UNITED STATES OLYMPIC & PARALYMPIC MOVEMENT ARBITRATION RULES

Administered by New Era ADR, Case No. 24061201

In the Matter of the Arbitration Between:

ANDREW DODDO (**"Mr. Doddo**" or **"Claimant"**),

Claimant

v.

USA FENCING (**"USFA"** or **"Respondent"**),

Respondent

And

MITCHELL SARON (**"Mr. Saron"**), FILIP DOLEGIEWICZ **("Mr. Dolegiewicz"**)

Affected Athletes

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated by New Era ADR, and in accordance with the Ted Stevens Olympic and Amateur Sports 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 heard and considered the arguments of the parties and their counsel during an approximately six-hour hearing held on June 21, 2024, and considered their written submissions, exhibits, testimony and legal authorities, hereby awards as follows:

INTRODUCTION

Claimant brought this Section 9 Complaint alleging that Affected Athlete Mr. Saron's competition results, which enabled him to qualify for the Paris Olympic Games, were gained through match manipulation. Claimant argued that Mr. Saron's saber bouts were refereed an inordinate amount by Bulgarian referee Vasil Milenchev ("Milenchev"). Claimant presented evidence that Milenchev was acquainted with Mr. Saron's coach Oleg Stetsiv ("Stetsiv") and that both Stetsiv and Milenchev shared a connection to the Nazlymov Fencing Club. Notably, Claimant did not allege that Mr. Saron was an active participant in any scheme to cheat in the bouts which form the basis of this claim.

Claimant argued that Respondent was made aware of these allegations before Olympic selections

were announced, and notwithstanding acknowledging these allegations, and in fact hiring an agent to conduct an independent investigation into the merits of the allegations, chose to select Mr. Saron in what Claimant alleged to be a violation of its Code of Conduct.

Claimant chose not to challenge the results of each of the competitions individually to avoid running afoul of the "Field of Play Doctrine." As he writes in his pre-hearing brief, "Mr. Doddo does not challenge any specific call in any specific bout. Instead, the issue is one that falls outside the Field of Play doctrine because the results center on a consistent pattern of irregularity in which Milenchev refereed Mr. Saron."[1] Instead, Mr. Saron contends that the frequency of Milenchev's appearance as a referee, and the connections between Milenchev and Stetsiv require a finding that the results achieved by Mr. Saron came about through fraud and that those results, which form most of the points needed by Mr. Saron to be named to the saber team, should be removed from the calculation for Olympic selection.

Prior to the June 21, 2024 hearing, the Arbitrator confirmed with the parties that the case required a 2-step analysis with different burdens of proof. The parties agreed that if Claimant was seeking to prove the existence of match-fixing or other fraudulent conduct which benefitted Mr. Saron (to avoid the Field of Play Doctrine), he had to prove this to the "comfortable satisfaction" of the Arbitrator.[2] If successful in that effort, to ultimately prevail on his Section 9 Complaint and obtain the relief sought, he would have to prove by a preponderance of the evidence that Respondent failed to act, and its failure to do so constituted a breach of its Code of Conduct which should lead to a cancellation of Mr. Saron's disputed points.[3]

Because Claimant failed to show to the comfortable satisfaction of the Arbitrator that the alleged irregularities in scoring came about as the result of match-fixing, the Arbitrator denied the Complaint in his June 22, 2024, Operative Award. As Claimant failed to surmount the first obstacle, the Arbitrator need not determine whether Respondent had the authority or responsibility to cancel the allegedly irregular results which form the basis of this claim.

I. Procedural History

On June 11, 2024, Claimant submitted his *Complaint Form, Section 9 of the USOPC Bylaws*.

On June 18, 2024, this Arbitrator was appointed to serve as replacement arbitrator in this proceeding after a previous arbitrator had recused himself due to the appearance of a conflict of interest.

[1] Claimant Pre-Hearing Brief, p. 8.
[2] FIE Ethical Code, Appendix 1, Rule 4.1, See also *Vanakorn v. FIS,* CAS 2014/A/3832.
[3] In its Pre-Hearing Brief, Respondent argued for the first time that the allegations of Claimant were more properly a Section 10 Complaint, and not a Section 9 Complaint as the alleged failure to act by USAF contemplated a claim that it failed to meet its responsibilities as an NGB. The Arbitrator notes that no party objected to his jurisdiction at the outset of this proceeding and since this Complaint at core is about Olympic Selection it is properly a Section 9 matter.

On June 18, 2024, the Parties, through counsel, presented for a telephonic pre-hearing conference. During the pre-hearing conference, Mr. Doddo was represented by Jared Vasilauskas of Power & Cronin, Ltd., USFA was represented by Stephen A. Hess of the Law Office of Stephen A. Hess, P.C. Affected Athlete Mr. Saron was represented by William Stute and John Badalich of Orrick, Herrington & Sutcliffe, LLP. Affected Athlete Mr. Dolegiewicz did not appear or send counsel in their stead. The Parties agreed to conduct the evidentiary hearing on June 21, 2024, beginning at 9:00 a.m. CT.

On June 19, 2024, Respondent filed its Motion to Dismiss alleging the Claimant's Complaint was time-barred. On June 20, 2024, Claimant filed a Memorandum in Opposition to Motion to Dismiss. On June 20, 2024, Mr. Saron joined in Respondent's Motion to Dismiss.

On June 20, 2024, the Arbitrator denied Respondent's Motion to Dismiss and ordered the parties to prepare for the evidentiary hearing to be held the next day.

The evidentiary hearing was held via Zoom conference on June 21, 2024, commencing at 9:00 a.m. CT and concluding at approximately 4:00 p.m. CT. During the hearing, Mr. Doddo appeared along with his counsel, Jared Vasilaukas and Michael Viverito, USFA appeared through its representatives, Phil Andrews and Christina Pachuta, and its counsel, Stephen A. Hess, and Mr. Saron appeared along with his counsel, William Stute and John Badalich, Mr. Dolegiewicz appeared *pro se*. In addition to the Parties and counsel, the following individuals attended the videoconference hearing as observers: Aaron Mojarres (USOPC Office of the Ombuds, Senior Associate Athlete Ombuds), Lucy Denley (USOPC, Associate Director of Dispute Resolution), Amanda Vaughan (USOPC, Compliance Director), Sarah Brown, (USOPC Legal Department Paralegal), and Anthea Spires (New Era ADR, Client Success Manager). At the conclusion of the hearing, the Parties confirmed they were provided with 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. The Arbitrator closed the hearing record at approximately 4:00 p.m. CT.

On June 24, 2024, the Arbitrator issued the Operative Award (Corrected) without reasons by email as follows:

> *I, THE UNDERSIGNED ARBITRATOR, having been designated by New Era ADR, and in accordance with the Ted Stevens Olympic and Amateur Sports 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 heard and considered the arguments of the parties and their counsel during an approximately six-hour hearing held on June 21, 2024, and considered their written submissions, exhibits, and legal authorities, hereby awards as follows:*
>
> a. *Claimant's requested relief is DENIED (the reasoned decision will follow in due course);*
>
> b. *The parties shall bear their own attorney's fees and costs associated with this Arbitration;*

c. *The administrative fees of New Era and the compensation and expenses of the Arbitrator shall be borne by the parties as incurred; and*

d. *This Award shall be in full and final resolution of all claims and defenses submitted to this Arbitration. The Arbitrator has considered all the arguments made by the parties, whether they are specifically referenced in this Award. All claims not expressly granted herein are hereby denied.*

IT IS SO AWARDED.

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. Claimant

Mr. Doddo submitted exhibits labeled A-EE and such exhibits included the following:

1. USA Fencing Code of Conduct
2. Administrative Rules of FIE
3. Olympic Movement Code on Prevention of Manipulation
4. USA Fencing Investigation Announcement
5. Phil Andrews Letter to Investigators
6. USA Fencing Referee Suspension Announcement
7. Letter to USA Fencing Board
8. FIE Technical Rules
9. Mitchell Saron Bio
10. Alleged Conflicts of Stetsiv and Milenchev
11. USA Fencing Referee Comparison
12. Saron Results by Referee
13. Reisenger Email to Athletes and Coaches
14. Andrews December 18, 2023 Letter to Saron
15. Saron Pool Results
16. USOPC Bylaws
17. Kleiner June 7, 2024 Letter to Arias
18. Doddo Section 9 Complaint
19. Irregularity Explanation Video
20. Milan P64 Bout Video
21. Yang v. Fig Decision
22. Beaman v. USA Shooting Decision
23. KOC v. ISU Decision
24. Competition Manipulation Regulations
25. CAS Jurisprudence Discussion
26. Text Messages to Spencer-El
27. Text Messages from Reisenger
28. Saron Referee Frequency

29. Stetsiv Affiliation Document
30. Anderson v. USA Boxing Decision
31. USFA Selection Procedures
32. Rauz v USA Wrestling Decision
33. Order on Mitchell Motion to Dismiss
34. Beaman v. USAS Decision
35. Ramirez v US Judo Decision

Mr. Doddo called the following witness at the evidentiary hearing who were sworn in and provided testimony under oath:

1. Andrew Doddo
2. Monica Aksamit

B. Respondent

USFA submitted exhibits labeled R-1 to R-13 and R-16 to R-17, R-23 to R-36 and such exhibits included the following:

A. FIE Statutes
B. FIE Technical Rules
C. USOPC Bylaws
D. USA Fencing Bylaws
E. USA Fencing Hearing Procedures
F. USA Fencing Athlete Selection Procedures
G. USA Fencing Athlete Handbook
H. Several Competition videos
I. Summary Report of Stephen G. Bronars
J. Edgeworth Report
K. Chart Detailing Milenchev Presence in Direct Elimination Events
L. 2023 USA Fencing Rolling Points Standings

USFA called the following witness at the evidentiary hearing who were sworn in and provided testimony under oath:

1. Phil Andrews
2. Stephen G. Bronars, Ph.D.
3. Eli Dershwitz

C. Affected Athletes

Neither Mr. Saron nor Mr. Dolegiewicz submitted exhibits. Mr. Saron called the following witness at the evidentiary hearing who was sworn in and provided testimony under oath:

1. Mitchell Saron

Mr. Dolegiewicz attended, was sworn in and provided testimony under oath on his own behalf.

III. Notice to Affected Athletes

Prior to the hearing, the Parties agreed that Mr. Saron and Mr. Dolegiewicz were the only affected athletes and therefore no additional notice was required. Both were present at the hearing and provided testimony.

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 must provide:

> [A]n 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."

At the outset of the evidentiary hearing the Arbitrator asked if any party objected to his exercise of jurisdiction to adjudicate this Section 9 matter. No party objected.

V. Standard of Review and Burdens of Proof

Professor Mitten sets forth the appropriate Section 9 jurisprudence governing the standard of review in *Lui and USA Table Tennis Ass'n, Inc. and Tio*, AAA Case No. 01-19-0001-4377 (June 20, 2019) (Matthew J. Mitten, Arbitrator):

> In a Section 9 team selection dispute, it is well established that the athlete has the burden of proving by a preponderance of evidence a claimed denial of a fair opportunity to compete for selection as a member of a team that will participate in a "protected competition". . . *Tibbs v. United States Paralympics*, AAA Case No. 71 190 E 00406 12 at 14 (August 28, 2012) (citing several prior Section 9 awards). "Section 9 jurisprudence requires [the Claimant] to prove [the National Governing Body (NGB)] breached its approved and published Athlete Selection Procedures for the [protected competition], applied them inconsistently to athletes similarly situated, acted in bad faith towards or with bias against [her], and/or violated applicable federal or state laws (e.g., Ted Stevens Olympic and Amateur Sports Act). *Id*.
>
> "It is well accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is *de novo*. Section 9 proceedings are not appeals of NGB decisions and there is no requirement for an arbitrator in these proceedings to give deference to any prior decision and in fact it would be incorrect to do so."[4] "In exercising *de novo* review in a team selection dispute, the arbitrator ensures that: (1) the athlete is

[4] *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014), quoting *Craig v. USA Taekwondo, Inc*., AAA Case No. 77 190E 00144 11 at p. at 5. (August 21, 2011).

> 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."[5] *see also Wright v. Amateur Softball Assn., AAA Case No. 301900046602* (Jan 23, 2003)("an arbitrator must not disturb the selections by the [NGB] unless the arbitrator finds that the body abused its discretion in the selection process").

As Arbitrator Dennie states in *Anderson v. USA Boxing, New Era Case No. 24011101*(January 19, 2024):

> The arbitrator must determine whether [the NGB] 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 [the NGB] 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 [the NGB] chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of [the NGB] in establishing the Selection Procedures.

This Arbitrator is cognizant of the well-established principle that an Arbitrator must not substitute the Arbitrator's assessment of performance for that of the NGB experts who are involved in the decision making. Instead, a reviewing Arbitrator must make a *de novo* review, with no deference, of the application of the published selection procedures to the facts of the individual case.[6]

In this case, Mr. Doddo does not contend that the selection criteria were facially defective. Nor does Claimant argue that Respondent incorrectly applied the selection criteria in a manner which was erroneous, or arbitrary and capricious. Instead, Claimant argues that Respondent should have declined to consider certain of Mr. Saron's competition results which Mr. Doddo believes were arrived at through fraudulent means. His argument most closely aligns with the "unreasonable" or "bad faith" standards described *supra.*

CAS jurisprudence has established that International Federations may determine the burden of proof to be applied in match-fixing cases. In the absence of such a designation the CAS applies the

[5] *Liu v. USA Table Tennis, Inc*., AAA Case No. 01-19-0002-0105 (June 20, 2019).
[6] *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

standard of "comfortable satisfaction."[7] In the case at bar, the FIE has established the appropriate burden of proof to be followed. The FIE Statutes state that "[t]he FIE or other prosecuting authority shall have the burden of proving that a violation has occurred under these Rules. The standard of proof shall be whether the FIE or other prosecuting authority has proved a violation to the comfortable satisfaction of the Disciplinary Panel, a standard which is greater than the mere balance of probability but less than proof beyond a reasonable doubt."[8] The parties and the Arbitrator agreed at the evidentiary hearing that it was Mr. Doddo's burden to prove to the Arbitrator's comfortable satisfaction that match-fixing had occurred in order to avoid the strictures of the Field of Play Doctrine.

VI. Selection Procedures

USFA is recognized by USOPC as the National Governing Body ("NGB") for the sport of fencing in the United States. USFA is granted the authority and responsibility 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 (in protected competitions).[9] In accordance with Section 8.4.1(d) of the USOPC Bylaws, NGBs must establish clear procedures approved by the USOPC and timely disseminate such procedure to the athletes and team officials.

USFA created and published certain policies and procedures (which were approved by USOPC) to govern selection of athletes for selection to the Games of the XXXIII Olympiad (Paris 2024).[10] The procedures (in pertinent part) provide:

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 selection.

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 Games must be a national of the country of the National Olympic Committee (NOC) 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).

[7] See CAS Bulletin 1/2014, Efraim Barak & Dennis Koolaard, pp. 9-16.
[8] FIE Ethical Code, Appendix 1, Rule 4.1.
[9] 36 U.S.C § 220523(a)(5-6)
[10] Exhibit R-7.

1.1.3. Minimum International Federation (IF) standards for participation (if any):

- All athletes must comply with the Athlete Eligibility requirements as set forth in Section C of the Qualification System – 2024 – International Fencing Federation (FIE) – Fencing guide found HERE.

1.1.4. Other requirements (if any):

- Athlete must be a current member of USA Fencing and in good standing at the time of selection.
- Athlete must successfully complete all Games Registration requirements by stated deadline.
- Any athlete age 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:

The Qualification System – 2024 – International Fencing Federation (FIE) – Fencing guide can be found HERE.

The information below describes how USA Fencing will select athletes to fill the quota places for each weapon Team qualified as described in the Qualification System.

Should USA Fencing fail to qualify a weapon Team as described in the Qualification System, individual athletes can qualify by name as described in the Qualification System (individual qualification).

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

Designated events will be listed in the 22/23 & 23/24 Designated International Calendars when international calendars are available (likely Summer, 2023).

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

The top 12 athletes on each USA Fencing National Points standings list as of the regular entry date will be selected for each competition. A full explanation of this selection process can be found in Chapter 4 of the USA Fencing Athlete Handbook.

1.3. Step-by-step description of the selection process for these Games (include maximum Team size):

The selection criteria for each weapon is posted HERE. The top three (3) athletes on the National Senior Team Point Standings for each weapon as of the selection date will be nominated to the 2024 Olympic Team for the individual and team competitions.

The athlete ranked fourth on the National Senior Team Point Standings for each weapon as of the selection date may be nominated to the 2024 Olympic Team as the Replacement Athlete in the team event only.

The National Coach may propose an alternate Replacement Athlete within 10 business days of the selection date.

. . . . . .

3. REMOVAL OF ATHLETES

3.1 Prior to submitting athlete entries to the USOPC, USA FENCING has jurisdiction over potential nominees.

An athlete who is nominated to the Team by USA FENCING may be removed for any of the following reasons, as determined by USA FENCING:

- Voluntary withdrawal. Athlete must submit a written letter to USA FENCING CEO/Executive Director.
- Injury or illness as certified by a physician (or medical staff) approved by USA FENCING. If an athlete refuses verification of his/her illness or injury by a physician (or medical staff) approved by USA FENCING, his/her injury will be assumed to be disabling and he/she may be removed.
- Failure to participate in Mandatory Training and/or Competition as defined in Section 9 of these procedures.
- Violation of the USA Fencing's Code of Conduct.

An athlete who is removed from the Team pursuant to this provision has the right to a hearing per USA Fencing's Bylaws, Section 7.81 and the USOPC Bylaws, Section 9.

VII. Legal Analysis

The Arbitrator considered all evidence, testimony, arguments and exhibits submitted by the parties. After consideration of the evidence the Arbitrator makes the below findings and conclusions based upon the appropriate standards of review.

Claimant identifies the World Cup Budapest March 24-26, 2023 (Budapest, Hungary), World Cup Madrid May 12-14, 2023 (Madrid, Spain), World Championships Milan July 22-30 (Milan, Italy), Grand Prix Nuoma, December 7-8, 2023 (Orleans, France) as the "protected competitions" that are the subject of his Section 9 Complaint.[11]

Claimant asked the Arbitrator to order the removal of Mr. Saron's allegedly corrupted qualification points and order USFA to include him on the Paris saber squad. His contention is that the evidence provided demonstrates to the comfortable satisfaction of the Arbitrator that only through match-fixing/result manipulation was Mr. Saron able to achieve the necessary points to qualify for the Olympic team. Mr. Doddo argues that allegedly manipulated referee assignments, which placed Milenchev too frequently in Mr. Saron's bouts, coupled with the fact that Milenchev and Stetsiv are acquainted or associated, should convince the Arbitrator to his comfortable satisfaction that match-fixing has occurred. The Arbitrator does not agree.

The Field of Play Doctrine

Claimant made clear that it was not his intention to challenge individual "calls" made by Milenchev during the bouts in question. His contention is that all the contested bouts listed above, in which Milenchev officiated Mr. Saron, should be determined by the Arbitrator to be corrupt. By styling his argument in this fashion he seeks to avoid the strictures of the Field of Play Doctrine which generally holds that a referee's discretionary decisions in most instances are final and unappealable after the conclusion of a competition.

Section 9.12 of the USOPC Bylaws sets forth the Field of Play Doctrine in pertinent part:

> 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.

USFA's Grievance and Discipline Committee Complaint and Hearing Procedures Section 7 (Feb 16, 2023) states similarly:

> The final decision of a referee or other competition official during a competition and within the purview of The Rules of Competition shall not be reviewable through, or the subject of, these Complaint and Hearing Procedures unless the decision is alleged to be the product of fraud, corruption, partiality or other misconduct of the official. For purposes of this Section, the term "official" shall include all individuals designated as officials under The Rules of Competition.

[11] Exhibit L.

In the decisions applying the Doctrine, arbitrators are cautioned not to disturb a referee's decisions, even when the arbitrator believes they were incorrect, except where the evidence demonstrates that those decisions are the product of prejudice or fraud.[12] In fact, it is a bedrock principle of the *lex sportiva* that for an arbitrator to disturb a referee's decision "there must be evidence, which generally must be direct evidence of bad faith."[13] As the Arbitral Panel states in *Korean Olympic Committee v. ISU*, "[t]he Panel accepts that this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision." CAS OG 2/2007 (2002) at p. 5.

Precedent permits an Arbitrator to consider overturning the results obtained in the challenged bouts but only upon a demonstration to their comfortable satisfaction that the result in question was arrived at through fraud, corruption, partiality or other misconduct. As Claimant has alleged that the results at issue were earned through corruption, the Arbitrator will examine each of Claimant's contentions to see if they meet the comfortable satisfaction standard and avoid the strictures of the Field of Play Doctrine.

Referee Assignment as Alleged Evidence of Match-Fixing

As a preliminary matter, Mr. Doddo, Mr. Saron, and Mr. Dershwitz all testified that Milenchev is one of the best, if not the premier saber referee in the world. Mr. Saron and Mr. Dershwitz testified that Milenchev is fair and knowledgeable in his application of the rules of the sport to competitions.

In his witness testimony Mr. Doddo stated (and presented documentary evidence that he created) that Mr. Saron's results, obtained immediately before and during the selection period, were anomalous. He argued that in those selection events in which Mr. Saron achieved the highest point totals, Milenchev officiated. Mr. Doddo contended that Mr. Saron's point totals were substantially higher in bouts in which Milenchev was the referee and his "too frequent" appearances as referee in Mr. Saron's bouts are evidence of match fixing. Mr. Doddo also testified that it was not uncommon for the same referee to be repeated in a competition. He testified that when one competes in the Direct Elimination ("DE") rounds, the number of referees qualified to officiate those bouts is smaller so it is likely that the same referee may officiate multiple bouts for the same fencer.

Mr. Doddo (who is admittedly not an expert in statistical analysis) provided the Arbitrator with a chart he created by gathering data from the FIE and USFA websites.[14] This chart, he argued, demonstrates that before and during the Olympic qualification period, Milenchev was too frequently assigned to Mr. Saron's bouts both in the pool rounds and the later DE rounds. Mr. Dershwitz testified that there were valid reasons why a particular referee would appear frequently in competitions, particularly in the DE rounds. Similarly to Mr. Doddo, Mr. Dershwitz stated that the cohort of elite fencing referees was so small that it was reasonable

[12] *NAOC v. IAAF & USOC* CAS 2008/A/1641 (2009); Yang Tae Young v. FIG, CAS 2004/A/704 (2004).
[13] *Korean Olympic Committee v. ISU*, CAS OG 2/2007 (2002).
[14] Claimant's Exhibit L.

for a top referee like Milenchev to appear frequently as a referee, particularly in the DE bouts.

Mr. Doddo's chart omits some relevant data. In the pool matches in which he lists Milenchev as the referee, the chart fails to show that there are generally <u>two</u> pool referees who share the responsibility for refereeing the six bouts that constitute a match in the pool round. In each of the pool rounds cited, Milenchev was a referee, but not the only referee to officiate Mr. Saron's bouts. Mr. Dershitz and Mr. Saron testified that routinely the referees divide responsibility for officiating the six pool bouts in an alternating fashion (2 x 2 x 2). Mr. Doddo admitted that he did not have any evidence that in the case of the contested pool results, there was a deviation from this practice (i.e. that Milenchev refereed all six bouts in the challenged pool matches). Mr. Saron testified to the contrary that in all the pool bouts cited by Mr. Doddo, he was refereed in alternating fashion by Milenchev and a 2nd referee, as is customary.

Mr. Doddo also provided a chart which purports to demonstrate that Milenchev's repeated assignment as a referee in Mr. Saron's pool bouts is a statistical anomaly.[15] Mr. Doddo contended that Milenchev's frequent appearance as a referee in Mr. Saron's bouts can only have been explained by manipulation of the supposedly random referee pool. Mr. Doddo testified to his understanding that referees are assigned randomly but that Milenchev, as a senior referee, could choose to officiate a particular bout thus overruling the random nature of selection. Mr. Doddo provided no evidence to demonstrate that in Mr. Saron's contested bouts Milenchev or another party had overruled this random selection process to install Milenchev as referee.

Mr. Doddo admitted that he had no direct evidence to prove that but for Milenchev's assignment to particular bouts, Mr. Saron would not have won those bouts. Instead, he pointed to what he believes to be statistical anomalies in the referee assignments alone as evidence of match fixing. Notably however, at the July 22, 2023, Worlds Milan, which occurred during the selection period, Milenchev did not officiate Mr. Saron's pool round yet Mr. Saron made it to the DE rounds nevertheless. While Milenchev did officiate the first DE bout that day, he did not officiate the final DE bout. At Milan, Mr. Saron scored 1200 qualifying points which is a significant tournament result. Mr. Doddo neither argued, nor presented evidence that the other referees were somehow complicit in the alleged match-fixing in Milan. A similarly plausible explanation for Mr. Saron's success in that tournament is that he fenced particularly well, and no manipulation of results occurred.[16][17]

Mr. Doddo testified that but for Mr. Saron's result at the WC Budapest (at which Milenchev refereed several of his bouts), Mr. Saron would not have qualified for GP Seoul which was the first event during the qualification period. However, Mr. Saron testified that even with the

[15] Claimant's Exhibit V.

[16] Mr. Doddo also admitted that Mr. Saron made a top 16 in a recent world cup in Korea where Milenchev did not appear. This result was outside of the Olympic qualification period.

[17] Mr. Doddo provided a video recording of one of Mr. Saron's bouts from the Milan tournament at which Mr. Saron was refereed by a referee other than Milenchev as Exhibit M. In the video, a person identified as Milenchev approaches the officiating referee and speaks with him during a pool bout. Mr. Doddo contends that Milenchev's actions violate the FIE Rules and in Mr. Doddo's estimation, that conversation results in the referee beginning to award points to Mr. Saron inappropriately. While it does appear Milenchev violated FIE rules by entering the piste, the video lacks audio, so it is speculation as to what Milenchev said and whether that conversation altered the referee's point allocation.

results achieved at that event, he would not have been invited to compete at Seoul unless another higher-ranked fencer had been injured. Only this unfortunate occurrence permitted Mr. Saron's entry into that qualification period event in Seoul. That testimony was uncontested.

Mr. Doddo also testified that after the selection period closed, Mr. Saron's point totals dropped dramatically in bouts not refereed by Milenchev. Mr. Saron testified that from GP Tunis onward, he sustained a hand injury which did not permit him to perform to the best of his abilities. And, significantly, in the May 2024 Madrid tournament in which Milenchev did not appear, and after Mr. Saron testified that his thumb injury had healed, Mr. Saron finished in twelfth place. Mr. Doddo acknowledged that to be an excellent result and congratulated Mr. Saron for his success in that tournament.

USFA provided the testimony of Mr. Stephen Bronars who had been retained to conduct a statistical analysis of the Saron matches featuring Milenchev in May of 2024, prior to the filing of this Section 9.[18] Mr. Bronars testified that he built a statistical model which examined a generic fencer's improvement from his pre pool competition seeding and his post pool competition rank. When he compared the generic result to the results achieved by Mr. Saron in those events refereed by Milenchev, he did not find a significant statistical difference from what his model predicted vs. Mr. Saron's post-pool ranking.

Mr. Bronars testified that Mr. Saron's likelihood of seeing Milenchev in a pool round was not statistically significant from the pre-qualification period to the Olympic qualification period. He also corroborated the lay testimony of the athletes that statistically it was more likely that earning more points in the pool round would lead to an increased likelihood that one would encounter Milenchev, a senior referee, in DE rounds as one kept progressing in a tournament.[19] Mr. Bronars did not attempt to model the DE rounds nor did he possess data which permitted him to analyze the randomness of referee assignments in the pool round.

Mr. Bronars testified that there was no doubt that Mr. Saron did well when Milenchev appeared in his bouts but that in his expert opinion there were other explanations available for that success besides match fixing or results manipulation. He indicated that Mr. Doddo's lay observation without a deeper statistical analysis (which was not performed by the Claimant) may have demonstrated a correlation between Milenchev's appearances and Mr. Saron's better results but did not establish causation. The Arbitrator agrees.

Alleged Conflicts of Interest due to Acquaintance/Association

Mr. Doddo also argued that the fact that Milenchev and Mr. Saron's coach Oleg Stetsiv are acquainted and/or have attended or taught seminars at the Nazlymov fencing school is evidence that calls into question the fairness of Milenchev officiating Mr. Saron's bouts. All parties acknowledge that these men were acquainted as an elite referee and elite coach. When asked of any connection between Milenchev and Stetsiv, Ms. Aksamit quite logically reported that at the FIE elite level, "all the coaches know all the referees." Mr. Dershwitz testified that in FIE sanctioned competitions at the international level the community is not large enough to

[18] Exhibit R33.
[19] Id., ex. 1.

avoid the perception of conflicts of interest as many of the elite level coaches and referees have been friends and competitors for many years.

Mr. Doddo testified that in his opinion, it was well known that FIE referees sometimes favor fencers based upon factors such as national origin. Mr. Dershwitz testified to his observation that in some cases, based upon what he styled as the political connections/country of origin of larger more powerful nations, a fencer might get more leeway in violation of competition rules.[20] He contended that those fencers might be given more latitude to behave in a manner that might otherwise result in a yellow or red card if that conduct was demonstrated by a fencer from a less powerful nation.

Mr. Doddo and Ms. Aksamit testified that Stetsiv appeared in a social media post attending an event at the Nazlymov fencing academy.[21] Mr. Doddo argued that he suspected that both Milenchev and Stetsiv were paid for those appearances by the club but there is no evidence in the record to that effect. Even if true, the Arbitrator cannot agree that two individuals being paid for services rendered by a third party constitutes a conflict of interest that would require Milenchev to decline to officiate Stetsiv's athlete.

The FIE Statutes are instructive in this regard. As regards referees and judges, the FIE Ethical Code describes situations in which a referee must avoid assignments. In sum, referees must not be involved in a specific bout in which they have a perceived or actual conflict of interest with a participant. Those conflicts are defined thusly:

> Conflict of interest shall mean any situation where a conflict exists between the duties and the private interests of a referee . . . in which s/he has a direct or indirect private interests (sic) that affect, might affect, or seem to affect the performance of, in an incorrect way, the referee's . . .responsibilities as a referee.[22]

The Ethical Code goes on to give examples of potential conflicts to be avoided. Conflicts might include:

> **Category A Conflicts**:
>
> The referee or judge has or has had the same nationality of an Affected Party. An Affected Party would include a fencer in the bout as well as the trainers or national coaches of such fencer.
>
> The referee or judge has or has had a domicile in the country within the last five (5) years of a country of any Affected Party.

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[20] The Arbitrator notes the opinion presented by Mr. Dershwitz that he had encountered many instances where he disagreed with Milenchev's rulings on points to be awarded in a bout. Mr. Dershwitz's comment that Milenchev was one of the few referees in the world to whom he would defer in the instance of a conflict was compelling. Similarly, Mr. Saron contended that he often disagreed with referees officiating his events. Such is the nature of judged sport.

[21] Exhibit W.

[22] FIE Statutes Chapter XII, Section 3.

The referee or judge is or has been employed by an Affected Party within the last five (5) years.

The referee or judge is or used to be a relative or partner of an Affected Party.

The referee or judge has or used to have a fencing relationship with an Affected Party, including but not limited to coach, captain, chief of mission, within the last five (5) years.

Category B Conflicts:

Any of the Category A Conflicts has occurred more than five (5) years of the date of the competition.

The referee or judge has other relationships with an Affected Party.

No evidence was presented to the Arbitrator that demonstrated that Milenchev has a relationship with Mr. Saron who in this action would be the "Affected Party." Mr. Doddo alleged only a relationship between Milenchev and Stetsiv which would not run afoul of even FIE's Category B conflicts example. The evidence that Milenchev and Stetsiv knew each other (as is common in elite sport) and may have been paid for services by a common third party is in the Arbitrator's estimation not the type of conflict that would raise to the level of even a Category B conflict.

Further, as to the argument of favoritism based upon friendship or national origin, Mr. Andrews and Mr. Dershwitz testified that some referees favor a particular style of saber combat. Both agreed that Milenchev tended to favor a more aggressive style of attack and that Mr. Saron's style could be characterized as aggressive.[23]

Finally, while not strictly necessary to prove corruption, Mr. Doddo offered no evidence to the Arbitrator which demonstrated method or motive to conspire to fix the matches in question. There was no evidence presented of exchange of funds or favors as consideration for Milenchev risking his international reputation and potential criminal exposure to assist Mr. Saron.[24] Mr. Doddo testified that apart from the statistical analysis he provided, and the aforementioned social media photographs, that he didn't have "any hard evidence of Milenchev taking money or anything of that caliber." That type of evidence would of course have been compelling had it been presented.

Arbitrator Dennie encountered similar claims in *Rau v. USA Wrestling Assn*., AAA Case No. 01-21-0003-7287 (June 1, 2021). In *Rau*, the Claimant sought to avoid the restrictions of the Field of Play Doctrine by contending that the official in that case was not impartial. *Rau* argued that both the referee in that case and Rau's competitor Stefanowicz shared a

[23] Notably, another US Fencer, Mr. Colin Heathcock also received significantly higher scores in bouts where Milenchev was officiating. There is no allegation in this forum that those results were achieved as the result of fraud.

[24] Swiss law, to which FIE is subject, permits prosecution of match-fixing under the Swiss criminal code as influenced by the Macolin Convention. Exhibit EE, The Court of Arbitration for Sport Jurisprudence on Match Fixing: A Legal Update, March 17, 2021 The International Sports Law Journal, vol 21, pp. 27-46.

connection to the All-Marine Wrestling Team and that fact demonstrated bias on the part of the referee. Arbitrator Dennie determined in that case that connection to be too far attenuated to establish bias without more direct evidence. In this matter, Mr. Saron's relationship with Milenchev is even more attenuated than was demonstrated in *Rau*. Without direct evidence of a scheme or agreement between Stetsiv and Milenchev to favor Mr. Saron, the acquaintance evidence presented here is insufficient to bolster Mr. Doddo's statistical analysis argument.

It is unclear to the Arbitrator why Mr. Doddo waited until the close of the qualification period and after the saber team was nominated, to formally challenge Milenchev's alleged misconduct in this Section 9 proceeding. Mr. Doddo testified that during the qualification period he suspected that Milenchev was bestowing an unfair advantage on Mr. Saron. However, there is no evidence in the record that Mr. Doddo personally took advantage of the formal FIE procedures designed to investigate claims of match-fixing or other forms of corruption. According to FIE Statute 7.2.1 "[a]ny person … if they are personally a victim of one of the offenses enumerated above in Article 7.17 (e.g. corruption, attack on sporting morals or ethics) can present a complaint before the Disciplinary Tribunal."

If any FIE member, including Mr. Doddo, had concerns about potential fair play issues, the appropriate venue to surface those concerns was the FIE. None of the athletes who testified at the hearing, while suspecting that Milenchev (and indeed other un-named fencing officials) were either unduly influencing the referee assignments or manipulating bout results in some fashion, ever filed any type of formal protest with FIE's ethics committee as was their absolute right.

In sum, the evidence presented by Claimant simply lacks sufficient persuasive weight to grant the relief sought. The claimed referee assignment anomalies are otherwise explainable by statistical analysis. Mr. Saron had success in tournaments during and after the qualification period in events in which Milenchev did not appear. No evidence was entered into the record as to whether and/or how the referee assignments were influenced by outside forces. Further, the alleged association evidence is not compelling. In small sports such as fencing, as Mr. Dershwitz and Ms. Aksamit testified, it is virtually impossible to avoid the appearance of conflicts of interest as elite referees and coaches are acquainted. In *toto,* the evidence presented failed to meet the comfortable satisfaction standard and for that reason the Arbitrator is compelled to respect the restrictions of the Field of Play Doctrine. The results of the challenged protected competitions shall not be disturbed. The relief sought by Mr. Doddo is denied.

VIII. Decision

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

1. All of Claimant's claims and requested relief are denied;

2. The parties shall bear their own attorney's fees and costs associated with this Arbitration;

3. The administrative fees of New Era ADR and the compensation and expenses of the Arbitrator shall be borne by the parties as incurred; and

4. This Award shall be in full and final resolution of all claims and defenses submitted to this Arbitration. The Arbitrator has considered all the arguments made by the parties, whether they are specifically referenced in this Award. All claims not expressly granted herein are hereby denied.

Hon. M. Alex Natt
Arbitrator

Date:

July 24, 2024