

EXPEDITED ARBITRATION PROCEDURE

In the Matter of Arbitration)
)
 between)
)
 JULIE SMITH)
)
 and)
)
 AMATEUR SOFTBALL ASSOCIATION OF)
)
 AAA CASE NO. 30 190 00060 00)

OPINION AND AWARD

BACKGROUND

The undersigned was selected by the parties, Julie Smith (Smith) and the Amateur Softball Association of America (ASA) to hear and decide Smith's challenge to selection of players for the 2000 Olympics. Smith was represented by Danielle Carver, Esq. ASA was represented by Robert Tomlinson, Esq. Hearings were held on April 4-5, 2000 in Los Angeles, CA. At the conclusion of the hearing the parties elected to submit final arguments in writing. The matter was considered fully submitted upon my receipt of the post-hearing briefs.

ISSUES

The parties submitted slightly differing versions of the Issues and agreed the Arbitrator could formulate the statement of the Issues, which I have done as follows:

1. Was Julie Smith denied the opportunity to participate on the 2000 Olympic Women's Softball Team as a result of a failure by the Selection Committee to follow the USOC approved Selection Procedure?
2. If so, what is the appropriate remedy?

STATEMENT OF THE FACTS

Smith is a second baseman. She was a member of the 1996 Olympic Team and most of the national teams since. She is an active Players' Representative. Smith has a personal contract with Addidas, while the ASA has a contract with another enterprise, which has caused some friction over the years with both ASA and some individuals on the Selection Committee. Smith participated in the Olympic Tryout held in Midland, Michigan in early September, 1999. She had what has been described as a "great tryout", which is supported by the offensive statistics. Smith was not selected as a member or an alternate for the 2000 Women's Softball Olympics Team.

ASA is the National Governing Body (NGB) recognized by the USOC for women's softball. In 1997 ASA appointed a volunteer Selection Committee which selects the members of the National Team for various competitions. Some members, but never every member, of the Selection Committee attended the events prior to the Olympics Tryout in September, 1999.

In February, 1999 ASA submitted a draft Women's Olympic Athlete Selection Procedure (Selection Procedure) to the USOC. Some clarifications were requested and some changes were needed for other reasons. In late August, 1999 the final version of the Selection Procedure was submitted by ASA and approved by the USOC. Olympic Tryouts were held September 1-5, 1999 in Midland and included players who were invited as late as July, 1999. No member of the Selection Committee had a copy of the USOC approved

Selection Procedure prior to arriving in Midland, and it is unclear when, if ever, they received a copy.

It appears that, although careful to secure approval of the Selection Procedure, ASA did not provide a copy of them to the Selection Committee and did not provide any guidance to the Selection Committee. There was no discussion between the members of the Selection Committee of the meaning of the "discretionary" criteria of "leadership, attitude, conduct, experience and maturity level" which are provided for in the Selection Procedure. No uniform evaluation forms were provided to, or employed by, the Selection Committee. The Selection Committee considered player performance at prior events in determining their selections for the Olympics Team.

There is no evidence that Selection Committee members during the selection process discussed either Smith's personal contract or her activities as a Players' Representative. The Selection Committee had daily meetings with the nominated head coach, Ralph Raymond (Raymond). There is no evidence in the record that Raymond spoke out against Smith, although there is no dispute that Smith and Raymond had a poor relationship and he clearly conveyed to the Selection Committee that Smith would not be one of his picks.

Smith here challenges the selection procedures actually employed by the Selection Committee.

//

//

//

//

RELEVANT PORTIONS OF THE SELECTION PROCEDURE

I. ATHLETE SELECTION SYSTEM

A. Selection Events

The final selection is a culmination of four years of athlete evaluations at various events...in which we compete during the quadrennium. We also evaluate potential elite athletes at various national tournaments and championships.... Twenty athletes (15 team members and 5 alternates) will be chosen from a tryout camp to be held September 1-5, 1999 in Midland, Michigan.

II. DISCRETIONARY SELECTION

Although the objective criteria can easily be identified through the use of statistics and evaluation of offensive and defensive skills, there are some subjective categories that are just as important. They include leadership, attitude, conduct, experience and maturity level.

2000 WOMEN'S OLYMPIC TEAM SKILLS CRITERIA FOR SELECTION

...

The specific skills to be tested are outlined in the following section.... The players that participated in this quadrennium's national team camps and National Team Festivals have participated in exactly the same skills tests that will be used to determine the athlete's skills ability in the 1999 Olympic Team Tryouts. ...

SKILLS SPECIFICS: The specifics that will be looked for in each of the skills will differ with each level and position played....

//

//

ASA PROPOSED NATIONAL TEAM TRYOUT AGREEMENT

[This document was submitted by ASA to players invited to the Olympic Tryout with a cover letter dated August 12, 1999, although subsequently withdrawn.]

2. Tryout Process. The ASA will select members of the Team and Alternates based upon performance at the Tryout and overall performance at prior competitions observed by one or more members of the ASA Women's National Team Selection Committee (the "Committee") during the twelve (12) months immediately preceding the Tryout.

USOC GUIDELINES FOR ATHLETE SELECTION PROCEDURES

No retroactive selection is allowed. Selection procedures based on events completed prior to the publication of the selection process will not be accepted.

Athletes should be selected through an objective system. Any discretion or subjectivity allowed will be required to be supported with objective criteria.

ARGUMENTS

Smith argues that the Selection Committee improperly applied the selection criteria in taking into consideration performance at prior events and in not developing objective criteria for applying the discretionary criteria. She argues that by all objective or objectively applied criteria she should have been a member of the Olympic Team. The failure to select her demonstrates that the

Selection Committee did not operate in good faith. As a remedy she asks that the Arbitrator add her to the 2000 Olympics Team as well as other relief.

ASA argues that there is no evidence that the Selection Committee applied criteria not found in the Selection Procedure. The Selection Committee operated in good faith, even if there were some technical violations. There is no permissible basis for the Arbitrator to appoint Smith to the 2000 Olympics Team.

DISCUSSION

There are several key issues which have to be resolved in this matter. First, were there general violations of the Selection Procedure system. Second, were the specific criteria improperly applied. Third, was there bad faith demonstrated by the Selection Committee. Fourth, what, if any, is the appropriate remedy.

1. Were there general violations of the Selection Procedure system?

As the Selection Committee members were not given copies of the Selection Procedure, any compliance was purely coincidental. This fact, standing alone, is sufficient to show a violation of the Selection Procedure which is intended to provide a uniform and largely objective basis for the selection of athletes for the Olympics.

Even to the extent there was a core understanding of the skills to be evaluated, the Selection Procedure is ambiguous in what performance it was to be applied to. The first section of the Selection Procedure can be read to say that the evaluation period

is the whole quadrinnium. However, the Skills portion clearly is intended to apply to a prospective evaluation of skills. ASA itself shows some confusion by sending out a document in August, 1999 (six months after the Selection Procedure was submitted to the USOC), the proposed National Team Tryout Agreement, which states that the Selection Committee will look to the prior twelve months to evaluate members for the Team, but arguing in this hearing that the Selection Procedure provides, and Smith knew, the evaluation period would cover two years and four months. At least one Selection Committee member testified that she evaluated performance even further back.

Given the fact that invitations were being offered for the Olympic Tryout as late as July, 1999 and in light of the USOC Guidelines, the most reasonable way to harmonize these seemingly contradictory provisions is to find that eligibility for the Tryout was established throughout the quadrinnium, but selection was to be principally based on performance at the September, 1999 Tryout in Midland. I deliberately have used the word "principally" as I do not believe that the discretionary criteria can be applied only based on that five day period, or it would render terms such as "experience" meaningless.

The testimony and offers of proof lead to the conclusion that the entire Selection Committee relied upon all its accumulated knowledge of the players, and thereby violated the Selection Procedure even as defined by ASA in this hearing.

//

//

2. Were the Selection Procedure criteria improperly applied?

The absence of any guidance regarding the selection criteria undoubtedly effected both the skills evaluations and the application of the discretionary criteria. There is no dispute that there was never an attempt to agree upon the meaning of the discretionary criteria and a strong possibility that the discretionary criteria meant very different things to different members of the Selection Committee. One member of the Selection Committee testified that Crystl Butros (Butros) clearly lacked "experience" and "maturity" which are both criteria provided for, but that the Olympics were a place for athlete to "grow" -- a concept or criterion not to be found in the Selection Procedure. I find that the specific criteria were improperly applied.

3. Was there bad faith demonstrated by the Selection Committee?

Although I certainly cannot rule out the possibility that some members of the Selection Committee made their evaluations based on improper consideration of Smith's personal contract and/or Player Representative activities, I also cannot find on the record here that they did so. I credit the testimony that the selections of Butros and Dot Richardson were due to the qualities they were perceived as bringing to the team, although they might be evaluated differently if the skills evaluation was limited to performance in Midland and the discretionary criteria had been given agreed meaning and properly applied by the Selection Committee. I do not mean to suggest here, however, that all the criteria must be given equal weight for each candidate. It is perfectly proper for the Selection Committee to conclude, for

example, that a particular player's skill level is high enough to compensate for a lack of experience.

There may or may not have been bad faith on the part of ASA, but there isn't sufficient evidence in this record for a finding of bad faith by the Selection Committee.

4. What is the appropriate remedy?

Having found that the USOC approved Selection Procedure was improperly applied, which deprived Smith of a fair opportunity to be selected for the 2000 Olympic Team, I have crafted what I hope to be a practical, as well as appropriate, remedy. Despite recognizing that winning this arbitration may be a Pyrric victory for Smith, there is insufficient basis in this record for me to appoint her to the Team.

I will order that the Olympic Team selections be vacated and that the Selection Committee be reconvened to make new selections within the parameters laid out above -- a principal focus on athlete performance in Midland and discretionary criteria defined prior to their application.

As ASA created the need for this arbitration by failing to even provide the Selection Committee with the Selection Procedure, all costs of AAA and the fee of the Arbitrator will be assessed to ASA. Each party shall bear its own witness and travel costs and its own attorney's fees. The other remedies sought by Smith are denied.

//

//

//

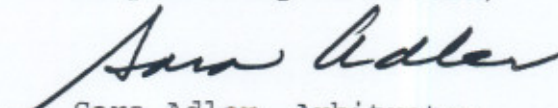
AWARD

Having carefully considered the evidence presented and the arguments made, it is the Award of the Arbitrator that:

1. Julie Smith was denied the opportunity to be on the 2000 Olympic Team due to the misapplication of the USOC approved Selection Procedures.
2. The 2000 Olympic Team selections are to be vacated and the Selection Committee is to be reconvened for selections in accordance with the Selection Procedures and the guidelines stated above.
3. ASA is solely responsible for the \$4,500 fee of the Arbitrator and all administrative costs of the American Arbitration Association. All other costs and fees are to be borne by the party incurring them.
4. I will retain jurisdiction in this matter solely to resolve any disputes which may arise regarding the remedy ordered.

DATED: April 24, 2000

Respectfully submitted,


Sara Adler, Arbitrator