

AMERICAN ARBITRATION ASSOCIATION

In the Matter of Arbitration Between:

Re: 77 190 E 00318 10 JENF

Anna Harrington, Kendal Nicely, and Sarah Chai,

Claimants

and

United States Collegiate Archery Association

Respondent

and

Kacey Eggers, Lyndzey Marzec, and Elizabeth Didan

Affected Athletes

AWARD OF ARBITRATOR

THE UNDERSIGNED ARBITRATOR having been designated by the above-named parties, having been duly sworn and having heard the proofs and allegations of the parties in a hearing held on June 6, 2011, do hereby render this full award.

**I
HEARINGS**

1. The Preliminary Hearing took place on June 30, 2011 by telephone conference at 8:00 a.m. pacific time. Present for the Claimants was their attorney Edward Williams, Esq. Present for Respondent, United States Collegiate Archery Association (“USCAA”), was their attorney Daniel A. Schwartz, Esq.

2. There were three athletes whose participation rights could be affected by this arbitration: Lyndsey Marzec, Elizabeth Didan and Kacey Eggers (hereafter referred

to jointly as the “Affected Athletes”). Kacey Eggers participated in the Preliminary Hearing. Sara Clark, from the office of the United States Olympic Committee’s Athlete Ombudsman, also sat in on the Preliminary Hearing.

3. At the Preliminary Hearing, the date for the Hearing was set for July 6, 2011 at 8:00 a.m. pacific time. Notices were sent out on June 30, 2011 by e-mail to Claimants and Respondent and by e-mail and overnight mail to the Affected Athletes.

4. The Hearing was scheduled on July 6, 2011 because USCAA must submit the names of the team members for the 8th World University Archery Championships Games (“WUG”) by July 12, 2011.¹ As a result, this matter was conducted under the American Arbitration Association’s (“AAA”) expedited hearing rules.

5. The Hearing took place on July 6, 2011 by telephone conference. Claimants were present at the hearing and represented by Edward Williams, Esq. Appearing on behalf of the Respondent was Lorretta Sinclair. USCAA was represented by Daniel A. Schwartz, Esq and Brad Mondschein, Esq. Lyndsey Marzec and Kacey Eggers appeared pro se. Sara Clark, from the office of the Athlete Ombudsman, also attended the Hearing.

6. Testifying at the Hearing for Claimants were Kendal Nicely, Matt Nicely, Anna Harrington, Sarah Chai, Kari Jill Granville, Esq., and Professor Dennis K. Lieu. Testifying on behalf of Respondent was Lorretta Sinclair and Norm Graham. Lyndsey Marzec and Kacey Eggers also provided testimony. All witnesses were sworn under oath.

7. All the documents provided by the parties were admitted into evidence without objection except for one document. Respondent objected to a document

¹ The WUG comes under the jurisdiction of the International University Sports Federation (“FISU”).

containing a description of the accomplishments of the Affected Athletes. This objection was overruled. Claimants also provided sworn declarations which were admitted into evidence. Respondent and the Affected Athletes were allowed to cross examine the witnesses who provided the sworn declarations.

8. At the conclusion of the hearing, all parties were asked whether they had been provided an opportunity to fairly present their case. All parties declared that they had been given a fair opportunity to present their case.

II. STIPULATION AND JURISDICTION

9. On June 16, 2011, Claimants filed their complaint with the American Arbitration Association (“AAA”). On June 29, 2011, Claimant and Respondent entered into a stipulation agreeing to allow the AAA to have jurisdiction over this dispute. At the July 6, 2011 Hearing, Lyndsey Marzec and Kacey Eggers agreed to the Stipulation. As a result, the Arbitrator has jurisdiction over this dispute by the agreement of the parties.

III. FACTUAL FINDINGS

10. This dispute arose over the enforcement of a policy USCAA adopted for the 2011 World University Games-Team Trials (hereinafter “Procedure”). The Arbitrator finds that the Procedure was properly adopted by USCAA. From February through May of 2011, USCAA published the Procedures in a number of ways including through e-mails to the membership, national news letters, etc. These publications satisfied USCAA’s obligation to provide adequate notice of the World University Games –Team

Trials (hereafter “WUG Trials”) and the requirements for athletes participating in the WUG Trials.

11. For the purpose of this dispute, the relevant provision of the Procedure states the following:

Required Documents and Deposits: All athletes who plan to compete for the World University Games Team are required to have the following documents, forms, and deposits at the time of the team meeting. The team meeting will be held directly after the close of competition on Sat, 22 May at a location designated by USCA:

- 2 color copies of passport (passport must have an expiration date later than **20 Feb 2012**)
- 2 passport photos
- Completed and signed Eligibility form *
- \$50 damage deposit
- If you graduated in the previous 12 months, you must complete the eligibility form and also submit a legible copy of your official diploma and copies of your transcripts that show proof of graduation.
- ##Students who graduated in the previous 12 months must also bring a deposit of \$1550 plus the \$50 damage deposit in the form of cash, money order, or check for a total of \$1550. The final payment will be due no later than 10 July 2011. The estimate for the final deposit is \$2000. Failure to submit the deposit or final payment will result in removal from the team and the next highest placing archer will be added to the team.
- If athletes want more than 2 competition shirts or additional shorts/pants, you will be required to pay for them in advance. Cost of an additional shirt is \$75. Additional shorts for men are \$45 and skorts/shorts for women is \$60.

Failure to have all of the above documentation, deposits, and forms at the team meeting voids your opportunity to be on the team. **There are no exceptions.**

All team members will be required to sign the USCA Code of Ethics and liability waiver, the Team USA Code of Conduct and liability waiver. (emphasis added)

12. The Procedure represented a policy change for USCAA. Through 2011, it had been the practice of USCAA to allow athletes time to submit the required documents after the qualifying tournament. In 2009, USCAA had a

couple of athletes disqualified from a world university tournament because their eligibility form was not proper. In 2010 USCAA experienced problems with having its athletes submit the proper paperwork before the world university tournament. As a result of these problems, USCAA put the “no exception” policy into its Procedure.

13. Ms. Nicely competed in the Santa Domingo Archery tournament which was held from March 13, 2011 through March 20, 2011. Because of this tournament, Ms. Nicely did not attempt to renew her passport (which expired on September 2011) before April.² After returning from the Santa Domingo tournament in April Ms. Nicely was informed that she was not eligible to compete in the WUG Trials. Ms. Nicely and her father worked with the Executive Director of USCAA, Lorretta Sinclair, in an attempt to have her eligibility restored. Finally, around April 29, 2011 USCAA orally communicated to Ms. Nicely that her eligibility was restored. On May 2, 2011, Ms. Nicely received official notification of her eligibility through an e-mail sent to her father. That e-mail contained a statement regarding the documents required for the WUG Trials which stated the following:

WUG Trial attendees must have a bring a copy of their passport, 2 passport sized photos, the signed and university sealed attached eligibility form and a \$50 damage deposit to the trials. Your passport must not expire before **1 March 2012** if you are selected for the team, there will be a team meeting on Saturday time and place TBD. (emphasis added)

14. This meant that Ms. Nicely had a little over two weeks to update her passport after her notice of eligibility. Ms. Nicely immediately sent her passport to the

² This is significant because it shows that Ms. Nicely’s actions were reasonable in not updating her passport before April of 2011.

government for renewal on May 3, 20011. In addition, she obtained a receipt for the renewal demonstrating that her passport would be updated by July 12, 2011.

15. A similar e-mail was sent to the coach of Ms. Chai and Ms. Harrington. The e-mails had the attached FISU Certificate of Academic Eligibility (“Academic Eligibility Form”). Ms. Chai admitted that her coach sent her the Academic Eligibility Form. Ms. Harrington denied ever receiving the Academic Eligibility Form. She stated that after the WUG Trials she looked online and finally located the form on FISU’s web site. The Academic Eligibility Form is what the Procedure referred to as the “Eligibility form.” Before May 2, 2011, the Academic Eligibility Form had not been provided to any athlete and after April 29, 2011, USCAA did not post this form on their web site.

16. At the WUG trials, in the Female Recurve Division, Ms. Chai placed second in the ranking rounds with a score of 1151; Ms. Harrington placed third overall in the ranking rounds with a score of 1103; Ms. Marzec placed fifth overall in the ranking rounds with a score of 979; Ms Didan placed 10th overall in the ranking rounds with a score of 948.

17. In the Female Compound Division, Ms. Nicely placed second overall in the ranking rounds with a score of 1339. Ms. Eggers placed fifth in the ranking rounds with a score of 1302.

18. The top three place winners in their respective divisions qualified for the Would University Games (“WUG”) provided they had the proper documents at the team meeting. Ms. Chai and Ms. Harrington did not bring any documents to the WUG Trials. Ms. Nicely provided all the documents required except that her two passport photos were too large and her passport showed an

expiration date of September 2011. Nevertheless, Ms. Nicely also produced a renewal receipt for her passport dated May 3, 2011.

19. Ms. Sinclair did not place Claimants on the team because they did not provide the required documents. The athletes requested an extension of time to produce the required documents, Ms. Sinclair consistently denied their requests and no member of the Board of Directors led the Claimants to believe that they would be granted an extension. As a result, Claimant's filed this complaint.

20. By May 31, 2011, the Claimants had submitted all the documents required by the Procedure. USCAA does not have to send these documents to FISU until July 12, 2011.

V. PARTIES ARGUMENTS

21. Claimants argue that they should have been provided an extension to provide the documents consistent with past practice. They also argued that Ms. Sinclair had improperly interacted with the board with respect to the adoption of the Procedure. They stated that Ms. Sinclair misled them about the dates the documents were required to be submitted to FISU, telling the athletes the documents were required to be submitted in May when the actual submittal date was July 12, 2011. Therefore, Claimants argue, because they earned their spot on the team through competition, it was an abuse of discretion to not allow them on the team when all they needed was one additional day to supply the Academic Eligibility Form for Ms. Chai and Ms. Harrington. Ms. Nicely would have needed a few more days to provide a copy of her updated passport.

22. Respondent argues that the procedures were properly promulgated, clear and unambiguous. Respondent argued that USCAA properly adopted the "no exception

policy” after dealing with problems in 2009 and 2010. Respondent argues it does not matter that there was over one month difference between USCAA’s deadline for the athletes at the WUG Trials and its obligation to submit those documents to FISU.

Therefore, it would be an abuse of discretion for the arbitration to make exceptions for the Claimants. It cited *Bishop v. USA Track & Field (USATF)*, Case No. 771900025208 JENF, July 8, 2008 for the proposition that “Ad hoc exceptions lead to confusion and uncertainty about, and uneven application of, such Rules.”

23. Respondent also argued that it was against the interest of USCAA to send a team to the World University Games (hereafter “WUG”) that was not competitive. Therefore, the Arbitrator should appreciate how serious a problem USCAA had in past years to require such a strict policy and the Arbitrator should not second guess USCAA’s Board of Directors on this issue.

VI. ANALYSIS

24. The evidence established that USCAA properly implemented the Procedure and Ms. Sinclair appropriately enforced the Procedure. Absent extraordinary circumstances, it would be improper for the Arbitrator to make a ruling against the Procedure that was properly adopted, advertised and enforced.³

25. With respect to Ms. Chai and Ms. Harrington, there were no extraordinary circumstances that would justify their inability to comply with the Procedure. USCAA did not interfere with Ms. Chai and Ms. Harrington ability to provide the documents at the appropriate time. Moreover, the evidence established that Ms. Chai and Ms.

³ This would not be the case if the Procedure had established eligibility criteria for the WUG that was more restrictive than the International Federation. If USCAA had established such and eligibility criteria that would have been an abuse of USCAA’s discretion.

Harrington did not even try to comply with the document requirement. Their attitudes were cavalier regarding a policy that USCAA had determined was important. As a consequence, their request for relief is denied.

26. The situation of Ms. Nicely is different. In no way did Ms. Nicely ignore the concerns of USCAA. At the WUG Trials she brought all the required documents, including a copy of her passport.⁴ The only problem with her passport was that it was scheduled to expire in September. However, she also provided a renewal receipt dated May 3, 2011 proving her passport would be updated to satisfy that requirement.

27. Once Ms. Nicely was officially notified she was eligible on May 2, 2011 she took immediate action to comply with the Procedure. That notice stated a different date for her passport requirement than the Procedure. In addition, the notice did not contain the “no exception” language. In this regard, these facts differentiate this case from the *Bishop* case as that case involved a rule that was unambiguous.

28. The Arbitrator concludes that but for USCAA’s indecision regarding the eligibility of Ms. Nicely, she would have complied with all the requirements of the Procedure. While Ms. Nicely was under the impression that she was ineligible, the testimony established that other athletes were mailing out their renewals. It would therefore be improper for USCAA to enforce a policy against Ms. Nicely when USCAA’s actions made it more difficult for her to comply. This concept of estoppel has long been recognized in right to participate disputes. (*See New Zealand Olympic Committee (NZOC) v. The Salt Lake Organizing Committee for the Olympic Winter*

⁴ While the passport photos were too large, the evidence established that she could have gone across the street on Saturday, May 21, 2011 and obtained a photo the correct size. Because USCAA issued a Procedure with an ambiguity regarding the time the documents should be produced, it stated they were due on May 22, 2011, the Arbitrator finds that Ms. Nicely would have satisfied the Procedure regarding the passport photos.

Games of 2002(SLOC), CAS ad hoc Division, 006—accepting entries of two athletes and then excluding them from competing a few days before the event would be unfair and contrary to the doctrine of estoppel; *See also International Association of Athletics Federation (IAAF) v. Track & Field (USATF)*, CAS 2002/O/401, ¶68.) Otherwise, her notice of eligibility would have been illusory, a bait and switch.

29. According to the testimony of USCAA’s Chair of the Board of Directors, Norm Graham, athletes should be given a minimum of 30 days notice regarding competitions and their rules. In this case, because USCAA had originally informed Ms. Nicely that she was not eligible for the WUG, then later changed that position and provided Ms. Nicely with that notice on May 2, 2011, USCAA was obligated to provide Ms. Nicely with a reasonable amount of time to comply with the Procedure.⁵ According to Mr. Graham, 30 days would not be unreasonable. In this case, as the actual documents were not required until July 12, 2011 and Ms. Nicely acted immediately to obtain all the requested documents, she should have been provided an additional amount of time.

30. The Affected Athletes argue that Ms. Nicely should have obtained her passport on an expedited basis. There was testimony that Ms. Nicely was advised that there might not be any difference between sending her passport normally or on an expedited basis.⁶ In fact, it appears that Ms. Nicely did receive her passport close to the three weeks date provided for expedited passports. The Arbitrator will not second guess Ms. Nicely on the methods she used to obtain her passport any more than he would second guess USCAA’s decision to adopt the “no exception” policy. It is enough that she

⁵ This does not mean that USCAA was wrong in initially stating that she was ineligible and then later deciding she was eligible. However, the delays and confusion that this changing status entailed must be taken into account by Respondent.

⁶ USCAA argued that Ms. Nicely could have obtained her renewed passport in one day. However, the evidence suggested that such an outcome was only possible if the travel date was within two weeks. As the WUG were in August, Ms. Nicely did not satisfy this requirement.

acted immediately, demonstrating respect for USCAA's policy. Ms. Nicely qualified for the WUG through competition, the most meritorious way to qualify for a sporting event. (See *Salk v. United States Sailing, Inc.*, AAA 77 19k0 E00016 08 (Feb. 10, 2008) (Campbell, Christopher arb.) p. 13.) Because of the priority given to performance in *lex sportiva*, her performance dictates she receives the benefit of the doubt.

**VII.
DECISION AND ORDER**

31. The relief requested by Ms. Chai and Ms. Harrington is denied.

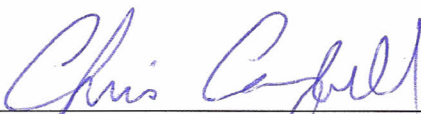
32. The relief requested by Ms. Nicely is granted. Respondent will nominate Ms. Nicely to participate on behalf of the United States at the World University Games to be held in China commencing August 13, 2011.

33. The administrative fees and expenses of the AAA totaling \$750.00 shall be borne by Claimants.

34. The fees and expenses of the Arbitrator totaling \$1,050.00 shall be borne equally between the Claimants and Respondent in accordance with their stipulation. The Affected athletes will not pay for any fees or expenses.

35. This Final Award is in full satisfaction of all claims submitted to arbitration by the Claimants against the Respondent and in full satisfaction of all defenses submitted by Respondent and the Affected Athletes against Claimants. All other claims and defenses not expressly granted herein are hereby denied.

Dated: July 10, 2011



Christopher L. Campbell, Arbitrator