

**NEW ERA ADR
 UNITED STATES OLYMPIC & PARALYMPIC MOVEMENT ARBITRATION RULES**

AMIR ANDERSON

Claimant

v.

USA BOXING

Respondent

and

**OBED BARTEE-EL II, STEVEN COLOME,
 RAHIM GONZALES, NATHAN LUGO, AND
 ETHAN SMITH**

Affected Athletes

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Case No. 24011101

ARBITRATION AWARD

I, the undersigned arbitrator ("**Arbitrator**"), having been designated in accordance with the Ted Stevens Olympic and Amateur Sports Act ("**Act**"), 36 U.S.C. § 220505 *et seq.*, and Section 9 of the United States Olympic and Paralympic Committee ("**USOPC**") Bylaws, having been duly sworn, and having duly heard the proofs and allegations, and considering any and all evidence provided by Amir Anderson ("**Anderson**" or "**Claimant**"), USA Boxing ("**USAB**" or "**Respondent**"), and Steven Colome ("**Colome**"), Obed Bartee-El II ("**Bartee-El**"), Rahim Gonzalez, Nathan Lugo, and Ethan Smith (collectively "**Affected Athletes**") (individually "**Party**" or collectively the "**Parties**") hereby finds, concludes, determines, and awards as follows:

I. Procedural History

On January 5, 2024, Claimant submitted his *Complaint Form, Section 9 of the USOPC Bylaws*.

On January 14, 2024, the Arbitrator was appointed to serve as the arbitrator in this proceeding.

On January 15, 2024, the Parties, through counsel, presented for a telephonic pre-hearing conference. During the pre-hearing conference, Anderson was represented by David Berlin of Boxing Legal and USAB was represented by Stephen A. Hess of the Law Office of Stephen A. Hess. Also appearing at the telephonic pre-hearing conference was Chis Burns (Anderson’s

coach). The Parties agreed to conduct the evidentiary hearing on January 18, 2024 beginning at 9:00 a.m. CT.

On January 15, 2024, New Era ADR issued the *Notice of Hearing* confirming the evidentiary hearing to be held on January 18, 2024 beginning at 9:00 a.m. CT.

The final hearing was held via Zoom¹ conference on January 18, 2024 commencing at 9:00 a.m. CT and concluding at 5:17 p.m. CT. During the hearing, Anderson appeared along with his counsel, David Berlin of the Boxing Legal, USAB appeared through its representative, Mike McAtee, and its counsel, Stephen A. Hess of the Law Office of Stephen A. Hess, and Colome appeared along with his counsel, Ashlyn L. Hare and John C. Clune. In addition to the Parties and counsel, the following individuals attended the videoconference hearing as observers: Kacie Wallace (USOPC Office of the Ombuds, Athlete Ombuds), Emily Azevedo (USOPC Office of the Ombuds, Senior Associate Athlete Ombuds), Lucy Denley (USOPC, Associate Director of Dispute Resolution), Anthea Spires (New Era ADR, Client Success Manager), Chris Brown (Coach of Anderson), Jen Buckley (Paralegal, Law Office of Stephen A. Hess), and Cameron Baker (Fox Rothschild, LLP). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. During and at the conclusion of the hearing, no Party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

II. Evidence Submitted by the Parties

The Parties submitted the exhibits and called witnesses as set forth below. All such exhibits were admitted into evidence.

A. Anderson

Anderson submitted exhibits labeled C-1-C-14 and such exhibits included the following:

1. Bout Result
2. Hearing Notice (Obed Bartee-El II Grievance)
3. USA Boxing Grievance and Complaint Policy
4. Hearing Decision from Obed Bartee-El II Grievance
5. Lynette Smith email to Chris Burns – December 28, 2023
6. Pre-Bout Video
7. Statement from Referee Ronald Reichel
8. USA Boxing National Rulebook
9. Statement from Deputy Official in Charge (OIC) Eloise Joseph
10. Article of December 9 with New Result
11. Medical Restriction
12. Stephen Hess and Chris Burns emails – January 4 and 5, 2024
13. Section 9 Complaint Form
14. Medical Restriction signed by Dr. Lebhar

¹ The hearing began as a videoconference through Google Meets, but an error occurred with the screenshare feature. Thereafter, the hearing occurred via Zoom.

Anderson called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Amir Anderson
2. Chris Burns
3. Ronald Reichel
4. Dr. Steven Lebhar
5. Shawn Reese

B. USAB

USAB submitted exhibits labeled R-A -- R-H and such exhibits included the following:

- A. 2023 Olympic Boxing Trials Qualification Guidelines
- B. Boxing Olympic Athlete Selection Procedures for 2024 Olympics
- C. 2024 Elite Team Selection Procedures
- D. USA Boxing Referee and Judges Manual
- E. You Tube Recording of Olympic Trials [Bout starts at 3:25:39]
- F. Partial Bout Video
- G. Hess-Burns Email
- H. 80kg Bracket through Final

USAB called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Mike McAtee
2. Matt Johnson

C. Affected Athletes

Neither Colome nor any of the other Affected Athletes submitted exhibits. Colome called the following witness at the final hearing who was sworn in and provided testimony under oath:

1. Steven Colome

Each one of the Affected Athletes was invited to attend the hearing. Of the Affected Athletes, only Colome attended, testified, and presented evidence.

III. Notice to Affected Athletes

On January 15, 2024 at 12:13 p.m. CT, Stephen A. Hess, counsel for USAB, issued written notice via email to the Parties and Affected Athletes. A copy of the notice is set forth verbatim as follows:

Greetings:

I am USA Boxing's attorney and am writing to you again to follow up my last email with the hearing information added below.

Amir Anderson has filed a Complaint under Section 9 of the USOPC Bylaws seeking inclusion in the USA Boxing Selection process at 176 pounds. His complaint and supporting documents are attached. In light of the manner in which USA Boxing conducts the Selection Camp and qualifies replacement athletes, there is a possibility that the arbitration will affect your rights as an athlete. You therefore have the right to participate in the arbitration proceedings if you wish. If you do not elect to participate, you will still be bound by any result.

A hearing on the Complaint has been set for Thursday, January 18, 2024 at 8:00 a.m. MT. The hearing will be conducted via video conference. To join the hearing go to the following:

<https://meet.google.com/bkh-pptr-pkw>

or call in using the following:

Dial in: 908.409.3164

PIN: 459 777 204#

USA Boxing understand that some of this may be confusing. Please reach out to the Team USA Athlete Ombuds if you have any questions about this matter. The Ombuds' office can explain your rights and options, and if necessary, can discuss representation by counsel if you desire. You can reach the Athlete Ombuds Office at 719.866.5000 or through ombudsman@usathlete.org.

I encourage you to reach out as soon as you can.

IV. Jurisdiction

An arbitrator has jurisdiction over disputes if the dispute is protected under the Act, 36 U.S.C. § 220501, *et seq.*, and the controversy involves the opportunity to participate in national and international competition representing the United States. Section § 220522(a)(4) of the Act states:

An amateur sports organization, a high-performance management organization, or a paralympic sports organization is eligible to be certified, or to continue to be certified, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the

concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the corporation's constitution and bylaws, except that if the Athletes' Advisory Council and National Governing Bodies' Council do not concur on any modifications to such Rules, and if the corporation's executive committee is not able to facilitate such concurrence, the standard commercial rules of arbitration of such designated provider shall apply unless at least two-thirds of the corporation's board of directors approves modifications to such Rules. . . .

Additionally, Section § 220522(a)(8) of the Act states that a national governing body (“**NGB**”) must:

[P]rovide[] an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin, and with fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator, or official before declaring the individual ineligible to participate. . . .

Section 9.1 of the USOPC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in a Protected Competition nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. The corporation will, by all reasonable means, protect the opportunity of an amateur athlete to participate if selected (or to attempt to qualify for selection to participate) as an athlete representing the United States in any of the aforesaid competitions. In determining reasonable means to protect an athlete's opportunity to participate, the corporation will consider its responsibilities to the individual athlete(s) involved or affected, to its mission, and to its membership.

Any reference to athlete in this Section 9 will also equally apply to any coach, trainer, manager, administrator or other official.

Under USOPC Bylaws Section 1.3(x), “Protected Competition” means “i. a Delegation Event [and] ii. a Qualifying Competition.”

USOPC Bylaws Section 9.6 provides that, “[i]f the complaint [under Section 9.1] is not settled to the athlete's satisfaction the athlete may file a claim with the arbitral organization designated by the corporation Board against the respondent for final and binding arbitration.” Under both Sections 9.6 and 9.8 of the USOPC Bylaws, the arbitration proceeding may be expedited.

V. Selection Procedures

USAB is the NGB for boxing in the United States and is recognized as such by the USOPC. USAB is authorized as the NGB for the sport of boxing to “establish procedures for the determination of eligibility standards for participation in competition” and to “recommend to the [USOPC]

individuals and teams to represent the United States” 36 U.S.C. § 220523(a)(5-6). In accordance with Section 8.4.1(d) of the USOPC Bylaws, USAB must establish clear procedures approved by the USOPC and timely disseminate such procedure to the athletes and team officials.

USAB adopted certain policies and procedures for qualification for the 2024 Olympic Games in Paris, France (“**Olympics**”). USAB drafted and adopted the *USA Boxing Athlete Selection Procedure, 2024 Paris Olympic Games, Men & Women* on April 3, 2023 (“**Procedures**”). *Exhibit R-B*. The Procedures were approved by the USOPC as set forth in correspondence from Sara Crowell, Olympic Performance Advisor, USOPC Sport Performance, dated May 5, 2023. In pertinent part, the Procedures provide as follows:

1. SELECTION SYSTEM

1.1. Provide the minimum eligibility requirements for an athlete to be considered for selection to the Team:

1.1.1. Nationality/Passport requirements:

Athlete must be a national of the United States at the time of the 2022 USA Boxing Elite National Championships (December 3-11, 2022) for all Olympic qualification pathways in 2023, or at the time of the 2024 Olympic Trials for Boxing (December 3-10, 2023) for all Olympic qualification pathways in 2024.

Athlete must hold a valid U.S. passport that will not expire for six months after the conclusion of the Games.

1.1.2. Minimum International Olympic Committee (IOC) standards for participation:

Any competitor in the Olympic, Paralympic, Pan American or Parapan American Games must be a national of the country of the National Olympic Committee (NOC) or National Paralympic Committee (NPC) which is entering such competitor. For additional information regarding an athlete who is a national of two or more countries, has changed his or her nationality or acquired a new nationality, refer to the Olympic Charter (Rule 41), the IPC Handbook (Section 2, Chapter 3.1), the Panam Sports Constitution (Article 34.4-7), or the Americas Paralympic Committee bylaws (Chapter 2.4.12 of the IPC Handbook).

1.1.3. Minimum IOC standards for participation (if any):

Athletes must comply with all eligibility requirements, as detailed in the 2024 Olympic Games Qualification Guidelines for the sport of boxing, including:

Compliance with the Olympic Charter and other relevant rules - All athletes must respect and comply with the provisions of the Olympic Charter currently in force, including but not limited to Rule 41 (Nationality of Competitors) and Rule 43 (World Anti-Doping Code and the Olympic Movement Code on the Prevention of Manipulation of Competitions).

Age requirements – To be eligible to participate in the boxing tournament of the Olympic Games Paris 2024, athletes must be born between and including 1 January 1984 and 31 December 2005.

Additional eligibility requirements – Athletes must comply with the following eligibility criteria:

1. Adhere to the Paris 2024 IOC boxing event regulations including all competitions and Anti-Doping provisions.
2. Participate in at least one of the boxing qualification tournaments for the Olympic Games Paris 2024.

The following link leads to the IOC's 2024 Olympic Games Qualification Guidelines for the sport of boxing, which details all eligibility requirements: https://stillmed.olympics.com/media/Documents/Olympic-Games/Paris-2024/Paris2024-QBoxing.pdf?_ga=2.236766855.726963985.1676884808-11722081.1652867343

1.1.4. Other requirements (if any):

- Athlete must be eligible to compete for the USA in accordance with all USA Boxing rules.
- Athlete must be a member in good standing of USA Boxing, meaning the athlete is not under suspension from USA Boxing at the time of nomination.
- Athlete must be a minimum of 18 years old by date of birth for any events advancing to the 2022 USA Boxing Elite National Championships (December 3-11, 2022) or 2024 Olympic Trials for Boxing (December 3-10, 2023) and cannot be older than 40 years old by year of birth during 2024.
- Athlete must successfully complete all Games Registration requirements by stated deadline.
- Any athlete aged 18 or older will be required to undergo a background screen in accordance with the current USOPC Background Check Policy.

- Any athlete age 18 or older as of the Closing Ceremony will be required to remain current with the U.S. Center for SafeSport’s education and training requirements in accordance with the USOPC Athlete Safety Policy.

1.2. Tryout Events:

For Olympic qualification events taking place in 2023, USA Boxing will follow the selection process detailed in the Preliminary 2023 Pan American Games and Paris 2024 Olympic Games Athlete Selection document, which can be found at:

<https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Athlete-Selection-Procedures>

For Olympic qualification events taking place in 2024, USA Boxing will follow the selection process detailed in the 2024 USA Boxing Elite High Performance Team Selection Procedures, which can be found at:

<https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Athlete-Selection-Procedures>

- 1.2.1. Event names, dates and locations of all trials, competitions, and camps to be used as part of the selection process:

Refer to section 1.2

- 1.2.2. Describe how athletes qualify for the events listed in 1.2.1.:

Refer to section 1.2

Exhibit R-B. The 2024 USA Boxing Elite High Performance Team Selection Procedures – Men & Women dated April 3, 2023 (“**High Performance Procedures**”) are expressly referred to in the Procedures and state in pertinent part as follows:

The following procedures will be utilized by USA Boxing to select its Elite High Performance Team for 2024. Athletes selected based on these procedures will be given the first opportunity to participate in elite training camp and international competition opportunities, including any Olympic qualifying events that take place in 2024.

Important Notice

If a US boxer qualifies for the 2024 Paris Olympic Games through the 2023 Pan American Games, his or her qualification will be accepted by the US Olympic & Paralympic Committee and USA Boxing. In this scenario, the weight category that the boxer qualifies in will still be contested at the 2024 Olympic Trials for Boxing. The athlete who places

first at this event will not advance to the next stage of team selection for 2024 but will be considered as an alternate in case the qualified athlete must withdraw from competing at the Paris 2024 Olympic Games.

Minimum Eligibility Requirements

To be considered eligible to participate in USA Boxing's 2024 Elite High Performance Team Athlete Selection process, athletes must meet the following criteria:

1. Athlete must have proof of U.S. citizenship
2. Athlete must have a valid and current U.S. passport at the time of selection
3. Athlete must be eligible to compete for USA in accordance with all USA Boxing rules.
4. Athlete must be a member in good standing of USA Boxing, meaning the athlete is not under suspension from USA Boxing.
5. Athlete must be a minimum of 18 years old by date of birth and cannot be older than 39 years old during the year that the 2024 Olympic Trials for Boxing occurs.
6. Athlete must meet all requirements to be eligible to train at the Olympic & Paralympic Training Center (OPTC), as established by the US Olympic & Paralympic Committee (USOPC). These requirements include:
 - a. Completed Safe Sport Certification
 - b. Completed background screening

In addition to the minimum eligibility requirements above, athletes must meet at least one of the following performance markers to advance to the evaluation stage of the selection process:

A. Athlete must be a member of the 2023 Elite High Performance Team, in accordance with the 2023 Elite High Performance Team Selection procedures and have won a minimum of two (2) medals at international competitions in 2023.

B. Athlete must be the *1st place finisher from the 2024 Olympic Trials for Boxing (December 3-10, 2024 – Lafayette, Louisiana) in an Olympic weight category listed below.

Full details on the 2024 Olympic Trials for Boxing Qualification Guidelines can be found at: <https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Athlete-Selection-Procedures>

*Note: If a 2023 Elite High Performance Team member does not meet the Performance Exemption, as detailed in the 2024 Olympic Trials for Boxing Qualification Guidelines, both the 1st and 2nd place finishers from his/her weight category at the 2024 Olympic Trials for Boxing will advance to the evaluation stage of the selection process.

Evaluation & Team Selection

Athletes who meet the requirements above will be selected to participate in the USA Boxing Elite Team Evaluation & Selection Camp, taking place January TBD, 2024. Each athlete who participates in the USA Boxing Elite Team Evaluation & Selection Camp will be evaluated by the USA Boxing High Performance Staff. This evaluation will be based on the High Performance Evaluation Guidelines outlined in Attachment A.

Once the evaluation process is complete, all evaluations will be submitted to the *High Performance Selection Committee, which is composed of the USA Boxing High Performance Director and USA Boxing AAC Athlete Representative. The High Performance Selection Committee will review all evaluations and the athlete with the best evaluation, per weight class, will be selected to the Elite High Performance Team. Athletes who meet a minimum evaluation score of 65 points but are not selected to the Elite High Performance Team will qualify to the Elite High Performance Squad and will be ranked within an Olympic weight category according to his or her evaluation score.

* Note: Any member of the selection committee that has a possible conflict of interest must either recuse himself/herself or disclose it to the NGB's Ethics Committee prior to the start of the selection process. A conflict of interest exists when the committee member has a direct or indirect relationship, connection, or affiliation, past or present, with an athlete in contention for the applicable team selection that could compromise the committee member's ability to participate in the selection process in an unbiased manner. If a conflict exists, the NGB's Ethics Committee shall vet the conflict and make the final determination of whether that committee member must recuse him/herself from participating in discussions and/or voting. The Ethics Committee may determine that a committee member who has relevant and necessary information with respect to athlete performance, for example a high performance team coach or high performance director, may, if requested by the selection committee, provide such information to the committee so long as such information is provided in a fair and unbiased manner and the committee member with the conflict of interest does not vote toward the final decision. The committee member should not otherwise influence other members of the committee in the selection process.

Additionally, any person (including any potentially impacted athlete or coach of a potentially impacted athlete) with a good faith belief that a committee member has a conflict of interest may report the alleged conflict of interest to the USA Boxing National Office, in accordance with the USA Boxing Grievance and Complaint Policy, which can be found at <https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Grievance-and-Appeal-Forms>.

If the recused individual is the USOPC Boxing AAC Representative, this selection committee member will be replaced by USA Boxing Board's alternate AAC Athlete Representative. If the recused individual is USA Boxing High Performance

Director, this selection committee member will be replaced by the USA Boxing Assistant High Performance Director – Operations or High Performance Manager.

Supporting Documents & Resources

The following documents and resources are referenced in the above procedures and found on USA Boxing’s website: <https://usaboxing.org/>:

- The 2024 Olympic Trials for Boxing Qualification Guidelines can be found at:
 - <https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Athlete-Selection-Procedures>
- The 2023 USA Boxing Elite Team Selection Procedures can be found at:
 - <https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Athlete-Selection-Procedures>
- The USA Boxing Code of Conduct can be found at:
 - www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Grievance-and-Appeal-Forms
- The USA Boxing National Team Policies & Procedures can be found at:
 - www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Grievance-and-Appeal-Forms
- The USA Boxing Bylaws and Grievance Procedures can be found at:
 - <https://www.teamusa.org/usa-boxing/rulebook/usa-boxing-bylaws>
 - <https://www.teamusa.org/USA-Boxing/Rulebook/Forms-and-Documents/Grievance-and-Appeal-Form>

Exhibit R-C.

VI. Discussion and Analysis

The undersigned has considered all the facts, allegations, arguments, testimony, and evidence submitted by the Parties in the present proceeding. In drafting and explaining the *Arbitration Award*, the arbitrator refers in this *Arbitration Award* only to the submissions and evidence considered necessary to explain the reasoning in this decision. After considering all evidence submitted, based on the preponderance of the evidence, the undersigned makes the following findings:

A. *Standard of Review and Burden of Proof*

The applicable standard of review in Section 9 cases is *de novo*. *Crowell v. US Equestrian Federation*, AAA Case No. 77 190 E 00193 09 JENF (May 3, 2009); *Nadmichettu v. US Table Tennis Ass'n*, AAA Case No. 77 190 169 10 JENF (Apr. 23, 2010); *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Fogarty v. USA Badminton*, AAA Case No. 01-19-0000-7585 (June 21, 2019). “In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: 1) the athlete is given adequate procedural due process by providing a full and fair opportunity to be heard regarding [her] claims; and 2) the merits of an NGB’s challenged decision comply with the foregoing requirements of law of private associations by analyzing whether the athlete selection procedures are valid; were followed and applied consistently; its discretionary decision was rational/reasonable (*i.e.*, not arbitrary or capricious) and in good faith (*i.e.*, without any bad faith or bias); and complies with applicable federal and state laws.” *Liu v. USA Table Tennis, Inc.*, AAA Case No. 01-19-0002-0105 (June 20, 2019); *see also Nieto v. USA Track & Field*, AAA Case No. 77 190 00275 08 (July 19, 2008)(stating claimant did not carry the burden of persuasion to show that the NGB rule lacks rational basis); *Wright v. Amateur Softball Assn.*, AAA Case No. 301900046602 (Jan. 23, 2003)(stating “an arbitrator should not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process”); *Scott v. Amateur Softball Assn.*, AAA Case No 301901500 (Apr. 14, 2000)(stating “claimant did not meet its burden of proof” that the NGB breached its selection procedures). In Section 9 proceedings based on a selection decision, it is well established that a claimant has the burden of proving his or her claim by a preponderance of the evidence. *Craig v. USA Taekwondo*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011).

In *Quigley v. Union International de Tir*, the panel, in pertinent part, stated as follows:

Regulations that affect the careers of dedicated athletes should be predictable . . . and not the product of an obscure process of accretion. Athletes and officials should not be confronted by a thicket of mutually qualifying or even contradictory rules that can be understood only on the basis of the *de facto* practice over the course of many years of a small group of insiders.

Quigley v. Union International de Tir, CAS 94/129 (Apr. 20, 1995). “The whole purpose for the development of criteria for qualification for [protected competitions] is for the contenders to know how they will be selected and against what criteria they will be judged.” *Klug v. US Ski and Snowboard Association*, AAA Case No. 30 190 0056 06 (Jan. 27, 2006).

The arbitrator must determine whether USAB breached the approved and published Selection Procedures, applied the Selection Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Hyatt v. USA Judo*, AAA Case No. 01 14 0000 7635 (June 27, 2014); *Tibbs v. United States Paralympics*, AAA Case No. 71-190-E-00406 12 JENF (Aug. 28, 2012). Other arbitrations filed under the Act have determined this review to mean that a decision by USAB must have no rational basis, *i.e.* is unreasonable, arbitrary or capricious, and/or will not meet the Act’s requirements. *Rivera v. USA Cycling, Inc.*, AAA Case No. 01 16 0002 6302 (July 26, 2016). The Arbitrator’s role is not to

determine whether USAB chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAB in establishing the Selection Procedures. *Id.* Rather, it is a *de novo* review, with no deference, of the application of the Selection Procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

B. Factual Background.

Anderson, Bartee-El, and the Affected Athletes (and a plethora of other hopefuls) attended the 2024 USA Boxing Olympic Trials seeking to qualify to compete for Team USA in the Olympics. The 2024 USA Boxing Olympic Trials took place from December 2-9, 2023 in Lafayette, Louisiana (“**Olympic Trials**”). The boxing matches occurring at the Olympic Trials were staged to determine the participants for the USA Boxing Elite Team Evaluation & Selection Camp (“**Selection Camp**”) from which athletes will be chosen to represent Team USA in the Olympics.

In the quarterfinal bout in the 176 lbs. (81 kg) weight class of the Olympic Trials on December 6, 2023, Anderson and Bartee-El faced off against one another. Approximately one (1) minute into the first round, Bartee-El connected with a right-hand sending Anderson to the canvas. Referee Ron Reichel (“**Referee**”) quickly approached Anderson to administer the mandatory eight (8) count. Approximately one (1) second after approaching Anderson, Referee waived both hands overhead and approached the ringside physician, Dr. Steven Lebahr (“**Doctor**”). As Referee began to waive his hands overhead, Anderson quickly rose to his feet and submitted to evaluation by Doctor. Doctor stood outside of the ropes, but did not enter the ring. Doctor quickly evaluated Anderson and determined he was fit to continue to box. Referee then motioned for Anderson and Bartee-El to meet in the center of the ring and instructed the athletes to “box.” The bout continued for the full duration of the bout and went to the judges’ scorecards. The judges concluded that Anderson was the winner of the bout.

Shawn Reese, the Chair of the Referees and Judges Committee of USAB and the Official in Charge, met privately with Referee about the circumstances of the fight. At the outset of that meeting, Referee prepared a handwritten statement that is as follows:

Red corner was dropped by the blue boxer in the neutral corner closest to the doctor. At first gla[n]ce[,] I felt the boxer was hurt and unable to continued. I summoned the [Doctor] to assist the [boxer] after suspending count after the count of one. Boxer regained his ability to stand. [Doctor] said boxer was ok to continue. I mistakenly said box instead of taking boxer to corner to corner [sic] and having the decision of KO announced. I waved the bout off[,] [I]t should not have continue[d]. I was completely in th[e] wrong.

Exhibit C-7. Similarly, Elouise Joseph, the Deputy Official in Charge, provided a handwritten post-bout statement that is as follows:

A bout took place between Amir Anderson and Obed Bartee-El[,] Ron Reichels was refereeing the bout. The boxer was hit and knocked down in the first round. Ron started an 8 count[,] suspended the eight count, waved the bout off and called the doctor in the ring.

Once the doctor check[ed] the boxer[,] he said that he could continue the bout. The bout went the distance and Amir Anderson[,] the boxer that was originally knocked down in the first round[,] won the bout.

At the time the doctor said Amir Anderson was okay to continue the bout, I only zoned in on the doctor said the boxer was okay. I was sitting as ring captain at that time.

Exhibit C-9. Thereafter, on December 7, 2023, Bartee-El filed a grievance in accordance with the *USA Boxing Grievance and Complaint Policy*. On December 7, 2023, the Judicial Committee of USAB issued an *Expedited Hearing Notice* to address Bartee-El's grievance on December 7, 2023 at 4:00 p.m. MT via videoconference. *Exhibit C-2.* On December 8, 2023, the Judicial Committee of USAB issued the *Hearing Decision* finding in favor of Bartee-El and overturning the result of the quarterfinal bout between Anderson and Bartee-El. In pertinent part, the Judicial Committee of USAB ruled as follows:

The Hearing Panel heard testimony, cross-examination, and rebuttal from all participants. Many questions of clarification were asked of the litigants so the Panel could gain a better understanding of the issues brought before it. The Panel ruled unanimously that the bout was incorrectly allowed to continue after being waved off by the referee and Obed Bartee-EL, II shall be allowed to continue to participate in the Olympic Trials. Amir Anderson will not compete further in this Olympic Trials.

Exhibit C-4. After the decision of the Judicial Committee of USAB, Bartee-El fought Colome in the semifinal bout of the Olympic Trials and was declared the winner. Subsequently, Bartee-El fought Nathan Lugo in the finals of the Olympic Trials, but lost that bout. Nathan Lugo was declared the winner of the Olympic Trials and moved forward to Selection Camp to determine the boxer to represent Team USA at the Olympics.

C. Application of the Field of Play Doctrine.

The Field of Play Doctrine is set forth in Section 9.12 of the USOPC Bylaws. Section 9.12 states as follows:

The final decision of a referee during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the referee) is not reviewable through or the subject of these complaint procedures unless the decision is (i) outside the authority of the referee to make or (ii) the product of fraud, corruption, partiality or other misconduct of the referee. For the purposes of this Section, the term "referee" includes any individual with discretion to make field of play decisions.

On the field decisions are "best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it." *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). Arbitrators should not "interfere with the application of the rules governing the play of the particular game" even when the referee makes an incorrect decision as long as such decision is not made with prejudice or fraud. *NAOC v. IAAF*

& *USOC*, CAS 2008/A/1641 (Mar. 6, 2009); *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). In *Korean Olympic Committee v. ISU*, the panel stated as follows:

[D]ifferent phrases, such as “arbitrary”, “bad faith”, “breach of duty”, “malicious intent”, “committed a wrong”, and “other actionable wrongs” are used, apparently interchangeably, to express the same test. In the Panel’s view, each of those phrases means more than the decision is wrong or one that no sensible person could have reached. If it were otherwise, every field of play decision would be open to review on its merits. Before a CAS Panel will review a field of play decision, there must be evidence, which generally must be direct evidence of bad faith. If viewed in this light, each of those phrases means there must be some evidence of preference for, or prejudice against, a particular team or individual.

Korean Olympic Committee v. ISU, CAS OG 02/2007 (Feb. 23, 2002)(internal citations omitted).

In *Rau v. USA Wrestling Assn.*, the athlete argued that field of play decisions that occurred during the wrestling match were the result of partiality and referee misconduct. In addressing these arguments, the arbitrator stated as follows:

The vast majority of Rau’s position falls within the ambit of the field of play doctrine where he challenges “judgment calls” made by Referee. The undersigned is in no position to second guess Referee’s decisions that occurred on the mat. Not only is the undersigned not trained to make those decisions, the undersigned is also not permitted to serve as a “super referee” after reviewing the video fifteen (15) times including in slow motion. Many witnesses testified that they watched the video of the first match of the wrestle-off numerous times including one witness who testified that he watched the video thirty (30) times. Referee was not afforded the opportunity to review the video in slow motion while officiating the first match of the wrestle-off. Witnesses who watched the video during the hearing, including highly decorated and trained referees, missed calls in real time such as the alleged leg grab referenced above. Even if the undersigned disagreed with the decisions and calls made by the Referee, the undersigned is in no position to reverse such decisions and calls in this forum. The on-mat decisions made by the Referee are field of play decisions.

Although Rau and his coaches disagreed with multiple calls and decisions made by Referee and the outcome of the first match of the wrestle-off, the evidence presented did not show Referee was partial in favor of Stefanowicz. Accordingly, the undersigned finds the evidence does not support a finding of partiality.

Rau v. USA Wrestling Assn., AAA Case No. 01-21-0003-7287 (June 1, 2021). “Arbitrators are not ombudsmen; they are authorized to resolve disputes under contracts and rules, not declare how the world should work in the large.” *Lindland v. U.S. Wrestling Ass’n, Inc.*, 227 F.3d 1000, 1004 (7th Cir. 2000). Judges, and by extension arbitrators, are not “super referees.” *Nat’l Collegiate Athletic Ass’n v. Yeo*, 171 S.W.3d 863, 870 (Tex. 2005).

Here, both Anderson and USAB contend that the field of play doctrine supports their respective positions. Anderson argued that Referee's decision to continue the bout was a field of play decision. Whereas, USAB argued that Referee "waived the bout off" thereby triggering a field of play decision, but Referee did not have authority to "re-start" the bout. These arguments require an extensive review of USA Boxing's National Rulebook ("**USAB Rules**") to determine the ambit of Referee's authority.

The Parties agree there is no express rule in the USAB Rules that permits or prohibits a "re-start" of a bout. The Parties also agree that Referee had significant discretion over numerous matters and issues that commonly occur during a fight; however, they differ significantly on what authority and discretion Referee had after he waived his hands over his head one (1) second into the mandatory eight (8) count.

Referee explained that he waived his hands over head after observing Anderson's eyes looking "glazed over" and his head falling back to the canvas. Like in *Rau v. USA Wrestling Assn.*, video of the bout was played numerous times throughout the hearing from several different angles. Although the video, viewed in slow motion, showed that Anderson's eyes did not appear to be "glazed over" and his head did not fall to the canvas, the arbitrator is in no position to critique Referee's every move and call with the benefit of slow-motion video. During the fight, Referee did not have the luxury of reviewing the video of the fight over-and-over again.

The USAB Rules provide the framework for this review. First, Rule 19 of the USAB Rules establishes what constitutes a "knockdown" and what is supposed to transpire thereafter. Rule 19 of the USAB Rules, in pertinent part, states as follows:

19.1 A boxer will be considered to be knocked down if:

- 1) The boxer touches the floor with any part of the body other than the boxer's feet as the result of a blow or series of blows.

19.2 Counts Following a Knockdown

In the case of a knockdown, the referee must say "stop" and then begin to count from one (1) to eight (8) if the boxer is fit to continue; and count from one (1) to ten (10) if the boxer is unfit to continue. The referee will count with intervals of a second between the numbers and will indicate each second with the hand so that the boxer who has been knocked down may be aware of the count. Before the number "one" is counted, an interval of one second must have elapsed from the time when the boxer is knocked down.

19.4 Mandatory Eight Count

When a boxer is knocked down as the result of a blow, the bout must not continue until the referee has reached a mandatory count of eight (8), even if the boxer is ready to continue before then or the round has come to a close.

19.8 Knockout

After the referee has said “ten,” the bout ends and must be decided as a KO. The referee may stop the count if in his/her opinion the boxer is in immediate need of medical attention.

Exhibit C-8 at Sects. 19.1(2), 19.2, 19.4, 19.8. It is without question that Bartee-El connected with a right-hand dropping Anderson to the canvas and, thus, the circumstances were properly considered a “knockdown.” As Referee approached Anderson to administer the “mandatory eight count” as required by Rule 19.4 of the USAB Rules and counted one (1), Referee waived his hands overhead. *Exhibit C-8* at Sect. 19.4. Just as Referee started to waive his hands overhead, Anderson quickly rose to his feet. At that point, USAB argued that Bartee-El was determined the winner by knockout.

Rule 15.6 of the USAB Rules states the circumstances that constitute a “win by knockout” as follows:

15.6 Win by Knockout – KO

- 1) If a boxer is knocked down and fails to resume boxing before that boxer is counted up to ten (10), the opponent will be declared the winner of the bout by KO.
- 2) In the case of an emergency and the referee summons the ringside doctor in the ring before the boxer is counted up to ten (10), the opponent will be declared the winner of the bout by KO.
- 3) In the event a double KO occurs, the round must be scored up to the termination of the bout. The boxer ahead on points will be considered the winner.

Exhibit C-8 at Sect. 15.6. In this case, immediately after waiving his hands overhead, Referee requested that Doctor evaluate Anderson. In accordance with Section 20.2(1) of the USAB Rules, Referee has a “dut[y]” to “care for both boxers and to make the safety of both boxers a primary concern throughout the bout.”² The knockdown occurred in the corner where Doctor was sitting. Doctor immediately evaluated Anderson and informed Referee that Anderson was fit to continue.³ *Exhibit C-8* at Sect. 20.2(12)(stating a referee may “[a]sk the Ringside Doctor if the injured boxer is fit to continue”). Doctor testified that he did not realize that Referee waived his hands overhead.

Referee testified when he heard Doctor state that Anderson was permitted to continue to fight that he did not continue the “mandatory eight count” as required by Section 19.4 of the USAB Rules

² Both Referee and Mr. Reese testified that “safety comes first” and Referee had authority to seek a doctor evaluation of Anderson. *Exhibit C-8* at Sect. 20.2(10)(stating “[t]he referee may consult the ringside doctor with respect to any injury to a boxer”).

³ All involved, including Anderson, Referee, and Doctor, testified and confirmed that Referee’s calling for Doctor’s evaluation was not “the case of emergency” as specified in Rule 15.6(2) of the USAB Rules. *Exhibit C-8* at Sect. 15.6(2).

or count to “ten” as required by Section 19.8 of the USAB Rules. Instead, Referee instructed Anderson and Bartee-El to “box.” In accordance with Rule 20.2(5)(b), Referee had the authority to say “[b]ox” and “order[] the boxers to continue boxing.” *Exhibit C-8* at Sect. 20.2(5)(b). USAB, however, argued that Referee had no authority to permit Anderson and Bartee to continue to box after waiving his hands over his head.

When a referee “stop[s] the bout,” “the referee must first inform the Official in Charge... the reason for which the bout has been stopped...” *Exhibit C-7* at Sect. 20.2(9). Referee testified he did not inform the Official in Charge that the bout had been stopped. Mr. Reese testified that he had the authority to stop the bout, but did not do so and neither did the Deputy Official in Charge despite both seeing the events unfold at least in part.

The USAB Rules make clear that the Referee had authority to 1) “order[] the boxers to continue to box” (*Exhibit C-8* at Sect. 20.2(5)); 2) “consult the ringside doctor with respect to any injury to a boxer” (*Exhibit C-8* at Sect. 20.2(10)); and 3) “ask the Ringside Doctor if the injured boxer is fit to continue” (*Exhibit C-8* at Sect. 20.2(12)(b)). Reading the aforementioned rules with the last sentence of Section 20.2(12)(b) of the USAB Rules is vitally important. *Exhibit C-8* at Sect. 20.2(12)(b). The last sentence of Section 20.2(12)(b) of the USAB Rules states “[i]f the ringside doctor informs the referee that the boxer is fit to continue, then the referee *may* decide to continue the bout[.]”. *Exhibit C-8* at Sect. 20.2(12)(b)(emphasis). Based on the unambiguous aforementioned language, Referee had authority to continue the bout or call off the bout after Doctor ruled Anderson was fit to continue. Additionally, Section 20.2(19) of the USAB Rules gives Referee broad authority to “interpret these rules insofar as they are applicable or relevant to the bout or to decide and take action on any circumstance of the bout, which is not covered by these rules.” *Exhibit C-8* at Sect. 20.2(19). Referee’s field of play decision was to instruct Anderson and Bartee-El to “box” as he is granted authority to do by Sections 20.2(5) and 20.2(12)(b) of the USAB Rules.

Although the circumstances that played out during the bout were far from ideal, the above-referenced rules adopted by USAB grant Referee authority to act based on his interpretation. During the bout in real time, Referee interpreted his authority to allow Anderson and Bartee-El to box. Reviewing this matter with hindsight does not change the field of play decision that occurred during the bout. The Parties agreed had the bout been stopped prematurely by Referee that Anderson would not be permitted to challenge Referee’s decision to end the bout, because that challenge would be prohibited under the field of play doctrine. The inverse cannot have a different result. Similar to an umpire making the wrong call on the last out of a no hitter,⁴ the calls and decisions on the field of play must stand. Referee’s decision to permit the fight to continue also must stand and is not reviewable in accordance with the field of play doctrine.

⁴ On June 2, 2010, Armando Galarraga, pitching for the Detroit Tigers, pitched a no hitter through twenty-six (26) outs against the Cleveland Indians (now the Cleveland Guardians). For what would have been the twenty-seventh (27th) out, Galarraga induced the batter, Jason Donald, to hit a soft groundball to first base. Galarraga raced over to cover first base and recorded what the world believed to be the final out of the game and securing Galarraga a no hitter. Much to the chagrin of Galarraga and the baseball world, the umpire, Jim Joyce, called Donald safe. Being that the call was made in the field of play and before on-field replay was permitted, Joyce’s incorrect call of “safe” stood. <https://www.espn.com/espn/otl/news/story?id=5993137> (stating the incorrect call “still haunts” Joyce).

Accordingly, Anderson shall be reinstated as the winner of the bout between Anderson and Bartee-El. USAB is hereby ordered to permit Anderson and Colome to fight. The winner of that fight shall fight Nathan Lugo to determine the individual who will be designated as the winner of the Olympic Trials and continue on to the Selection Camp for determination of who will represent Team USA in the Olympics in the 176 lbs. (81 kg) weight class.

VII. Decision

Based on the foregoing findings and analysis, the undersigned decides and awards as follows:

- The Arbitrator finds and concludes that the decision of the USAB Judicial Committee shall be overturned and Anderson shall be declared the winner of the bout between Anderson and Bartee-El. USAB is hereby ordered to permit Anderson and Colome to fight. The winner of that fight shall fight Nathan Lugo to determine the individual who will be designated as the winner of the Olympic Trials and continue on to the Selection Camp for determination of who will represent Team USA in the Olympics in the 176 lbs. (81 kg) weight class;
- The Parties shall bear the costs and fees of this arbitration as incurred; and
- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb
Arbitrator

Date: January 19, 2024