

**AMERICAN ARBITRATION ASSOCIATION  
COMMERCIAL ARBITRATION TRIBUNAL**

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In the matter of the Arbitration between

RE: **Jamie Danskin  
and  
Wheelchair Sports, USA and  
National Wheelchair Basketball Association [WNBA']**

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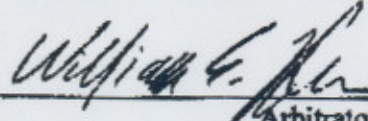
**AWARD OF ARBITRATOR**

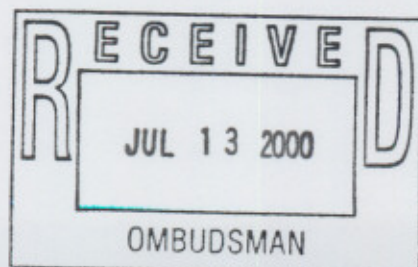
I, THE UNDERSIGNED ARBITRATOR, HAVING BEEN DESIGNATED IN ACCORDANCE WITH THE arbitration Agreement entered into by the above-named Parties ~~dated~~, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, AWARD, as follows:

The claims of Jamie Danskin are denied. Each party shall bear its own costs and attorney's fees, except that the fees and costs of the American Arbitration Association, including the Arbitrator's fees, shall be borne by the National Wheelchair Basketball Association. To the extent permitted by law and the rules of the American Arbitration Association, the Arbitrator reserves jurisdiction to decide any issues that may arise concerning the interpretation and implementation of this Award. The opinion of the Arbitrator is attached.

This Award is in full settlement of all claims and counterclaims submitted to this Arbitration.

July 12, 2000  
Date

  
Arbitrator  
WILLIAM E. JOHNSON



The Arbitrator, being duly sworn, finding that the parties have agreed to the resolution of this dispute by the American Arbitration Association, having considered (1) all of the claims, correspondence, exhibits and other documents submitted by all of the parties, (2) all of the sworn testimony introduced by the parties at the evidentiary hearing lasting approximately eight hours conducted in Los Angeles, California on July 11, 2000 [at which certain parties and witnesses appeared by telephone conference call], including the testimony of Patricia Shepherd, Frank Brasille, Edward Danskin, Jamie Danskin, Gary Moy, Tracy Chynoweth, and Roger Davis, and (3) the arguments presented by the parties and their counsel, renders the following Opinion in conjunction with this Award.

The selection process for the 2000 USA Paralympic team in women's wheelchair basketball was intended to be governed by a number of criteria, checks and balances designed to assure a fair selection of the team, keeping in mind the goals of creating the best chances for a winning team at the 2000 Paralympic Games in Sydney, Australia, and a fair opportunity to all players who wanted to be considered for the team. Those procedures are described in the "Guidelines for Athlete Selection Procedures" in the USOC DSO/NGB Procedures Manual, and the "Athlete Selection Procedures" of the NWBA.

The more material provisions of those procedures are:

1. "Open trials will be held following the 26<sup>th</sup> National Women's basketball Tournament in March 2000."
2. "The Selection Committee will utilize observations made not only during the preceding women's tournament but during the tryouts that follow to select the players."
3. "Evaluation of players is a subjective process."
4. "Athletes should be selected through an objective system. Any discretion or subjectivity allowed will be required to be supported with objective criteria."
5. "The Player Selection Committee will consist of the Head Coach, Frank Brasille, three assistants, Curtis Bell, Ron Lykins, and Tracy Chynoweth and one athlete."

6. "[T]he Selection Committee [must] be sensitive to the distribution of players in different classes in order to arrive at a roster that represents the strongest team possible."

7. The Selection Committee must be have at least 20% representation by an athlete.

8. A representative of the USOC was to attend the tryouts to oversee the selection process, but did not because of lack of notice from the NWBA.

9. "The NWBA Executive Committee and the commissioner of the NWBA will oversee and approve the selection process throughout."

10. "The Selection Committee will have had [and may consider] ample opportunities an occasions to observe players ... in previous seasons and international competitions."

11. Advance USOC approval and publication of the Athlete Selection Procedures.

12. The identity of a team is not to be published while a dispute concerning its membership is pending.

Jamie Danskin participated in both the Tournament and the tryouts that followed. She was not selected, and claims that this was improper and must be corrected for many reasons. While some of her claims may have some merit, they do not in the view of this Arbitrator separately or together warrant this Arbitrator to order her placement on the team, to order her re-evaluation by the NWBA, or any other remedy that she requests or might request.

1. Prejudice by the Coach. The evidence showed that Ms. Danskin previously opposed the selection of the coach. While the coach denied that this had any effect on him, I expect that it did, and furthermore that the other members of the Selection Committee would be deferential to the judgments and conclusions of the Coach. However, the selection was not made by the Coach, the Selection Committee was formed in substantial compliance with the Selection Procedures, appears to have operated in a democratic fashion, and whatever animosity the Coach may have had,

and I cannot reach a conclusion in that regard, was in all likelihood outweighed by the judgments and conclusions of the other members of the Selection Committee, as well as by their common goal to select the best players for a team to play at the 2000 Paralympics. While the Coach may have dominated the Selection Committee, I believe the overriding interest of all members of the Committee, including the Coach, outweighed any predisposition based on non-skill related events in the past, and that while a Coach's relations with his players based on non-skill related matters may in some cases affect his judgment and is unavoidable, I cannot conclude from this record that it was unfairly prejudicial in this case.

2. The Formation of the Selection Committee. The Committee was not formed in strict compliance, but was formed in substantial compliance with the Selection Procedures. The most material deficiency, the elimination of the athlete representative, occurred after the initial choice of 16 players which did not include Ms. Danskin. The Arbitrator does not see how strict compliance with the Selection Procedures would have resulted in Ms. Danskin's selection to the Team or that referring the matter back to this Selection Committee, or a different Selection Committee, which would have to be approved by the NWBA and the USOC, would lead to a different result.

3. The Operation of the Selection Committee. The principal objections are that all the members did not attend all of the games and tryouts, that they did not follow established criteria, requiring objectivity, and that they were unfairly prejudiced in favor of athletes who had played on the 1999 Pan American Team. The best evidence is that in the 2.0 to 3.0 classification range, seven athletes made the initial cut, but Ms. Danskin did not, despite having the best or among the best statistics during the Tournament. While that is compelling objective evidence of unfair and arbitrary treatment, it is mitigated and outweighed by several factors, including (a) there was only one other 2.5 classification athlete chosen, Christina Ripp, and her statistics from tournament play are not materially inferior to Ms. Danskin's, and her evaluation at the tryout was markedly superior, (b) tournament play was not the exclusive performance being evaluated, (c) the Arbitrator received what appeared to be a reasoned and objective explanation from a member of the Selection Committee other than the Coach of why the players chosen in the 2.0 - 3.0 classification were chosen over Ms. Danskin, and (d) the Arbitrator concluded that the Selection Committee's consideration of their entire knowledge of Ms. Danskin, including their observations during the tryouts, appeared to be sufficiently

reasonable and objective so that this Arbitrator cannot justify interfering with it. With regard to the undisputed requirement of objectivity, the requirements of the USOC appear to be for all sports, including contests among teams and contests among individuals. Team basketball involves many different skills that can be measured objectively, and many that cannot, and ultimately it is the performance of the athletes playing together as a team, as long as every athlete has the opportunity to be considered for selection, that is the most important criterion. The Selection Committee made observations that were subjective and also based upon prior information about the athletes. There was not substantial material evidence of any arbitrary or capricious subjectivity, or subjectivity not tied to observations and objective standards, nor was there substantial evidence that consideration of the players' performance on the 1999 Pan American Team unfairly prevented fair consideration of someone not on that team who was evaluated at the 2000 Tournament and tryouts. With regard to the failure of all Selection Committee members to attend all games and all tryouts, while this would appear to be a desirable if not necessary procedure, there was no showing that Ms. Danskin was excluded from the team or did not receive fair consideration as a result, particularly given her longevity in the sport.

4. Prejudicial Conduct During the Appeals Process. The Arbitrator did not reach the issue of what deference the decisions of the National Review Board and Board of Governors of Wheelchair Sports, USA should receive, because he concluded that even if they received no deference, his decision would remain the same. The Arbitrator did not decide what standard of review was appropriate to the decisions of the Selection Committee and the NWBA to not choose Ms. Danskin, because he concluded that even by giving de novo review, with the appropriate deference that he thought the Selection Committee should receive under the evidence in this case, their decision not to choose Ms. Danskin would not be disturbed. The Arbitrator did not find any material and prejudicial conduct in the review process conducted prior to the arbitration.

While the Award is against Ms. Danskin, it is being made after considerable reflection and caution. She is a player with a long history of accomplishments in women's wheelchair basketball. The statistics of her play in March 2000 among the 2.0 - 3.0 classification appear unsurpassed. I think she would be a productive member of the 2000 Paralympics Team. While I regret she did not make the team, I would also regret making a decision that would interfere with the Selection

Committee's expertise, observations and selections and which would result in a duly selected player being removed from the Team without a greater showing. In light of her background and achievements in the sport, the unfortunate adversarial relationship that may have occurred with respect to the selection of this Coach, her statistics during tournament play, several failures to strictly follow the Selection Procedures [not all of which are addressed above], the short notice and absence of pretrial discovery, I was in many ways predisposed in favor of Ms. Danskin. However, given my lack of expertise and direct observations, Ms. Danskin's burden of proof, the expertise and observations of the Selection Committee and the duly appointed Coach, and most importantly what I found to be substantial compliance with the Selection Procedures and the absence of material noncompliance prejudicial to Ms. Danskin, the Award is as stated. Given Ms. Danskin's experience, talents and enthusiasm, I would hope [but cannot and do not order] that the NWBA would give her the benefit of the doubt in any NWBA activity that she seeks to participate in the future, including any openings that may occur following this arbitration on the 2000 Paralympic Team.

Accordingly, the claims of Jamie Danskin are denied. Each party shall bear its own costs and attorney's fees, except that the fees and costs of the American Arbitration Association, including the Arbitrator's fees, shall be borne by the NWBA. To the extent permitted by law and the rules of the American Arbitration Association, the Arbitrator reserves jurisdiction to decide any issues that may arise concerning the interpretation and implementation of this Award.