

NEW ERA ADR

Case No. 24040501

In the Matter of the Arbitration between

NIKOLAUS MOWRER, Claimant

and

USA SHOOTING, Respondent

and

RYLAN KISSELL and IVAN ROE, Affected Athletes.

FINAL REASONED 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 fully considered the Claimant's Complaint and Demand for Arbitration; Claimant's, Respondent's and the Affected Athletes Prehearing Briefs, exhibits, legal authorities and arguments, and witness testimony during an approximately six-hour video hearing on July 5, 2024, do hereby Award as follows:

THE PARTIES

Claimant Nickolaus "Nick" Mowrer was a member of the pool of athletes competing for a position on the U.S. 2024 Olympic shooting team.

Respondent USA Shooting is the National Governing Body (“NGB”) for Olympic shooting, authorized to nominate athletes to the U.S. Olympic and Paralympic Committee (“USOPC”) to represent the United States in Olympic competition, and to draft and disseminate Olympic selection procedures pursuant to 32 U.S.C. §§ 220502(3) and (4), 220523(a)(5-6) and 220524(a)(4).

Rylan Kissell was a member of the pool of athletes competing for a position on the U.S. 2024 Olympic shooting team and was named to that team in the air rifle event. Pursuant to § 9.7 of the USOPC Bylaws, Mr. Kissell was identified by the Arbitrator as an Affected Athlete whose interests might be adversely affected by this proceeding.

Ivan Roe was a member of the pool of athletes competing for a position on the U.S. 2024 Olympic shooting team and was named to that team in the smallbore rifle event. Pursuant to § 9.7 of the USOPC Bylaws, Mr. Roe was identified by the Arbitrator as an Affected Athlete whose interests might be adversely affected by this proceeding.

Alexis Lagan, Sagen Maddalena and Katelyn Abeln were also members of the pool of athletes competing for positions on the U.S. 2024 Olympic shooting team and were named to that team. Pursuant to § 9.7 of the USOPC Bylaws, Ms. Lagan, Ms. Maddalena and Ms. Abeln were identified by the Arbitrator as Affected Athletes whose interests might be adversely affected by this proceeding. They were provided with the opportunity to participate in this proceeding but declined to do so.

PROCEDURAL BACKGROUND

On July 1, 2024, Mr. Mowrer submitted his Complaint and Demand for Arbitration, which was not resolved. Mr. Mowrer asserted that USA Shooting deprived him of the opportunity to participate in the 2024 Olympic smallbore rifle shooting event when it allowed Ivan Roe to accept the smallbore rifle quota spot after he had previously qualified for the air rifle quota spot. Mr. Mowrer asserted that Mr. Roe should be placed in the air rifle quota spot in place of Rylan Kissell, and that Mr. Mowrer should be placed in the smallbore quota spot.

On July 3, 2024, the Arbitrator was appointed by New Era ADR and a Pre-Arbitration Conference was convened via Zoom. Present at that Conference were the Arbitrator, Mr. Mowrer's attorney Matthew Kaiser, Esq., USA Shooting's attorney Stephen Hess, Esq., USOPC Athlete Ombuds Emily Azevedo and New Era ADR Client Success Manager Anthea Spires. At that Conference, with the agreement of the parties and pursuant to Rule 16 of the U.S. Olympic and Paralympic Movement Arbitration Rules, the Arbitrator directed that: (a) Mr. Mowrer file his Prehearing Brief, exhibits and witness list by 8:00 a.m. EDT on July 4, 2024 via the New Era ADR platform; (b) USA Shooting and any Affected Athlete file their Prehearing Briefs, exhibits and witness lists by 4:00 p.m. EDT on July 4, 2024 via the New Era ADR platform; and (c) an Arbitration hearing on this matter be convened on July 5, 2024 beginning at 10:00 a.m. EDT via Zoom. The Arbitrator also determined that Messrs. Kissell and Roe, and Mss. Lagan, Maddalena and Abeln were Affected Athletes and directed that they be immediately notified of these filing deadlines and invited to participate in the hearing. That notice was delivered immediately after the Conference concluded.

Accordingly, on July 5, 2024, a Zoom video hearing was held in this matter beginning at 10:00 a.m. EDT and ending at approximately 4:00 p.m. EDT. In attendance were: the Arbitrator, Mr. Mowrer and his counsel Matthew Kaiser, Esq. accompanied by Madeline Maday; USA Shooting's counsel Stephen Hess, Esq. and Laura Peeters, Esq.; USA Shooting CEO Kelly Reisdorf; USA Shooting consultant Les Gutches; Affected Athlete Rylan Kissel and his counsel April Stone, Esq. and Matt Levin, Esq., accompanied by Anna Hong and Gabriel Rivas; Affected Athlete Ivan Roe; and USOPC Athlete Ombuds Emily Azevedo. The remaining Affected Athletes, Alexis Lagan, Sagen Maddalena and Katelyn Abeln did not appear.

Opening Statements were presented by Mr. Kaiser, Mr. Hess and Ms. Stone. Sworn witness testimony was presented by Mr. Mowrer, Stephen Schammel (member of the USA Shooting 2024 Olympic selection committee), Mr. Roe, Peter Durben (USA Shooting National Rifle Coach), and Kelly Reisdorf (USA Shooting CEO). All participating parties were given the opportunity to question all witnesses, and all offered

exhibits were allowed into evidence without objection. Closing Statements were presented by counsel for Mr. Mowrer, USA Shooting and Mr. Kissell. Mr. Roe declined to present either an Opening or Closing Statement. At the conclusion of the hearing, all participating parties acknowledged that they had received a full and fair opportunity to be heard, and the Arbitrator closed the Arbitration.

The Arbitrator issued an Operative Decision on July 6, 2024, denying Mr. Mowrer's claims and request for relief.

JURISDICTION

The Arbitrator has undisputed jurisdiction to resolve this dispute, pursuant to 36 U.S.C. §§ 220529(a) and 220522(4)(B), and §§ 9.1 and 9.2 of the USOPC Bylaws, and because Mr. Mowrer alleges that he was deprived of a participation opportunity at the 2024 Olympic Games, a "protected competition" under § 1.3(l) and (x) of those Bylaws.

UNDISPUTED FACTS

The July 27, 2023 USA Shooting Athlete Selection Procedures, 2024 Olympic Games, Rifle/Pistol (the "Selection Procedures") (§ 1.2.1) identified three Ranking Matches to be used as part of the selection process:

Ranking Match 1 – USA Shooting Fall Trials – September 28- October 3, 2023 - Fort Moore, GA

Ranking Match 2 – Winter Airgun & Smallbore Trials – Winter 2023 - Location TBA (Intent is Indoor for all competitions)

Ranking Match 3 – USA Shooting Spring Trials – Late Winter/Early Spring 2024 – Location TBA (Intent is outdoor for Smallbore competitions) Intent is to complete with enough time to allow any athlete the ability to get ISSF ranking matches prior to Olympic Nomination Deadline. Potential for Ranking Match 3 to have separate dates/locations for Air and Smallbore competitions.¹

The "step-by-step description of the selection process for these Games" was set out in the Selection Procedures as follows:

¹ Mowrer Ex. 3.

1.3.1. Rifle/Pistol Country Quota Places

Country Quota Places may be obtained for the 2024 Olympic Games in accordance with the [International Shooting Sports Federation (“ISSF”)] Qualification System for the 2024 Olympic Games. USA Shooting is eligible to earn up to two Quotas per event per gender ...

1.3.2 Selection Qualification

... Each [Ranking] match will consist of:

- Two (2) courses of fire
- One (1) final

The scores from these matches will be used in the average ranking system to determine the Olympic Trials Ranking list. After each course of fire is completed the Olympic Trials Ranking List will be updated and posted accordingly....

Olympic Trials Ranking List definition

The Olympic Trials Ranking List will be made up of all athletes that have an average ranking sorted from highest to lowest average and will be updated after the conclusion of each course of fire. A protest period of 20 minutes will be in effect after each course and final. The Olympic Trials Ranking List will be used to determine Quota slot allocation for the 2024 Olympic Games....

QUOTA ALLOCATION/NOMINATION

If quotas are available, the highest ranked athlete on the Olympic Trials Ranking List, and who is eligible for the Olympic Games², will be offered a Quota slot for his/her event. If the athlete declines his/her Quota slot, the next highest ranked athlete on the Olympic Trials Ranking List, and who is eligible for the Olympic Games, will be offered the slot until all slots are filled. ... The athletes who have accepted a Quota spot will be nominated to the 2024 Olympic Team.

TIE-BREAKING PROCEDURES

Should there be a tie in the Olympic Trials Ranking List, down to 6th place, the tie will be broken immediately following Ranking Match 3 finals

....

On January 5-7, 2024, the final Ranking Match in air rifle was held, and Ivan Roe placed first in that event after the three matches, while Mr. Kissell placed second.³ On January

² Olympic Games eligibility required that an athlete have accumulated at least one ranking point in the ISSF Qualification Ranking for the Olympic Games and have competed at two or more ISSF championships between January 1, 2022 and June 9, 2024. Mowrer Ex. 3, p. 2.

³ Mowrer testimony.

11, USA Shooting announced that Mr. Roe had “qualified” for the Olympic Team.⁴ On March 17-19, 2024, the third Ranking Match for smallbore rifle was held, and Ivan Roe again placed first after the three matches. Mr. Mowrer placed second in smallbore rifle.⁵

The United States previously had been allocated only one (1) quota spot each for Men’s Air Rifle and Men’s Smallbore Rifle, but it hoped to gain additional quota spots after the April 2024 Championships of the America Games in Rio.⁶ However, when the last available quota spots were issued by the ISSF on June 9, 2024, the U.S. did not receive any additional quota positions.⁷ Although this caused a nine-day delay in nominating the Olympic Team, USA Shooting tried to trade two unneeded quota spots the U.S. held for an additional smallbore quota spot for Mr. Mowrer, but that request was denied by the ISSF on June 19.⁸ Mr. Roe was offered the quota spot in smallbore rifle and Mr. Kissell was offered the quota spot in air rifle.⁹ Mr. Mowrer was offered an alternate position on the Olympic Team.¹⁰

BURDEN OF PROOF AND STANDARD OF REVIEW

It is undisputed that Mr. Mowrer has the burden of proving by a preponderance of the evidence that the selection process with regard to him for the 2024 U.S. Olympic Shooting Team was arbitrary or capricious (i.e., there was no rational basis for the outcome), was applied inconsistently to athletes similarly situated, made in bad faith (i.e., with improper bias) or did not comply with applicable federal and state law. In this team selection dispute, the Arbitrator must “only determine whether [Mr. Mowrer] had a fair opportunity to compete for a position on [the 2024 Olympic shooting team] and whether [USA Shooting’s] Team Selection Committee used and rationally applied the

⁴ Mowrer Ex. 7.

⁵ Mowrer testimony.

⁶ Mowrer Ex. 5, Durben testimony.

⁷ USA Shooting Exs. 22 and 23, Reisdorf testimony.

⁸ Reisdorf testimony.

⁹ It is unclear precisely when the quota spots were officially offered to the qualifying athletes, but Mr. Schammel testified that the Selection Committee did not meet to discuss filling the quota spots until after April 22.

¹⁰ Mowrer testimony.

published [Athlete Selection Procedures]. My role is not to determine whether [USA Shooting] chose the best process for selecting teams.”¹¹

ANALYSIS

The Arbitrator finds that USA Shooting followed its published Selection Procedures and interpreted those Procedures in a rational and reasonable manner, without unequal treatment or bias against Mr. Mowrer for the following reasons:

1. The Selection Procedures Did Not Require Mr. Roe to Immediately Accept the Air Rifle Quota Spot in January 2024

Mr. Mowrer asserted that USA Shooting should have forced Mr. Roe to “immediately” accept or decline the air rifle quota spot when he finished first at the final air rifle Ranking Match in January 2024.¹² Alternatively, if Mr. Roe did not decline the quota spot at that time, “he [sh]ould automatically be considered to have accepted it.”¹³ Mr. Mowrer pointed to a USA Shooting website posting which said that the “Paris 2024 Olympic Air Rifle and Pistol Team will be selected” at the January 5-7, 2024 event, and assumed that Mr. Roe was offered the air rifle quota spot at that time.¹⁴

However, Mr. Mowrer offered no evidence that Mr. Roe was in fact offered the quota spot at the January event, other than some social media posts that Mr. Roe had “qualified” for the Olympic Team.¹⁵ Social media posts in January of 2024 are not part of the July 2023 Selection Procedures, and the Arbitrator finds that Mr. Mowrer could not reasonably rely on them as superseding those official Procedures. Moreover, “qualif[y]ing” for appointment to the Team is very different from being appointed to the

¹¹ Mowrer Ex. 10, *Matter of Victor Lui and USA Table Tennis Association, Inc.*, AAA Case No. 01-19-0001-4377 (June 20, 2019), p. 18, quoting *Matter of Beckom and USBFF*, AAA Case No. 77-190-E-0015-10 (Feb. 10, 210), p. 8 (internal citations omitted) (emphasis in original).

¹² Mowrer brief, pp. 4-5, 13-15; Mowrer testimony.

¹³ Mowrer brief, p. 7.

¹⁴ Mowrer Ex. 5.

¹⁵ Mowrer Brief pp. 7, 14-15.

Team, and Mr. Schammel testified that the Selection Committee did not even begin meeting to discuss offering quota spots until late April of 2024.¹⁶

Significantly, the Selection Procedures do not mention any time frame for offering quota spots for which athletes qualified through the Ranking Matches. Those Procedures only say that the top finisher in the Ranking Matches who is eligible for the Olympic Team “will be offered a Quota spot for his/her event.”¹⁷ Mr. Mowrer acknowledged during his testimony that USA Shooting would not know its final quota spot allocation until after the April 2024 “last chance” event in Rio and that the only deadline in the Selection Procedures was the June 10 date for USA Shooting to nominate athletes to the USOPC for placement on the Olympic Team.¹⁸ Moreover, in January 2024, Mr. Roe had not yet accumulated the required ISSF ranking point to make him eligible for the Olympic Games.¹⁹ Accordingly, USA Shooting *could not* offer him the air rifle quota spot upon the conclusion of the January 2024 Ranking Match.

Mr. Mowrer also points to the Tie-Breaking Procedures section of the Selection Procedures (quoted above), which includes a requirement of “immediate” action, and argues that this timeframe should be grafted into the quota allocation section. However, the fact that the drafters of the Selection Procedures knew how to impose an immediacy requirement in the tie-breaking procedure instead indicates that they intentionally omitted such a requirement from the quota allocation paragraph directly preceding it. Thus, the use of the term “immediate” in the tie-breaking section contradicts, rather than supports, Mr. Mowrer’s position.

¹⁶ Mr. Mowrer also alleged – without any confirming evidence or testimony – that Katelyn Abeln and Alexis Lagan were offered quota spots at the January 2024 Ranking Match and that they “were deemed to have accepted them” when they did not decline the alleged offer. Mowrer Brief, pp. 8-9, 11, 16-17. Like Mr. Roe, their “qualification” for the team did not equate with being named to the team, and again, Mr. Schammel’s testimony that the Selection Committee did not meet to discuss offering quota spots until April contradicts Mr. Mowrer’s unfounded assumptions.

¹⁷ Mowrer Ex. 3, p. 5.

¹⁸ Mowrer testimony, Durben testimony, Reisdorf testimony. As noted above, this June 10 deadline was missed by nine days while USA Shooting attempted to obtain another quota spot for Mr. Mowrer.

¹⁹ Roe testimony, Reisdorf testimony.

If Mr. Mowrer had his way, Mr. Roe would have been forced to compete in the air rifle event simply because its third Ranking Match was earlier in the calendar than that for smallbore. Such an outcome would itself have been unreasonable and unfair. There is nothing unreasonable about allowing Mr. Roe to choose which of the two events in which he qualified he wishes to contest at the Olympic Games.

2. Mr. Mowrer Was Not Harmed at the Final Smallbore Ranking Match

Mr. Mowrer asserted that he was harmed during the March 2024 final smallbore Ranking Match, because he “understood” that Mr. Roe’s prior win in the air rifle meant that he would not qualify for the smallbore quota spot, even if he finished at the top of the smallbore rankings. Despite the fact that Mr. Roe was there competing, Mr. Mowrer alleged that he tried only to beat everyone else, with the implication that had he known Mr. Roe was still in the running for the smallbore quota spot he would have tried harder to finish first.²⁰ Mr. Mowrer argued that this assumption is supported by the fact that “nowhere in the Selection Procedures does it give an athlete the authority to decline a quota spot after accepting it or to be offered two quota spots at the same time.”²¹

As discussed above, there was no evidence introduced at the Hearing to establish that Mr. Roe had previously been offered, accepted or declined the air rifle quota spot at the time of the March 2024 smallbore final Ranking Match. Nor do the Selection Procedures prohibit an athlete being offered two quota spots from which he can chose his preferred event. It is unusual for a shooting athletes to qualify for multiple events in this manner, and USA Shooting witnesses expected that Mr. Roe would eventually have to pick one over the other.²² Given that the purpose of Olympic Team selection is to “obtain for the United States, directly or by delegation to the appropriate national governing body, the most competent amateur representation possible in each event of

²⁰ Mowrer Brief, pp. 9-11.

²¹ Mowrer Brief, p. 10.

²² Durben testimony, Schammel testimony.

the Olympic Games ...”²³ it would be entirely reasonable for an NGB to allow an athlete to choose which of two events he will contest at the Olympics if he is the best American competitor in both disciplines.²⁴

Most importantly, however, at the Hearing Mr. Mowrer acknowledged that he did not give less than his best effort at the March 2024 smallbore Ranking Match, despite Mr. Roe’s prior air rifle performance. He testified that he never tried to do less than his best and that he gave a “100% maximum effort” at all three Ranking Matches.²⁵ He further acknowledged that USA Shooting did “nothing” that deprived him of the opportunity to finish first.²⁶

3. Mr. Mowrer Was Not Harmed by the Mixed Air Rifle Team Pairings or Mr. Kissell’s Selection to the Air Rifle Team

After submission of his Prehearing Brief, Mr. Mowrer asked leave to submit an additional exhibit²⁷ which he claimed showed that USA Shooting improperly favored Mr. Kissell during selection and improperly allowed Messrs. Roe and Kissell, and their teammates Sagen Maddalena and Mary Tucker to diverge from the air rifle Mixed Team pairing system set out in the Selection Procedures.

In addition to the single gender events, there are also mixed team events in air rifle and air pistol at the Olympics. There is no mixed smallbore competition.²⁸ The Selection Procedure regarding the Mixed Team event states:

²³ 32 U.S.C. §220503(4).

²⁴ Mr. Mowrer suggested that Mr. Roe enjoyed an unfair advantage in the final smallbore selection because having previously qualified for the Olympic Team in air rifle, he was under less pressure. Mowrer Brief, p. 11. However, one need look no further than the U.S. Track and Field and U.S. Swimming Olympic Trials, where numerous athletes compete for Olympic Team spots in multiple events, even after qualifying in earlier events. So, too, some of those athletes later decide to forego competing in events for which they qualified, so as to focus on others. There is nothing unreasonable about this, and any such advantage is not necessarily an unfair advantage.

²⁵ Mowrer testimony.

²⁶ Mowrer testimony.

²⁷ Mowrer Ex. 12.

²⁸ Schammel testimony.

1.3.2.3 Rifle & Pistol Mixed Team

Per the ISSF Qualification System, athletes for the Mixed Team Event must come from the individual entries in the men's and women's event. For the 2024 Olympic Games, the Rifle and Pistol mixed team event will be Air. Therefore, the two athletes competing in the Mixed Team Air Rifle and Mixed Team Air Pistol Event must be the athletes nominated to the team using the above Quota Place allocation methods outlined in 1.3.1. The highest ranked male and female athlete from the Olympic Trials Ranking List will be selected to the Mixed Team Air Event for Team 1. Should USA Shooting be able to enter in two mixed teams, the second highest ranked male and second highest female from the Olympic Trials Ranking List will be selected to the Mixed Air Event for Team 2.

In May of 2024, after a competition in Germany, Ivan Roe, Rylan Kissell (number 1 and 2 male air rifle finishers in the Ranking Matches, respectively) and Mary Tucker and Sagen Maddalena (number 1 and 2 female finishers in the air rifle Ranking Matches, respectively) asked their coach to alter this pairing process, instead pairing #1 Ivan Roe with #2 Sagen Maddalena, and #2 Rylan Kissell with #1 Mary Tucker.²⁹ Mr. Mowrer's accusations aside, the only evidence regarding the reason for this move was that Mr. Roe and Ms. Maddalena wanted to shoot together.³⁰ There was no evidence of any nefarious purpose or bias against Mr. Mowrer.

Significantly, Mr. Mowrer's top two finish was in the smallbore rifle, not the air rifle. Accordingly, because there is no mixed team event in the smallbore rifle, under the Selection Procedures quoted above he could not possibly be a part of the pool for the mixed team air rifle event. He therefore cannot show that he was harmed in any way by this pairing arrangement and lacks standing to challenge it.

Mr. Mowrer also lacks standing to object to Mr. Kissell's appointment to the 2024 Olympic Team in air rifle. Mr. Kissell finished second in that event in the Ranking Matches and was next in line for that quota spot after Mr. Roe, as set out in the

²⁹ Mowrer Ex. 12, USA Shooting Ex. 21, Durben testimony, Roe testimony.

³⁰ Schammel testimony, Roe testimony. They are both Army Sergeants stationed at Fort Moore as marksmanship instructors and competitive shooters in the U.S. Army Marksmanship Unit International Rifle Team. Mowrer Ex. 9.

Selection Procedures.³¹ Mr. Mowrer finished second in smallbore rifle, so would only have standing to seeking appointment to the team only if Mr. Roe had declined the smallbore quota spot (which did not happen) and it had been given to someone other than Mr. Mowrer.

4. Mr. Mowrer's Attack on the Selection Procedures Is Time Barred

Finally, Mr. Mowrer's claim that the terms of the Selection Procedures -- specifically sections 1.3.2 (Selection Qualification), 1.3.2.1 (Average Ranking System definition) -- were so vague as to deprive him of an opportunity to compete in the 2024 Olympic Games,³² is time barred. Section 9.9 of the USOPC Bylaws requires that any such challenge must have been raised within 180 days of issuance of the Selection Procedures. Mr. Mowrer's Prehearing Brief notes that the Selection Procedures were issued on August 18, 2023, much more than 180 days before his July 1, 2024 Complaint to the USOPC.³³

Conclusion

As noted previously, it is not the role of this Arbitrator to determine whether USA Shooting chose the best process for selecting its Olympic squad. As discussed above, Mr. Mowrer did not prove by a preponderance of the evidence that he was deprived of a fair opportunity to compete for a position on the 2024 Olympic shooting team, or that USA Shooting's application of the Selection Procedures was irrational or in bad faith.³⁴

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³¹ "... If the athlete declines his/her Quota slot, the next highest ranked athlete on the Olympic Trials Ranking List, and who is eligible for the Olympic Games, will be offered the slot until all slots are filled." Mowrer Ex. 3, p. 5.

³² Mowrer Brief pp. 10, 13-16.

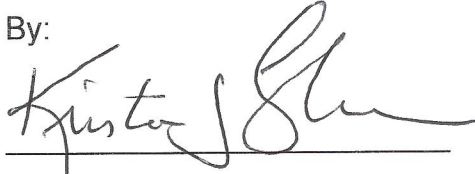
³³ Mowrer Brief, p. 3. The Procedures document (Exhibit 3) to which he refers bears an approval date of July 27, 2023.

³⁴ Mr. Mowrer did not claim that USA Shooting violated any federal or state laws.

Therefore, Mr. Mowrer's claims and request for relief are denied. This Award fully resolves all claims and defenses submitted by the parties in connection with this arbitration proceeding. All claims and defenses not expressly granted herein are denied.

July 14, 2024.

By:

A handwritten signature in black ink, appearing to read "Kristen J. Thorsness", written over a horizontal line.

Kristen J. Thorsness, Esq., OLY
Arbitrator