

## **American Arbitration Association**

In the Matter of Arbitration between:

Thomas W. Gough, Claimant

vs.

George Greenway (U.S.W.F.), Respondent

Case Number: 30 190 00190 96

### **Arbitrator's Opinion**

This Opinion provides the reasons for the Arbitrator's Decision on July 5, 1996 denying the Grievance filed by Thomas W. Gough with the United States Olympic Committee ("USOC"). That Decision was rendered following a hearing held by the Arbitrator on that day via conference telephone throughout which both parties were represented by counsel and presented their respective arguments, witnesses and exhibits. All of Claimant's and Respondent's Exhibits were admitted by the Arbitrator with the exception of Claimant's Exhibit 4 (because it was not furnished to the Respondent) and Claimant's Exhibits 5D, 8, 8A and 9 (because they relate to Greg Schouten's Grievance which was outside the scope of this arbitration proceeding). The attorney for Konstantine Starikovitch, a third party affected by the outcome of this Grievance, declined to have him participate in this hearing.

### **Grievance and Jurisdiction**

This Grievance was brought before the Arbitrator by Mr. Gough's Demand for Arbitration dated July 3, 1996 against George Greenway in his capacity as the Executive Director of the United States Weightlifting Federation ("USWF"). This Grievance was properly referred to arbitration under the auspices of the American Arbitration Association in accordance with the requirements of USOC and USWF.

This Grievance claims that USWF acted improperly in selecting Mr. Starikovitch instead of Mr. Gough for the fifth slot on the U. S. Weightlifting Team for the 1996 Olympics. The propriety of that selection depends on whether it was made in accordance with the USWF's 1996 Olympic Games Selection Procedures ("USWF Selection Procedures")(Claimant's Exhibit 1 and Respondent's Exhibit 3) and the waiver procedures set forth in USOC's letter of August 7, 1995 to NGB Presidents and Executive Directors (Claimant's Exhibit 3 and Respondent's Exhibit 5).

### Rules and Chronology

The USWF Selection Procedures provide on page 12 that:

"Selection to the Olympic Team will be based on placement on the Special USWF Olympic Games ranking list."

On page 18 Rule Ib15 says that:

"The athletes selected for the Olympic Trials (Weightlifting) will be the top 30 ranked athletes based on a special Olympic Trials (Weightlifting) Ranking List. This ranking list will be based on the results of all the above qualifying events using the percentage ranking system to rank order all athletes."

Rule Ic on page 18 goes on to provide that:

"An athlete who is a non-citizen may not qualify for the Olympic Trials until such time as he is a citizen. Any total made when the athlete was a non-citizen and lifted as an "extra lifter" may not be used in the Olympic Trials Ranking List."

Mr. Starikovitch was not a U. S. citizen when any of the specified "qualifying events" took place, and he competed in the 1995 American Open, one of the "qualifying events," as an "extra lifter." He could therefore not be eligible for the U. S. Olympic Team unless a proper waiver was obtained for him.

In its August 7, 1995 letter to NGB Presidents and Executive Directors, USOC authorized consideration of NGB requests for such waivers if three criteria were met. Mr. Starikovitch requested such a waiver in his letter of December 28, 1995 to USOC (Respondent's Exhibit 8) and in his attorney's letter of April 15, 1996 to USWF (Respondent's Exhibit 10). As a result of this request, and in consideration of his naturalization as a U. S. citizen on April 12, 1996 and his score of 390 as an "extra lifter" in the 1995 American Open, USWF permitted Mr. Starikovitch to participate in the Olympic Trials held on April 28, 1996 for his weight class. USWF accommodated his participation by expanding the ranking list to 31 athletes, adding him and not displacing any of the athletes on the original list of 30. This permission was confirmed in the Stipulation entered into between Mr. Starikovitch and the UWSF in connection with another arbitration case (Respondent's Exhibit 11). USWF did not at this time act to approve or deny his request for a waiver.

At the Olympic Trials Mr. Starikovitch placed fifth with a score of 109.20% and Mr. Gough placed sixth with a score of 108.76% (Claimant's Exhibit 5B). At that time there were only three authorized slots for weightlifters on the U. S. Olympic Team, although USWF then hoped to obtain up to ten slots. At the present time, five slots have been authorized, and USWF still hopes for more.

In view of Mr. Starikovitch's fifth place performance at the Olympic Trials, USWF wrote to USOC on May 8, 1996 requesting a waiver for him (Claimant's Exhibit 6 and Respondent's Exhibit 12). On May 10, 1996 USOC granted the waiver and concluded that "Therefore, Mr. Starikovitch stands as the number five athlete on the Olympic ranking list" (Claimant's Exhibit 7 and Respondent's Exhibit 13). So long as only five slots are authorized, Mr. Starikovitch is on the Olympic Team, and Mr. Gough is not on the Olympic Team, if this waiver was properly granted for Mr. Starikovitch.

### Contentions and Conclusions

The parties agree that Mr. Starikovitch properly complied with two of the three criteria for a waiver as set forth in USOC's August 7, 1995 letter.

They disagree on whether he complied with the third criterion which requires that (Claimant's Exhibit 3 and Respondent's Exhibit 5):

"The inclusion of this athlete in the selection process can in no way adversely affect a current U. S. citizen attempting to earn a position on the Olympic or Pan American Team. Thus a pool of athletes in either an individual or team trials structure would have to be increased by the number of non-citizens for which you are requesting a waiver."

This third criterion in its first sentence requires only that there be no adverse effect on a current U. S. citizen in the "selection process." It does not require that, as a result of the selection process, no current U. S. citizen lose a slot on the U. S. Olympic Team which he or she would otherwise have obtained in the absence of the inclusion of the athlete granted the waiver.

In its second sentence the third criterion requires that "adverse affect" on the selection process be avoided by increasing the pool of athletes. It is clear that USWF complied with this requirement by increasing the number of athletes authorized to compete in the Olympic Trials from 30 to 31.

On behalf of Mr. Gough it is urged that, in addition to requiring an increase in the pool of athletes, the third criterion requires USOC and USWF to consider any other kind of "adverse affect" which influences the selection process. However, the Arbitrator believes that the better interpretation of that language is that it does not permit the consideration of any factor other than whether the pool was increased. That is, the Arbitrator reads the second sentence, which is introduced by the key word "thus," as setting forth the sole requirement for accomplishing the absence of the "adverse affect" which the first sentence prohibits. This plain meaning of the wording is confirmed by Mr. Greenway's memorandum of his September 5, 1995 telephone conversation with Mr. Saye at USOC (Respondent's Exhibit 6) about the waiver requirements set forth in USOC's August 7, 1995 letter. This memorandum says that the third criterion means that:

“We would have to add one additional slot to the Olympic Trials so as not to displace a US citizen athlete from the Trials.”

If the experienced sports professionals who wrote and approved this third criterion wanted to permit consideration of other kinds of “adverse affect” than failure to increase the pool of athletes at the Olympic Trials, the Arbitrator believes that they would have said so.

The other kind of “adverse affect” which Mr. Gough and his coaches claim is that they could not anticipate with any reasonable accuracy what weights Mr. Starikovitch could lift at the Olympic Trials. (The importance of such information is explained later in this Opinion.) They make this claim, first, by questioning whether there was any published information on his prior scores and, second, by pointing out that his 390 score in the 1995 American Open was obtained as an “extra lifter” in a separate session which used the “round system.” While, as explained above, the Arbitrator believes that the proper interpretation of the third criterion does not permit consideration of any such other alleged “adverse affect,” the Arbitrator will nevertheless address this claim in the interest of completeness.

As to the availability of published information on Mr. Starikovitch’s prior scores, while there was some conflict in the testimony, the clear weight of the testimony was that Mr. Starikovitch’s 390 score at the 1995 American Open was published information which was reasonably available to the other lifters and their coaches. Moreover, at the April 26 technical conference (which preceded the April 27 and 28 Olympic Trials) it was known that Mr. Starikovitch was going to compete. The officials conducting the conference were aware of his 390 score and would have told it to anyone who asked, but no one asked.

As to the informative value in the “regular system” competition at the Olympic Trials of Mr. Starikovitch’s 390 score in “round system” competition at the 1995 American Open, the Arbitrator finds that Mr. Starikovitch’s “round system” score provided some useful information on his ability. It is normal and to be expected that “regular system” scores will be somewhat lower than “round system” scores because, for instance, the “regular system” affords the lifters less time to recover between lifts than does the “round system.” What was not clear was precisely how

much lower Mr. Starikovitch's score should be expected to be in the "regular system" of competition. His 380 score in the Olympic Trials turned out to be only ten points lower than his 390 score in the 1995 American Open. At the least, the closeness of the two scores corroborates that the 390 score had some usefulness and indicates that the other athletes and their coaches were or should have been on notice that Mr. Starikovitch would be a formidable competitor.

Mr. Gough (in the 91 kg weight class) and the other lifters who competed prior to Mr. Starikovitch (in the 108 kg weight class) could not obtain any further information on his lifting abilities from the actual competition at the Olympic Trials. The structure of the timing of that competition, in which the lighter weight classes competed before the heavier weight classes, appears to have put the lighter weight classes at some disadvantage to the heavier weight classes in executing their competitive strategies against lifters in the heavier weight classes. This was not, however, an "adverse affect" caused by the waiver.

While "round system" scores are not precise indicators of scores in "regular system" competition, the Arbitrator believes that it is unlikely that, and the Arbitrator finds that it has not been proved that, Mr. Gough's choices of lifts and his success at some weights and his failure at other weights in the Olympic Trials were due to the absence of more precise information about Mr. Starikovitch's lifting ability.

When the lifters are competing in the "regular system," as at the Olympic Trials, they each have three attempts at the "snatch" lift and three attempts at the "clean and jerk" lift. Their best score in each of the two styles of lift are added to obtain their total score in the competition. The athlete decides what weight to try to lift in each attempt, and so can start high and try higher, but cannot try a lower weight after failing to lift a higher weight. What weight an athlete tries on his first attempt and what, if any, higher weights he tries on his second and third attempts depend on what weights he and his coaches anticipate that he needs to lift in order to achieve the total score he seeks to succeed in competition with his anticipated closest competitors. In choosing the Olympic Team all weight classes were in open competition with each other based on a handicapping system used to level the natural advantages of the heavier weight classes.

These factors made reliable information on a competitor's "regular system" ability quite important to all of the lifters at the Olympic Trials. There was ample testimony at the hearing on the complexities and subtleties of executing each lifter's strategies against the most likely close competitors at the Trials.

At the time of the Trials, all of the 31 lifters knew that only three slots were guaranteed for the total U. S. weightlifting team. This had to be a critically important factor in strategizing what weights to try to lift. At that time fifth place—or any other place than the top three--was not sure of making the team. At that time, none of the competing lifters knew that there would be any other cut off point, and so any competition for a slot below the top three was simply a part of each athlete's natural desire to do his best. It therefore cannot be said that Mr. Gough was knowingly competing against Mr. Starikovitch for fifth place and lacked sufficient knowledge of Mr. Starikovitch's lifting ability when selecting the weights which he, Mr. Gough, would try to lift in head to head competition.

In the competition at the Olympic Trials, Mr. Gough started his "clean and jerk" lifts with success at 195 kg and then tried twice and failed twice at 200 kg (Claimant's Exhibit 5C). This means that he and his coaches believed that he needed to achieve 200 kg. and wanted two chances to achieve it, and therefore he did not try 197 ½ kg on his second lift. (As previously noted, the rules of "regular system" competition prevented him from attempting the lower 197 ½ kg weight on his third try after failing at the higher 200 kg weight on his second try.) The testimony at the hearing was that, if Mr. Gough had succeeded at 197 ½ kg, his total score would have been higher than Mr. Starikovitch's and would have ranked him fifth and Mr. Starikovitch sixth. This indicates that Mr. Gough's failure to attain fifth place was due to his attempt to lift too high a weight on his second try, presumably in order to gain one of the top three places, rather than to any lack of more precise information on Mr. Starikovitch.

In the Arbitrator's judgment, the circumstances of the lifters' relative competitive strategies are too complex and subtle to be used to test whether the "selection process" was fatally infected by an "adverse effect" that prevented the successful implementation of these strategies. The validity of a waiver and qualification for the Olympic Team should not depend on

elusive arguments as to a particular athlete's personal subjective competitive strategies. Any other conclusion would open up the validity of a waiver to all sorts of challenges which are based on after-the-fact analyses of the complexities and subtleties of lifting strategies and which allegedly show some additional difficulty in effectively executing a particular lifter's competitive strategies against a less than well known "extra lifter." Such challenges could be administratively unmanageable and could leave the results of the competition unknown until all of numerous challenges have finally been heard and settled. This is an additional reason for confining the test of "adverse affect" to whether the pool of athletes was appropriately increased, as the Arbitrator believes is required by the plain wording of the third criterion.

Furthermore, it needs to be remembered that "extra lifters" with experience in the "round system" of competition are the very persons who are to be benefited by the waiver process. The competitive abilities of such athletes are naturally likely to be less well known. Some lack of such information seems inherently to be the result of granting waivers to them. But USOC and USWF have decided in principle, and in this case specifically, to grant such a waiver nevertheless. A waiver should not be deemed invalid because its natural consequences occur in the competition. This point provides further support for an interpretation of the third criterion which confines the test of "adverse affect" to whether the pool of athletes was appropriately increased.

For the forgoing reasons the Arbitrator has decided that Mr. Gough's Grievance must be denied

Arbitrator: *William P. Bering*

Date: *JULY 10, 1996*