. This was a compromise vote as typically the larger, power push athletes were in favor of adding the weight while the lighter, speed push athletes were opposed to

adding the weight. Similar votes were taken on the cone and weight features regarding the brakemen and side pusher individual competitions to take place in July of 1991.

4. With respect to the 3-man Push competitions, it was unanimously agreed that the top 3-man team would be selected by best two out of three pushes but, if a tie occurred of cumulative time, the fastest heat would determine the winner. This selection process vote was apparently unanimous among the 26 athletes present at the May camp.

5. It was also agreed among the 26 athletes unanimously that, if any athlete selected to the final eight also qualified for a waiver (i.e., a pro-football player like Claimant, WILLIE GAULT or another push athlete candidate, HERSCHEL WALKER), such athlete must return in January 1992 and push off against the individual that was selected in his place to compete on the World Cup Tour. This would give the athlete who was bumped up because of the waiver another opportunity to make the team during a pushoff in January 1992 on ice under the most realistic conditions possible.

There was a dispute in the evidence over whether the fact that

there had been a split vote on some of the modifications to the original selection criteria was communicated to the U.S.O.C. orally. However, the evidence was clear that the vote count was not communicated to the U.S.O.C. in writing.

DR. RALPH W. HALE, the Chairman of the Games Preparation Committee, testified that he was unaware, until the arbitration hearing itself, that there was anything other than unanimous adoption by the athletes of these changes in the original selection criteria within weeks of the July National Push Championships. Of significance was Dr. Hale's testimony that material changes in selection criteria made a short period of time before Olympic trials require unanimous consent of the athlete candidates. Dr. Hale testified that, if he had known any athlete objected, the Games Preparation Committee would have forced the USBSF to return to the original selection criteria. While Dr. Hale did not address what would occur when original selection criteria were no longer feasible due to a change of circumstances beyond an NGB's control, he was firm that advance knowledge of selection criteria is such an important factor in the Olympic selection process that the U.S.O.C. would do everything possible to accommodate an objecting athlete's concerns.

The evidence was clear that the USBSF communicated the content of the modifications to the original selection criteria to the U.S.O.C. and that, with some modification by U.S.O.C., the modified selection criteria was approved by the U.S.O.C. as of June 21 when the athletes were sent the final revision to the selection

procedures for the Push athletes. (The June 21, 1991 selection criteria will be referred to as the "modified selection criteria"). It should be noted that the modified selection criteria was sent to the Push Claimants approximately two weeks before the National Push Championships were scheduled to commence.

Claimant HARRELL testified that he was taken by complete surprise on May 24 at the Push Camp when changes to the original selection criteria were proposed and voted upon. He testified that he voted against the cone change and, he believed, the weight change. He was not sure he understood the ramifications of the other changes in the selection procedure.

Claimant MOSES was contacted by Claimant HARRELL shortly following the May Camp and expressed shock and dismay upon learning of modifications in the original selection criteria. In early June of 1991, MOSES objected orally to Dr. Hale who told MOSES that, if he filed a formal objection to the changes, the USBSF would have to go back to the original selection criteria. MOSES also testified that he objected to the Coach and Executive Director of the USBSF the evening before the 3-man July Push Trials were scheduled.

Claimant GAULT testified that he objected vigorously to the modifications the evening before the July Push Championships. GAULT further testified that he only learned of the changes four to five days before the scheduled Push Championship.

All three Claimants refused to sign a written approval of the

modified selection criteria.<sup>3</sup>

The Arbitrator finds no waiver or laches on the part of Claimants in pursuing their position. The USBSF could have scheduled a grievance hearing well before December of 1991 if it had chosen to. Claimants consistently objected to the modified selection criteria.

It is noteworthy that the decision by the USBSF in the modified selection criteria to designate the July Push Championships as the final trial for appointment to the Olympic Bobsled Team as a Push athlete resulted in the USBSF designating the earliest date of any NOB under the U.S.O.C. to have finalized selection of their USA 1992 Winter Olympic Team. This early, final selection date was not required under the U.S.O.C. designation rules. The athletes need not be designated to the U.S.O.C. until January 19, 1992. However, part of the reason the July 1991 National Push Championships were selected as the final selection forum was that the Push Claimants were generally unavailable due to other commitments to participate either in Fall 1991 trials or the World Cup 1991-1992 Tour. The Push Claimants were available to participate in the final selection process in January of 1992 called for under the original section criteria. One advantage to the United States in having the team selected as early as July of 1991 was to give the team seven to eight months to work out and

---

<sup>3</sup>While Mr. Hickey testified that he had signed approvals from Claimants HARRELL and GAULT, they were not produced at the hearing. Messrs. GAULT and HARRELL testified that they did not knowingly approve the modified selection criteria.

peak together to maximize the cohesiveness and competitiveness as a team for the 1992 Olympics.

At the 1991 Push Championships in July in Lake Placid, the competition between the three-man teams of GAULT, HARRELL and MOSES and SNAVELY, LETURGES and WOODARD was extremely close. The Claimants team won two out of three of the heats head-to-head with the SNAVELY, LETURGES and WOODARD team. However, under the rules, the cumulative times scores of two out of three heats selected by the teams resulted in a tie. (GAULT, MOSES and HARRELL had two best heats of 5.10 and 5.10 for a total cumulative time of 10.20; the team of SNAVELY, LETURGES and WOODARD had two best heats of 5.09 and 5.11 for a total cumulative time of 10.20). However, under the modified selection criteria, the best heat of 5.09 turned in by the SNAVELY, LETURGES and WOODARD team constituted the tie breaker, and therefore that three-man team was selected as three of the eight Push athletes for the World Cup Tour and Olympic Team.

This means that the team of GAULT, MOSES and HARRELL lost out by 1/100th of a second on a best single heat basis, although they tied on a cumulative time basis and won two out of three heats. Cumulative time, however, is an acceptable method in bobsledding for determining a winner and best single heat is a recognized method of tiebreaking in bobsledding. Thus, unless there is some inherent problem with adoption of the July 1991 Push Championships as the final selection process under the overall circumstances, the results must stand. The Push Claimants chose not to participate in the brakemen and side push individual competition at the July

## 1991 Push Championships.

Claimant GAULT testified that, while he did not actually reach the 45-meter mark during the 1991 Push Championships, the very presence of the cone effected his ability to concentrate and push the sled as fast as possible for fear of disqualification. He and the other Push Claimants believe that, contrary to the stated reasons for the placement of the cone, it was intentionally devised by the other athletes and/or the coaching staff to diminish the chances of world class sprinters like EDWIN MOSES and WILLIE GAULT who have a long stride and are more likely to reach the 45-meter mark than others competing at the Push Championships. The Push Claimants felt they signed liability waivers, and there was no need to place the cone for alleged safety purposes.

The coaching staff and the other athletes vehemently deny that there was any such design and further are of the opinion that there is no way any push athlete including, but not limited to, those with the talents of Messrs. MOSES, GAULT and HARRELL, would actually reach the 45-meter mark as part of a legitimate attempt to turn in a competitive time on a particular push.<sup>4</sup> The coaching staff and other non-claimant push athletes who testified are of the opinion that, had Push Claimants HARRELL, GAULT and MOSES worked out together for some appreciable period of time prior to the July 1991 Push Championships rather than just showing up for the

---

<sup>4</sup>While certainly one could run beyond the 45-meter mark according to Coach Philbin, that would simply create such a drag in ice conditions or a risk of injury on artificial surface conditions that it could not be considered as a realistic impairment to performance.

championships from different parts of the Country, they would have probably prevailed. The coaching staff and the other push athletes are of the opinion that the cone issue is a red herring.

The Arbitrator is well aware of the fact that, since July of 1991, based upon the March 1991 driver trials and the July 1991 Push Championships, and the modified selection criteria, the following individuals have been considered members of the 1992 Olympic Bobsled Team:

<u>DRIVERS</u>	<u>PUSH ATHLETES</u>	<u>PUSH TEAM ALTERNATES</u>
BRIAN SHIMER	CHRISTOPHER COLEMAN	THOMAS ALLEN
BRIAN RICHARDSON	KARLOS KIRBY	WAYNE AUBERTIN
CHARLES LEONOWICZ	BRIAN LETURGES	
RANDY WELL	JOSEPH SAWYER	
	TODD SNAVELY	
	HERSCHEL WALKER <sup>1</sup>	
	ROBERT WEISSENFELS	
	JEFFREY WOODARD	

The Arbitrator is also well aware that disruption of the existing "selected" team roster could have a negative and perhaps devastating effect upon not only USA's chances of obtaining a medal in the 1992 Winter Olympics but upon the sport of bobsledding in the United States. Unfortunately, the background of the dispute involved in this arbitration reflects much acrimony and division within the bobsledding athletic community. There perhaps naturally

---

<sup>1</sup>Mr. Walker took a waiver from the 1991-1992 World Cup Team and, thus, must push off against Thomas Allen on January 17, 1992 in Altenberg, Germany according to the modified selection criteria.

is more comraderie among those Push athletes who devote themselves on a more regular basis to bobsledding and compete on the World Tour than between that group and other athletes who may have the athletic ability to compete but who do not devote all their time to bobsledding and who obtain waivers like Messrs. HARRELL, WALKER, MOSES and GAULT. There is perhaps a natural resentment among those who devote significantly more of their time, energy and resources to the sport against those who, because of extreme athletic gift, can devote less time to the sport and still be competitive. While some of those on the team may perceive Push Claimants as dabblers or opportunists, the Arbitrator is convinced that, while every athlete would like to be on an Olympic Team for his or her own personal glory and other benefits which may flow, the overriding motivation of the Push Claimants is their genuine belief that, given a fair opportunity, they will qualify for the team and provide the best chance for the United States to obtain a medal in this sport in the 1992 Winter Olympics. Some witnesses characterized this belief as arrogance; others as confidence. It is also noteworthy that Push Claimants have competed in bobsledding for several years.

The Arbitrator is also cognizant of the extremely negative effect on morale disruption in the status quo at this time would bring not only to the existing "selected" Push athletes but to those who in the future may consider devoting time, money and other resources to the sport only to risk having their positions snatched at the "last minute" by perhaps superior athletes who do not devote

themselves full time to the sport.

In balancing all of the factors relevant to this painful and acrimonious dispute, the Arbitrator has considered that, even as of the date of the arbitration proceeding, none of the existing eight Push athlete team members is guaranteed an actual ride on a sled in the Olympic Games. Of the eight Push athletes who are ultimately designated to the U.S.O.C. on January 19, 1992 as the Olympic Team, perhaps only six will actually ride on the sleds. That will be a coaching decision. Therefore, even under the existing circumstances, there is considerable uncertainty about who will actually carry out the effort of the United States to obtain a medal in the Olympic Games. The Arbitrator is not ignorant of the fact that, even if a Push athlete does not actually slide in the Olympic Games, he has "made the Olympic Team" and will be able to march in the Opening and Closing Ceremonies, participate with his teammates in the camaraderie and experience of competing in the Olympic Games and otherwise carry that most cherished of memories throughout his life. It is also noteworthy that, under the original selection criteria, the Olympic team was not to be selected until January of 1992 following final evaluation.

The Arbitrator finds that, notwithstanding the exigent circumstances which arose in April and May of 1991 resulting from the change in the F.I.B.T. Rules, the USBSF should have given written notice of the need to change the selection criteria to all 33 push athletes immediately after learning of the April 26, 1991 vote of the F.I.B.T. Sports Committee to recommend change in the

**F.I.B.T. Rules.**

The Arbitrator finds that written notice should have been given to all 33 push athletes in advance of a particular meeting date informing the athletes that significant modifications of the original selection criteria would be taken up and voted upon by all athletes.

The Arbitrator finds that the U.S.O.C. should have been advised in writing immediately following the May Camp of the existence of a dispute among the athletes over proposed changes in the original selection criteria and the U.S.O.C. Games Preparation Committee given the opportunity of intervening to solve the problem by either designating a simple majority of the athletes as the means of resolving the dispute or suggesting alternatives to the existing selection procedures that would have met the changed conditions and yet satisfied all 33 of the athletes. While the Push Claimants were in a small minority of the overall pool of Push athletes of 33 in terms of their availability to participate in competitive bobsled events between July of 1991 and January 19, 1992, something to accommodate the needs of all athletes should have and could have been worked out if the parties had come together.

The Arbitrator finds that the overriding object and purpose of the U.S.O.C. is to field the best possible team consisting of the best possible athletes in a particular event to maximize the chances for a medal. This does not mean that a superior athlete in any particular sport can simply ignore practices, policies and

procedures of an NGB and walk up to the starting gate at the time of the Olympics and simply state "I am the best so I should be entitled to compete". It does mean that reasonable accommodation must be made to accommodate the interests of all individuals competing for a spot on any Olympic Team to carry out these goals.

Perhaps the most difficult part of this decision is how to proceed in the least disruptive fashion possible to rectify the deficiencies in the notice and selection procedures that have occurred to date. Coach Philbin testified that, while his strong preference would be to leave the team as selected currently in tact for designation to the U.S.O.C. on January 19, 1992 if forced to consider Push Claimants for possible inclusion on the Olympic Team, he feels the least disruptive method would be to conduct a pushoff on ice in Europe at a time and under conditions to be designated by Coach Philbin and his staff between January 14, 1992 and January 18, 1992 to include in such head-to-head individual pushoffs the eight existing Push athletes (COLEMAN, KIRBY, LETURGES, SAWYER, SNAVELY, WALKER, WEISSENFELS, and WOODARD), the two team alternates (ALLEN and ALBERTIN) and the three Claimant Push athletes (GAULT, MOSES and HARRELL). These 13 Push athletes would compete in a brakeman pushoff vying for four brakeman positions. Once the top four were determined and selected for the four brakeman positions, these four and the remaining nine would again compete in side push pushoff competition with the highest ranked four of the remaining nine selected to the four side push positions. Under this pushoff scenario, there would be a total of eight pushmen selected while

giving Coach Philbin the opportunity to make necessary assessments among brakemen and side push athletes for him to make decisions concerning the actual placement of athletes on a particular sled. The placement of any of the eight athletes selected on a sled at all or on a sled in any particular position or combination would be within the discretion of Coach Philbin.

Having heard and considered all of the evidence and having given careful consideration to the overall circumstances in which the parties find themselves, the Arbitrator finds that it is appropriate to select the eight push athletes for the 1992 Mens Olympic Bobsled Team from a pushoff among the 13 push athletes in the fashion described in the foregoing paragraph. Such pushoffs shall take place between January 14 and January 18, 1992 on ice at a time and place to be specifically designated by Coach Philbin. Any details of the pushoff competition among the 13 athletes not specifically covered by this Arbitration Award are to be decided at the sole discretion of Coach Philbin. While the pushoffs may not result in any change to the currently "selected" eight push athletes, such a pushoff will give Push Claimants an opportunity to make the team.

The Arbitrator finds that the Driver Trials were conducted in accordance with existing written selection criteria and, therefore, the claim of SHIMER to be included as a 4-man driver is denied. Naturally, SHIMER will retain his USA I 2-man driver position.

It is truly unfortunate that a dispute of this nature has arisen among candidates for an Olympic team. Any result is this

arbitration would be subject to criticism and create great disappointment and unhappiness. It is the hope of the Arbitrator that the parties can put aside their differences in the little time remaining before the Olympic Games and pull together in a spirit of unity on behalf of the United States. The Olympic Oath to be recited by an athlete of the host nation on behalf of all the participants in the Olympic Games and an oath which the members of the 1992 USA Mens Olympic Bobsled Team should follow is:

"In the name of all competitors I promise that we will take part in these Olympic Games, respecting and abiding by the rules which govern them, in the true spirit of sportsmanship, for the glory of the sport and the honor of our teams."

This Award is being delivered to the parties by telecopier.

DATED: January 11, 1992.

  
ROSS R. HART, ESQ.