

EXPEDITED ARBITRATION PROCEEDING

In the Matter of Arbitration)
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 between)
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 JULIE SMITH, AMANDA SCOTT and)
 KELLY KRETSCHMAN)
)
 and)
)
 AMATEUR SOFTBALL ASSOCIATION OF)
 AMERICA)
)
 AAA CASE NO. 30 190 00060 00)

OPINION AND AWARD

BACKGROUND

The undersigned was selected by Julie Smith (Smith) and the Amateur Softball Association of America (ASA) to hear and decide Smith's challenge to the September, 1999 selection of a Women's Softball Team for the 2000 Olympics. In my Award, dated April 24, 2000, ASA was ordered to reselect the Olympic Team for women's softball. The reselection took place on May 3-4, 2000 in Dallas, TX. Three athletes, Julie Smith (Smith), Amanda Scott (Scott) and Kelly Kretschman (Kretschman) (collectively Complainants) challenged the reselection process. Smith is represented by Danielle Carver, Esq., Scott is represented by Chris Campbell, Esq. and Kretschman is represented by Gary Blume, Esq. ASA is represented by Robert Tomlinson, Esq. A consolidated hearing was held on May 22, 2000 in Dallas, TX. With the consent of the parties, John Ruger, USOC Ombudsman, attended the hearing as an observer. At the conclusion of the hearing the parties made oral final arguments. The matter was considered fully submitted at the close of the

hearing. This Opinion and Award incorporates the Opinion and Award in the 1ST Smith arbitration dated April 24, 2000 (Smith Award).

ISSUES

The Issues in this portion of this matter are as follows:

1. Were Smith, Scott and Kretschman 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 in the reselection which occurred on May 3-4, 2000?
2. If so, what is the appropriate remedy?

STATEMENT OF THE FACTS

In accordance with the requirements of the Smith Award, the Selection Committee reached a consensus agreement on the definitions of the Discretionary Criteria. The Selection Committee then evaluated each athlete to reach a consensus evaluation based on skills demonstrated at the Midland Olympic trials in both games and drills and on the Discretionary Criteria applied over the quadrinnum (which was actually a period of 2 years, 6 months).

The skills portion of the evaluation was broken down into two sections each worth 12 points. The first sub-score was based on player statistics from Midland. A second sub-score was based on remembered "observations" from Midland, including such things as whether or not a pitcher had a variety of pitches or how a catcher framed the catch. The skills evaluation was based on the general categories (which included subparts) of throwing, hitting, base-running and fielding for all athletes, with the addition of pitch-

ing for pitchers. The criterion of "strength and conditioning" which appears in the Selection Procedure was dropped from the evaluation after the Selection Committee determined it had insufficient information to evaluate this criterion.

The skills portion was rated on a 3-2-1 scale with 3 representing performance which "exceeded expectations for an Olympic athlete", 2 representing "meets expectations for an Olympic athlete" and 1 for "below expectations for an Olympic athlete". The two sub-scores were added together for a composite skills score.

The Discretionary Criteria of "leadership, attitude, conduct, experience and maturity" were evaluated as those criteria had been defined by the Selection Committee. The Discretionary Criteria were scored on a 4-3-2-1 scale with the 3-2-1 having the same meaning as used in the skills portion and the added score of 4 representing "far exceeds expectations of an Olympic athlete".

The composite skills score (a maximum of 24) was then added to the Discretionary Criteria score (a maximum of 20) for a total athlete score used for selection purposes. The Selection Committee concluded that this process resulted in a weighting of 55% for skills and 45% for the discretionary criteria intended to meet the requirement in the Smith Award that the selections be based "principally" on the Midland trials.

Using these rankings, a new Olympic Team was then selected which resulted in the same team which had been selected in the first selection process with the exceptions that this time Scott was selected as an alternate and Kretschman was dropped as an alternate. Smith remained non-selected.

ARGUMENTS

Although there were some differences among them, there also was considerable overlap and the arguments of the Complainants will be considered as a single argument. The Complainants argued that the reselection process was fatally flawed in two major respects: 1. the USOC rules and the Smith Award require mostly objective criteria be used, while the process the Selection Committee employed was largely subjective when the "observations" are added to the Discretionary Criteria, and 2. the criteria were not consistently applied between athletes. The remedy sought included appointment of the Complainants to the Olympic Team or various mechanisms for turning the selection process over to the USOC. Complainants also seek their expenses and attorney's fees.

ASA argued there are no reasonable inferences to be drawn from the absence of any radical change in the team composition. The non-statistical criteria were necessary, appropriate and fairly applied. The Selection Committee conducted the reselection in good faith and in accordance with the mandates of the Selection Procedure and the Smith Award. It's inevitable that some athletes will be non-selected and will believe that different procedures were required, but these are the ones in place and the new selection should not be disturbed on this record.

DISCUSSION

As a preliminary matter, because of some of the things mentioned by both counsel and witnesses, it seems useful to define what my role in this matter is -- and is not. My jurisdiction is

limited to determining the Issues stated above, based on evidence in the record. I have no jurisdiction over whether or not the content of the Selection Procedure approved by the USOC is proper. I have no jurisdiction over the role of selected alternates. I have no authority to disenfranchise the ASA as an NGB. Although I have a personal interest in ASA fielding the Olympic Team most likely to succeed in Sydney, as the Arbitrator, my sole focus is on compliance with the approved Selection Procedure and not the Selection Committee's determination of the "best team" if not in compliance with the Selection Procedure.

Unfortunately, despite what appears in many respects to be a reasonable and good faith effort by the Selection Committee in the reselection process, there again were fatal flaws. It's sufficient for this Opinion to focus on the two major failures of the Selection Committee to follow the Selection Procedure and the Smith Award.

1. The Use of "Observations"

The concept of "observations" is entirely appropriate under the Selection Procedure in regard to both the skill factors specifically delineated in the Selection Procedure, such as "Decision making ability" and "Teamwork" and other skills aspects not subject to the statistical compendium but appropriate to the evaluation of the athletes by position. However, a rock bottom requirement of the USOC system is that all athletes are evaluated by the same standards and the 39 athletes in Midland were not in the May reselection.

There is no dispute that no contemporaneous notes still exist of any Selection Committee member's observations. There is no dispute that the observations were based on members' memories. There is no dispute that there simply were NO memories regarding some athletes at the Midland trials, and what can only be described as selected memories of other athletes' performance. Quite apart from what the literature tells us about the unreliability of memory after the passage of even a week (much less eight months), these remembered observations could not be relied upon in the reselection because the Selection Committee simply could not apply them with consistency to all athletes being evaluated. For some of the athletes, the absence of any memories is analytically indistinguishable from the "strength and conditioning" criterion which the Selection Committee itself appropriately discarded because it did not have the requisite information to rely upon it. Even as to the athletes whose statistics suggest a possibility of being selected, such as the Complainants, there is no evidence that the memories of the Selection Committee were very complete.

2. The Application of the Discretionary Criteria

Application of the Discretionary Criteria is inherently based on subjective judgements, but those judgements must be rooted in some objective grounds. The first step, which was taken by the Selection Committee in response to the Smith Award, was to define the broad terms of the Discretionary Criteria. The second step, which still needs to be taken or needs to be taken more carefully, is to have objective facts supporting the subjective judgments being made by members of the Selection Committee. There may well be

Criteria, as argued for by the Complainants, but the facts are best developed in this record regarding Smith and Crystl Butros (Butros).

Smith is about 32 years old, played on the '96 Olympic Team, played on various National Teams in '97 and '98 and has been an active and reelected Players' Representative. Butros is about 22 years old, spent a couple of years playing in the Pro league and came to a National Festival for the 1st time in the spring of '99 (after turning down prior invitations). She played on a National Team in the Canada Cup in '99.

The Selection Committee rated the two on the Discretionary Criteria as follows:

	Smith	Butros
Maturity	2	3
Experience	3	3
Leadership	1	3
Conduct	2	3
Attitude	1	3

When asked about these ratings, the testimony was that Smith was down-rated in Maturity, Leadership, Conduct and Attitude all apparently because of the members' perceptions of events at the Canada Cup in '99 when she did not play. The three areas remarked upon were her being somewhat aloof, that she did not help the team in warming up and that she left without permission prior to the concluding ceremonies. There is significant doubt that the last two perceptions of the situation at the Canada Cup were factually accurate. There is no dispute that the Selection Committee knew

that Smith's mother was seriously ill during the Canada Cup. The testimony about Butros was that she was quiet and cooperative, trying to learn and open to instruction, although she is not (to paraphrase) a rocket-scientist.

I recognize how badly the Selection Committee wants Butros on this team. To quote a Selection Committee member's testimony at the first round of hearings in this matter, "it is inconceivable not to have Butros on the team". However, because Smith had excellent statistics in Midland and Butros somewhat more mediocre ones, the Discretionary Criteria seem to have been disparately applied to bring Butros' rating total up despite her relatively poorer performance in Midland. It may be that the evaluation system applied in a consistent and uniform manner will exclude Butros from the Team, but the Selection Committee is required to do the inconceivable if that's required by faithfully following the Selection Procedure.

One of the recurring problems in trying to make sense of the ratings on Discretionary Criteria is that the Selection Committee evaluated Smith over the entire quadrinnium period and could have evaluated Butros only from approximately April '99 through the Midland Trials at the beginning of September '99. There is simply no evidence in the record which would support a 3 (above expectations for an Olympic athlete) for Butros in "leadership" and only questionable evidence from the Canada Cup supporting Smith getting a 1 (below expectations for an Olympic athlete) in "leadership", using the consensus definition. Even assuming that the Selection Committee was accurate in its perceptions about the Canada Cup, it

appears to have given no weight to Smith's having been elected and reelected as a player representative or to any other demonstrated qualities during the rest of the quadrinnium. If the Selection Committee focused only on the period of the Canada Cup through Midland for its rating of the Discretionary Criteria, it violated its own guidelines -- which were hotly sought by ASA in the first round of this arbitration.

There is no indication in the record that the Selection Committee had any basis for giving Butos a 3 in "maturity" and only the same questionable evidence from the Canada Cup was relied upon for giving Smith a 2 in "maturity".

Similarly, there is only the same questionable evidence from the Canada Cup used to justify rating Smith a 1 in "attitude", in apparent disregard of her conduct with the national team during the rest of the quadrinnium (and assuming the Selection Committee members really did not take into consideration her different personal endorsement contract with its related disputes or her legitimate activities as a player's representative). Although Butros was slow to highly value the national amateur scene, it seems quite possible that she would have displayed an attitude justifying a 3 once she came onto the scene.

In rating the criteria of "experience" I cannot judge from the evidence how the Selection Committee weighed Butros' general experience in the Pro league, which perhaps was viewed as making up for the lack of much experience in international competition, but other portions of the evaluation of "experience" suffer from the same defect -- that Butros could only have been evaluated from

April to September '99. There is no evidence in the record which would explain or substantiate that she exceeded expectations for "experience" during that period.

Overall, the rating of Smith on the Discretionary Criteria at average or below (except for experience) and the rating of Butros as uniformly exceeding expectations of an Olympic athlete is suspect.

3. Appropriate Remedy

Although with extreme reluctance, I cannot escape the conclusion that the Selection Committee still has not complied with the Selection Procedure. I will again order the selection of the Olympic Team vacated. Recognizing that the available universe of information for selection would have been somewhat different in September '99, I will order still another reselection of the Olympic Team to be done under the following guidelines: Only rating criteria which can be applied to all athletes may be used. If that means only the first (statistical) portion of the skills rating, the Selection Committee may chose to simply double the first number upon which consensus was reached in May, rather than still again reevaluate the statistics. The Discretionary Criteria are to be re-rated with care to apply them uniformly, which I would expect the Selection Committee to be certain is factually accurate. The total rating should determine who plays which position unless there are objective factors from the evaluation period to justify a departure from the selection. In the devout hope that this will be the end, and to ensure compliance with the letter of this Award and the spirit of the USOC charter to afford

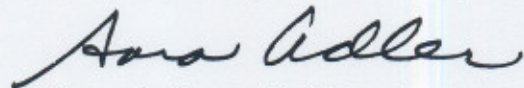
AWARD

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

1. The Complainants were denied the opportunity to be on the 2000 Olympic Team due to the misapplication of the USOC approved Selection Procedure.
2. The 2000 Olympic Team reselection of May 3-4, 2000 is to be vacated and the Selection Committee is again to be reconvened for selections in accordance with the Selection Procedure, the Smith Award and the guidelines stated above.
3. The new reselection is to be supervised by a member of the USOC staff if the USOC is willing to provide such a person in a timely fashion.
4. ASA is solely responsible for the fee and expenses of the Arbitrator and for all administrative costs of the American Arbitration Association, including the cost of the room. All other costs, expenses and fees are to be borne by the party incurring them.
5. I will retain jurisdiction in this matter solely to resolve any disputes which may arise regarding the remedy ordered.

DATED: May 30, 2000

Respectfully submitted,


Sara Adler, Arbitrator