

# AMERICAN ARBITRATION ASSOCIATION

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Re: 77 190 E 00189 12 JENF  
Phil DeRosier  
and  
USA Track & Field

Affected Athlete:  
Amanda Kimbers

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## FINAL AWARD

This matter arises as a complaint by Phil DeRosier (DeRosier) under Section 9 of the United States Olympic Committee (USOC) Bylaws, as prescribed by the provisions of the Ted Stevens Olympic and Amateur Sports Act. Amanda Kimbers (Kimbers) was added as an affected athlete, based on the facts set forth below.

### 1. Factual Background

DeRosier competed in the New Jersey International Invitational on June 16, 2012 in Holmdel, New Jersey (New Jersey meet) and achieved a personal record in the 100 meters, sufficient to meet the "qualifying standards" set by USA Track & Field (USATF) for the 2012 U.S. Olympic Trials. Kimbers competed in the same meet in the women's 100 meters and also achieved a personal record. According to USATF, their times were "outliers", significantly better than they had previously achieved. Upon their entry into the Olympic Trials, USATF officials investigated DeRosier's and Kimbers' times. During this investigation, USATF determined that the timing system used by the New Jersey meet did not conform to fully automatic timing standards as set forth in its Competition Rules. Based on this finding, the USATF track & field committee determined that the times were not compliant with the 2012 USOT - Qualifying Guidelines and thus should not be accepted. Therefore, both athletes were declared not to have qualified to compete in the Olympic Trials to be held June 22 and 23, 2012.

### 2. Standard of Review and Applicable Rules

In accordance with the USOC Bylaws, USATF is to use all reasonable means at its disposal to protect the opportunity of an amateur athlete to attempt to qualify for selection to participate in the Olympic Trials (Section 9.1).

The 2012 USOT - Qualifying Guidelines provide the "qualifying marks must be made in accordance with USATF Rule 149 and verifiable in one of the following: USATF or IAAF sanctioned meets/events which prescribe to or exceed USATF competition rules". These Competition Rules, in 165.13, deal with videotape-based systems which may be used for non-championship competitions, such as the New Jersey meet. Rule 165.13 specifies that the meet must use a videotape camera that produces at least 50 frames per second and incorporates a timing device that generates a reading to 1/100<sup>th</sup> of a second. The same Rule specifies that the videotape-based system must also comply with the provisions of Rule 165.10. The applicable

subsection of this rule, (d), applies to fully automatic systems, where the "picture production and the time system shall be synchronized generating a uniformly marked time scale graduated in 0.01 of a second."

### 3. Arguments

#### USATF

USATF argues that the standard of review for this arbitration is whether its actions are arbitrary or capricious which it contends they are not. USATF sanctions thousands of meets which are individually required to meet the USATF competition rules. USATF does not verify that each meet complies with the specific Qualifying Guidelines for the Olympic Trials. Nor do all of the sanctioned meets need to have timing systems that are compliant with the Qualifying Guidelines for the Olympic Trials. The USATF can not control what each individual meet advertises nor can it verify that the meet actually follows the Qualifying Guidelines. Nevertheless, the USATF can not simply let any sanctioned meet post times as qualifying marks for the Olympic Trials. The times need to be measured by compliant timing systems. Otherwise, there is the potential that the Olympic Trials would be overrun with athletes and not conducive for the best athletes. Thus, the burden lies with the elite athletes to determine that the scoring system used at a meet complies with the Qualifying Guidelines for the Olympic Trials.

USATF argues that elite athletes are very familiar with the customs and trade in the track & field industry and as such they are all aware that in order to adequately measure their times, a fully automatic timing system is required. Specifically, it argues that it is not unreasonable for USATF to require athletes to know what timing is used at a meet and that if the timing system is non-compliant, the athlete competes at his/her peril. Since these elite athletes are deemed to know that fully automatic systems were required, USATF acted properly, not capriciously or arbitrarily and did what it thought was right in not accepting the times from the New Jersey meet where a fully automatic system was not used.

#### Athletes

DeRosier and Kimbers argue that the standard of review in a Section 9 appeal is not whether the USATF acted arbitrarily or capriciously, but rather that the case is considered de novo and that the burden is on USATF to demonstrate the athletes should be denied the opportunity to participate in the Olympic Trials.

The athletes argue that the rules as written are nonsensical and contradictory, since if the standards of 165.13 are followed, the requirements of 165.10(d) are inconsistent. The athletes also argue that in fact the timing device used by the New Jersey meet is compliant with both requirements of Rule 165.13, i.e. the videotape camera produces at least 50 frames per second and it incorporates a timing device that generates a reading to 1/100<sup>th</sup> of a second.

They also argue that under equitable principles, USATF is not harmed at all if these two athletes are allowed to compete in the Olympic Trials. There is space and if their times indeed were inaccurate, then they will not qualify for the Olympic Games. If on the other hand they are denied the opportunity to participate in the Olympic Trials, a once in a lifetime opportunity to try to qualify for the Olympic Games, the harm is much greater to the athlete.

In addition, they argue that the burden should not be on the athlete to determine whether the meet has a sanctioned timing device. USATF members, such as the athletes in this case, reasonably assume that membership in USATF means that USATF is doing everything required to have the meets be compliant, especially a meet such as the New Jersey meet which has been held for 26 years and advertises that it is "a last chance qualifying opportunity... for the US Olympic Trials..."

#### 4. Analysis

In accordance with Section 9, USATF needs to demonstrate that the timing device used at the New Jersey meet did not comply with its rules and as such, the posted times can not be accepted for qualifying at the Olympic Trials. The standard for review is not whether the USATF acted arbitrarily or capriciously.

The New Jersey meet director testified that he believed his meet complied with the USATF Qualifying Guidelines and specifically the Competition Rules in adopting the FT-FAT 60 timing system used for the meet. The head of timing and the meet director also testified that they verified the times recorded by the timing system carefully before posting the results. The manufacturer of the FT-FAT 60 timing system testified that the system does in fact meet the requirements of 165.13, but does not meet the requirements of 165.10(d). The only way to meet those would be instead to have 100 frames per second in contradiction to the 165.13 requirement of 50 frames per second. I do agree with DeRosier's argument that the two Competition Rules are at the least nonsensical, since 165.13 specifically provides that "video timing is not fully automatic timing and is intended to be used as a backup timing system" and yet, that same rule 165.13 identifies that "a videotape-based system may be used for non-championship competition." Those two provisions are contradictory. In addition, 165.10(d) is with reference to "fully automatic systems" only and it is specifically stated in 165.13 that a videotape-based system is not a fully automatic system. Yet, though 165.13 requires compliance with 165.10, they each reference two completely different systems. The standards of 165.10 with respect to a fully automatic system are by their terms not applicable to a videotape-based system. Therefore, these Competition Rules are indeed contradictory.

There is no question that USATF did not act capriciously or unreasonably, but that is not the standard at issue in a Section 9 appeal. Nor is there any question that requiring USATF to verify the timing equipment used by every meet would be unduly burdensome. Rather, the standard for deciding this case is whether the USATF used all reasonable means at its disposal to protect the athletes' opportunity to participate. The applicable Competition Rules are not clear and are contradictory. As such, USATF did not use all reasonable means at its disposal to protect the athletes' opportunity to participate. Its own Competition Rules need to be crystal clear so that meets can comply and athletes can rely on the timing at compliant meets.

If the experienced meet director is confused as to the standards to be met for timing, it is impossible for the athlete either to be certain the standards are met or indeed to have responsibility for any failure of the meet to comply.

USATF has the burden to show that the time posted by the New Jersey meet can not be accepted, but based on its own Rules, that burden has not been met. USATF did show that the timing

equipment does not comply with 165.10(d) but did otherwise comply with 165.13. Since the two provisions are not reconcilable, the New Jersey meet's compliance with 165.13 only and its understanding that its system did comply with the Rules overall is accepted. The athletes do not have a separate obligation to verify that the standards for timing were met at the New Jersey meet, and even if they had attempted to do so, they would not have been able due to USATF's own rules being contradictory. Thus, the athletes' times at the New Jersey meet do comply with the Competition Rules and they do meet the qualifying standards. As such, the athletes are qualified to compete in the Olympic Trials.

### **Findings and Decision**

I therefore rule as follows:

1. The times achieved by Mr. DeRosier and Ms. Kimbers in the 2012 New Jersey International Invitational are qualifying marks and as such they meet the US Olympic Trials qualifying standards as determined under the Competition Rules.
2. Mr. DeRosier and Ms. Kimbers have qualified to compete in the 2012 US Olympic Trials.
3. The parties shall bear their own costs and attorneys' fees. No adjustments shall be made to the fees payable to the American Arbitration Association.
4. This Award is in full settlement of all claims submitted in this Arbitration. All claims not expressly granted are hereby denied.



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Maidie E. Oliveau  
Sole Arbitrator  
June 22, 2012