

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

Case No. 01-23-0002-7452

In the Matter of the Arbitration between

KIM RHODE, Claimant

and

USA SHOOTING, INC. Respondent

and

SAM SIMONTON, HAYDEN STEWART, and OTHERS, Affected Athletes.

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated by the American Arbitration Association ("AAA"), and in accordance with the Ted Stevens Olympic and Amateur Sports Act ("ASA"), 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 Section 9 Complaint, Demand for Arbitration, and Pre-Hearing Brief; Respondent's Prehearing Statement; Affected Athletes Simonton and Stewart's Hearing Brief; and other Affected Athletes' written statements as well as these parties' respective exhibits and witness testimony and oral statements by any Affected Athletes during a video hearing on July 31 and August 1, 2023, does hereby AWARD, as follows:

PARTIES

Claimant Kim Rhode, a world-class athlete in the sport of shooting (specifically, shotgun), is a 6-time Olympic medalist, including 3 gold medals; an 8-time World Champion; a 5-time Pan American Games Champion; and a 6-time National champion in women's trap or skeet shooting. Ms. Rhode is a member of USA Shooting's Board of Directors and a Vice

President of the International Shooting Sports Federation (ISSF). Claimant was represented by Howard L. Jacobs and Katy Freeman, Law Offices of Howard L. Jacobs, Westlake Village, CA.

Respondent USA Shooting, Inc., which is based in Colorado, is the National Governing Body (“NGB”) for the sport of shooting in the United States and is a member of the ISSF. It was represented by Steven B. Smith and Steven J. Perfrement, Bryan Cave Leighton Paisner, LLC, Colorado Springs, CO.

Affected Athletes Sam Simonton, a women’s skeet shooter, and Hayden Stewart, a men’s skeet shooter, were represented by Stephen A. Hess, The Law Office of Stephen A. Hess, P.C., Colorado Springs, CO.

Affected Athletes Austen Smith, Dania Vizzi, Vincent Hancock, and Connor Prince, men’s or women’s skeet shooters, were represented by Ryan K. Lurich, Friedman & Feiger, Dallas, TX.

Affected Athletes Caitlyn Connor, Christian Elliott, Alicia Gough, Seth Inman, Fayth Layne, Connor Lynn, Derrick Mein, Lia Nelson, Karsyn Ross, Mark Staffen, Julie Stallings, Hal Wallace, and Jake Wallace, men’s or women’s skeet or trap shooters, observed the arbitration hearing and were not represented by counsel.

MATERIAL FACTS

Pursuant to Article III C (“Mission and Purpose”) of its Bylaws, Respondent’s general purposes include “foster[ing] National and International Amateur Athletic Competition in the Shooting Sports with emphasis on ISSF Shooting . . . and to support and develop Amateur Athletes for national and international competition in such sports.” (Article III C, Bylaws of USA Shooting, Inc., March 14, 2022). “In connection with its purposes, USA Shooting shall: . . . 2) Obtain for the United States, in cooperation with the USOPC when the Olympic or Pan American Games are involved, the most competent Amateur Athlete representation possible for the United States in the sport of ISSF Shooting” (Article III D (2)). Respondent is authorized “[t]o designate individuals and teams to represent the United States in International Amateur Athletic Competition (other than in the Olympic, Paralympic, Pan American, or ParaPan Games) in the sport of ISSF Shooting” such as the 2023 World Championships in Baku, Azerbaijan. (Article IV A (6)).

In 2020, Respondent changed its athlete and team selection procedures for major international competitions such as the Olympic Games, Pan American Games, and ISSF World Championships to a new process in which only objective factors (i.e., each athlete's shooting scores) would be used to select the athletes and team that would represent the U.S. in these competitions, which is consistent with Article III D (2) of its Bylaws. This changed process resulted in the team's successful performance during the 2020 Tokyo Olympic Games, which were held from July 23-August 8, 2021 because of the Covid-19 pandemic.

In a November 2, 2021 email to "Senior Team Members" (including Ms. Rhode and Sarah Scherer, USA Shooting's USOPC Athletes' Advisory Council Representative), Jay Waldron, USA Shooting Shotgun Team head coach, attached copies of the proposed 2022 and 2023 national shotgun team selection criteria and procedures and explained:

"Performance points will be awarded only from World Championships

That means 2022 will be a straight selection process and the Performance points won't come into play until selection match (1) 2023.

This process gives the shooter the opportunity to use the performance points at either match in 2023 but they can use them only once.

Example: Go to selection match (1) 2023 and shoot great, make the final no trouble— You could choose to not exercise your performance points and hold them for selection match (2) 2023

Example: You shoot not so good at the selection match (1) 2023 you use your performance points to bolster your qualification score and get yourself into the final, that way you have a chance to win finals points . . .

Make sense?"

(Exhibit 104).

According to Coach Waldron, his goal was to have an open process for determining 2023 National Shotgun Team selection criteria, which solicited athletes' input, and to provide an objective bonus/reward (i.e., Performance Points) based on individual performance in the 2022 ISSF World Championships. In his view, an athlete's strong performance in the most recent international competition (e.g., 2022 ISSF World Championships) would a good predictor of success in an upcoming international competition (e.g., 2023 ISSF World Championships), which is supported by USOPC High Performance Team data.

In a November 24, 2021 email to a group of athletes, including Ms. Rhode, regarding 2022 national shotgun team selection criteria and procedures (Exhibit 119), Coach Waldron attached a document captioned “Key Selection Points,” which, in relevant part, compared the selection criteria for various teams for 2022, 2023, and 2024:

“2022 selection match 1 + 2022 selection match 2 (nationals) = WCH & CAT Team
2022 selection match 2 (nationals) + 2023 selection match 1 = WC National Team
2023 selection match 1 + 2023 selection match 2 (nationals) = 2023 WCH & Pan Am Team National Team
2023 selection match 2 (nationals) + 2024 selection match 1= Olympic and 2024 Team
Each match stands on its own—Meaning qualification scores from the match in attendance sets the final
2022 & 2023 WCH Performance bonus issued—relook at points issue based on final TBD
2022 WCH Points could be used at either match to enter final—added to qualification score . . .
2023 WCH Points would be used at 2024 selection match 1
National Championships decided on the finals outcome-Win the final = National Championship”

(Exhibit 119A).

Prior to the USOPC’s June 7, 2022 publication of USA Shooting’s original “2023 Shotgun National Team Selection” policy and procedure, there is no record evidence that any athletes, including Ms. Rhode, objected to the inclusion of Performance Points based on competition results from the 2022 ISSF World Championships as part of Respondent’s objective criteria for selecting the 2023 Shotgun National Team that would compete in World Cup (WC) competitions, the National Team for the 2023 World Championships (WCH), or the National Team for the 2023 Pan American Games.

In relevant part, Respondent’s original 2023 Shotgun NTSP (Exhibit 201) stated as follows:

“A. GENERAL

1. The USA Shooting, Shotgun National Team, will be selected from the top-scoring U.S. citizens under this USA Shooting Policy and Procedure.
...
3. Team members will be determined based on selection performance. There will be no subjective selection unless stated and detailed in procedures outlined below.

B. SHOTGUN TEAM SELECTION

MATCHES Selection Matches and Dates

1. 2022 Selection Match 2-2022 July Hillsdale Mi
2. 2023 Selection Match 1-TBD 2023
3. 2023 Selection Match 2-TBD 2023

Events to be contested

1. Men's Trap
2. Women's Trap
3. Men's Skeet
4. Women's Skeet

Course of Fire

1. Trap and Skeet Men and Women
 - a) One course of fire equals 125 targets

Number of courses of fire

1. All selection Matches will consist of Two (2) courses of fire-Men and Women

2022 & 2023 Selection Match Finals Format

1. One ISSF final per event. 2021 ISSF Finals rules or new format once finalized
2. Match Qualification score (250) + performance points will set each Match final
3. Finals points awarded by finish position.
4. Awarded Finals point(s) will be added to qualification score (Total Aggregate Score)

Finals points awarded Men & Women

1st = 3 points

b) 2nd = 2 points

c) 3rd = 1points [sic]

5.
a)

C. National Team Policy

1. National Team (NT) will consist of the top 6 scoring athletes, in the current selection process

...

6. The National Team status will reset at the conclusion of each selection match

Performance Points

1. Performance points will be awarded based on 2022 WCH finish positions
2. Performance points can be utilized at the athlete's discretion at either Selection Match 1, 2023 or Selection 2, 2023.
3. Performance points can only be utilized one (1) time.

E. [sic]Performance Points Distribution 2022 World championships

1. Gold = 6 points

- 2. Silver = 5 points
- 3. Bronze = 4 points
- 4. 4th = 3 points
- 5. 5th = 2 points
- 6. 6th = 1 point

D. [sic] National Team Selection Policy

1. Selection Match 1, 2023 (SM1)

- a) Open to all eligible competitors
- b) Top 6 aggregate scores will earn National Team Status

2. Aggregate Score Selection Match 1, 2023

SM 2, 2022 aggregate score+ qualification score SM 1,2023 +performance points +Finals points

EXAMPLE

SM2 AS-2022 (247) [+] SM1 QS-2023 (247) [+] Performance Points (May or may not be used based on finals finishing position) [+] SM1 FP (3) [=] Aggregate Score [497]

3. Proposed National Team Travel Selection Match 1, 2023 Results

- a) TBD

...

5. Selection Match 2 (SM2) 2023

- a) Open to all eligible competitors
- b) Top 6 aggregate scores will earn National Team Status

6. Aggregate Score Selection Match 2, 2023 (SM2)

SM 1, 2023 aggregate score+ qualification SM 2, 2023 +performance points +Finals points

EXAMPL [sic]

SM1 AS-2023 (250) [+] SM2 QS-2023 (122) [+] Performance Points (May or may not be used based on finals finishing position) [+] SM2 FP-2023 (3) [=] Aggregate Score [375]

...

8. Pan American Games Special Consideration

- a. Once the qualification guide for the 2024 [sic] Pan Am Games is published a special consideration will be made to maximize Quota opportunities.”

In July 2022, based on their respective three highest total aggregate scores from Section Match 1, 2022 and Selection Match 2, 2022 (including Finals Points), Ms. Vizzi (481), Ms. Simonton (479), and Ms. Smith (477) earned selection for the three-person USA Shooting

women's skeet team competed in the 2022 ISSF World Championships in Osijek, Croatia from September 19-21, 2022. Although she earned 3 Finals Points for winning the women's skeet shooting national championship during Selection Match 2, 2022, Ms. Rhode's total aggregate score of 469 (6th highest) did not earn her a place on USA Shooting's women's skeet team for the 2022 World Championships. (Exhibit 114).

During the September 2022 World Championships, Affected Athletes Simonton and Smith placed third and sixth, respectively, in women's skeet shooting. Affected Athletes Vincent Hancock and Christian Elliott placed second and fifth, respectively, in men's skeet shooting. Affected Athlete Derrick Mein placed first in men's trap shooting. Accordingly, each athlete earned the following Performance Points based on their respective top-six competition results: Simonton (4); Smith (1); Hancock (5); Elliott (2); and Mein (6).

Thereafter, on October 25, 2022, the original 2023 Shotgun NTSP was modified, apparently because the USOPC would not approve the use of Performance Points in selecting USA Shooting's National Team for the 2023 Pan American Games as well as concerns that athletes should not be permitted to use 2022 World Championship Performance Points in connection with Selection Match 2, 2023, which is the first selection match for purposes of selecting its National Team for the 2024 Olympic Games.

The relevant provisions of Sections A, B, and E of the "2023 Shotgun National Team Selection—Updated 10/25/22" policy and procedure (Exhibit 107) and the June 2022 original 2023 Shotgun NTSP are identical:

"A. GENERAL

1. The USA Shooting, Shotgun National Team, will be selected from the top-scoring U.S. citizens under this USA Shooting Policy and Procedure.
- . . .
3. Team members will be determined based on selection performance. There will be no subjective selection unless stated and detailed in procedures outlined below.

B. SHOTGUN TEAM SELECTION

MATCHES Selection Matches and Dates

1. 2022 Selection Match 2-2022 July Hillsdale Mi
2. 2023 Selection Match 1-TBD 2023
3. 2023 Selection Match 2-TBD 2023

Events to be contested

1. Men's Trap
2. Women's Trap
3. Men's Skeet
4. Women's Skeet

Course of Fire

1. Trap and Skeet Men and Women
 - a) One course of fire equals 125 targets

Number of courses of fire

1. All selection Matches will consist of Two (2) courses of fire-Men and Women

2022 & 2023 Selection Match Finals Format

1. One ISSF final per event. 2021 ISSF Finals rules or new format once finalized
2. Match Qualification score (250) + performance points will set each Match final
3. Finals points awarded by finish position.
4. Awarded Finals point(s) will be added to qualification score (Total Aggregate Score)
5. Finals points awarded Men & Women
 - a) 1st = 3 points
 - b) 2nd = 2 points
 - c) 3rd = 1points [sic]

E. [sic]Performance Points Distribution 2022 World championships

1. Gold = 6 points
2. Silver = 5 points
3. Bronze = 4 points
4. 4th = 3 points
5. 5th = 2 points
6. 6th = 1 point

To address the foregoing issues regarding the 2023 Pan American Games and 2024 Olympic Games, the October 2022 modification of the 2033 Shotgun NTSP revised Sections C and D in relevant part as follows:

C. National Team Policy

1. National Team (NT) will consist of the top 6 scoring athletes, based on total aggregate score of the most current 2 selection matches
...
6. The National Team status will reset at the conclusion of each selection match.

Performance Points

1. Performance points will be awarded based on 2022 WCH finish positions
2. Performance points will be utilized at Selection Match 1, 2023 for the Proposed National Travel Selection Match 1, 2023 Results only, as referenced in Section D.3 [sic] below. These points will not be used for Pan American Games purposes.

E. [sic] Performance Points Distribution 2022 World championships

1. Gold = 6 points
2. Silver = 5 points
3. Bronze= 4 points
4. 4th = 3 points
5. 5th = 2 points
6. 6th = 1 point D.

D. National Team Selection Policy

1. Selection Match 1, 2023 (SM1)

- a) Open to all eligible competitors
- b) Top 6 aggregate scores will earn National Team Status

2. Aggregate Score Selection Match 1, 2023

SM 2, 2022 aggregate score+ qualification score SM 1,2023 +performance points
+Finals points

EXAMPLE

SM2 AS - 2022 (247) [+] SM1 QS – 2023 (247) [+] Performance Points (Any earned through 2022 World Championships) [+] SM1 FP (3) [=] Aggregate Score (497)

3. Proposed National Team Travel Selection Match 1, 2023 Results

- a) TBD

...

5. Selection Match 2 (SM2) 2023

- a) Open to all eligible competitors
- b) Top 6 aggregate scores will earn National Team Status

6. Aggregate Score Selection Match 2, 2023 (SM2)

SM 1, 2023 aggregate score+ qualification SM 2, 2023 +performance points +Finals points

EXAMPL [sic]

SM1 AS-2023 (250) [+] SM2 QS-2023 (122) [+] Performance Points (None) [+] SM2 FP-2023 (3) [=] Aggregate Score [375]

...

8. Pan American Games Special Consideration

a. USA Shooting is currently working with the USOPC on finalizing 2023 Pan American Game Selection procedures at this time. The selection will comprise of Selection Match 1, 2023 and Selection Match 2, 2023 with no performance points included. These procedures will be announced in full as soon as the qualification guide has been published and the USOPC approves of said procedures. Know in advance that the Selection Match 1 of 2023 will be the start of your Pan American Games process and that there will be an effort to maximize quota opportunities at this competition that may result in the addition of language to the selection process.”

Because the October 2022 revision of the selection procedures for the 2023 Shotgun National Team and World Championships Team occurred after Ms. Simonton and the other four athletes earned Performance Points for their top-six place finishes during the September 2022 World Championships, they were disadvantaged by it because Performance Points now could be used only for Selection Match 1, 2023. This change eliminated their individual discretion to choose to use Performance Points at either Selection Match 1, 2023 or Selection Match 2, 2023 to increase their qualification score and get into the finals as Coach Waldron explained in his November 2, 2021 email, which provided the opportunity to earn 1-3 finals points for a first, second, or third place finish, respectively.

After Selection Match 1, 2023, which was held in Tucson, Arizona in February, 2023, Ms. Rhode, Ms. Vizzi, Ms. Simonton, Ms. Smith, Ms. Connor, and Ms. English earned 2023 World Cup and National Team status for women's skeet shooting as a result of their respective competition results based on their individual "Aggregate Score Selection Match 1, 2023" (i.e., "SM 2, 2022 aggregate score+ qualification score SM 1,2023 +performance points +Finals points" set forth in Section D 2 of Respondent's modified 2023 Shotgun NTSPP, which is identical to the same provision in its original 2023 Shotgun NTSPP s. For example, Ms. Rhode's "Aggregate Score Selection Match 1, 2023" was 488 (SM 2, 2022 aggregate score (239) + qualification score SM 1, 2023 (246) + performance points (0) + Finals points (3)), which was the highest Total Aggregate Score. Ms. Simonton's "Aggregate Score Selection Match 1, 2023" was 477 (SM 2, 2022 aggregate score (234) + qualification score SM 1, 2023 (239) + performance points (4) + Finals points (0)), which was the third highest Total Aggregate Score. Ms. Smith's 2022 World Championships performance points (1) were included in her "Aggregate Score Selection Match 1, 2023." (Exhibit 115).

Consistent with the calculation of the "Aggregate Score Selection Match 1, 2023" for 2023 World Cup and National Team status for women's skeet shooting, the 2022 World Championships performance points earned by Mr. Hancock (5) and Mr. Elliott (2) were included in the calculation of their respective "Aggregate Score Selection Match 1, 2023" for 2023 World Cup and National Team status for men's skeet shooting. (Exhibit 115).

On May 18, 2023, Coach Waldron held an on-site meeting in the morning for coaches and athletes competing in Selection Match 2, 2023, which was held in Hillsdale, Michigan from

May 19-22, 2023. He explained that two different real time Google spreadsheets would be used for purposes of scorekeeping for selection of the 2023 Pan American Games Team (which would not include Performance Points) and the 2023 National Team and World Championships Team (which would include Performance Points). Ms. Rhode attended this meeting, and she did not protest or question the inclusion of Performance Points for National Team and World Championships Team scoring. In the afternoon, he sent an email to the athletes and coaches with a link to the Google spreadsheets for “National Team-World Championships & Pan Am Selection,” in which he requested “Please check your scores.” (Exhibit 123).

Initial squadding and shooting positions for Selection Match 2, 2023 (Hillsdale) were based on Selection Match 1, 2023 (Tucson) competition results. Consistent with her highest women’s skeet shooting score in Selection Match 1, 2023 (Tucson), Ms. Rhode was squadded in the top 18 (specifically in the first shooting position) throughout Selection Match 2, 2023 (Hillsdale). Although her shooting position for the qualification firing rounds did not change during this competition, the shooting position of other competitors (apparently including Ms. Simonton) changed after the original squadding based on their accumulated scores and inclusion of their respective Performance Points. There is no record evidence that any change of Ms. Simonton’s shooting position benefited her shooting performance or adversely affected Ms. Rhode’s shooting performance during either of the qualification firing rounds of Selection Match 2, 2023 (Hillsdale).

On the morning of May 22, 2023 (the final day of the competition), Coach Waldron sent an email captioned “Selections” to the athletes and coaches, which in relevant part states:

“The National Champions will be crowned today based on the aggregate score from this match alone.

Example

Qualification + Finals Points = Aggregate score

World Championship Selection

The 2023 Open World Championship Team will be selected based on the Aggregate score from Tucson selection + Aggregate score from National Championships 2023

Example

Tucson Aggregate Score + Hillsdale Aggregate Score = Total Aggregate Score

Tucson Aggregate Score
Qualification + Finals Points + WCH 2022 Performance Points = Tucson Aggregate Score

Hillsdale Aggregate Score
Qualification + Finals Points = Hillsdale Aggregate Score

Pan Am Selection

The 2023 Open Pan Am Team will be selected based on the Tucson Qualification Score + Tucson Finals Points + Hillsdale Aggregate score from National Championships 2023

Tucson Score
Qualification + Finals Points = Tucson Score

Hillsdale Aggregate Score
Qualification + Finals Points = Hillsdale Aggregate Score

...

Let me know if you have any questions---It's going to be a busy and exciting day --"

(Exhibit 124).

During the qualification firing rounds of Selection Match 2, 2023 (Hillsdale), Ms. Rhode had an uncharacteristically poor shooting performance in comparison to her long history of superlative shooting performances and achievements in national, Olympic, and international competitions. Ms. Rhode's Hillsdale qualification score was 231/250 targets (in comparison to her Selection Match 1, 2023 (Tucson) qualification score of 246/250 targets), which did not qualify her for the Match 2, 2023 finals and the opportunity to earn 1-3 Finals Points. Ms. Rhode acknowledged she did not qualify for the finals based solely on her qualification firing rounds 1 and 2 scores as well as that the inclusion of 4 Performance Points as part of Ms. Simonton's Selection Match 1, 2023 (Tucson) Aggregate Score did not adversely affect her ability to qualify for the Selection Match 2, 2023 (Hillsdale) finals.

After the Selection Match 2, 2023 (Hillsdale) qualification firing rounds and finals, Ms. Rhode and Ms. Simonton had the same total aggregate score (480) used to determine selection for the 2023 Pan American Games Team for women's skeet shooting. There is no dispute that the following calculations of their respective individual scores is mathematically correct: Ms. Rhode (Tucson Qualification (246) + Finals Points (3) + Hillsdale Qualification (231) + Finals Points (0) = 480); Ms. Simonton ((Tucson Qualification (239) + Finals Points (0) + Hillsdale Qualification (241) + Finals Points (0) = 480). (Exhibit 116 and 219).

After Selection Match 2, 2023 (Hillsdale), Ms. Simonton's 2023 National Team and World Championships total aggregate score was 484 because 4 Performance Points were included in her Selection Match 1, 2023 (Tucson) aggregate score. Her total aggregate score was calculated as follows: (Tucson Qualification (239) + Finals Points (0) + Performance Points (4) + Hillsdale Qualification (241) + Finals Points (0) = 484). (Exhibit 116 and 219). Because Ms. Vizzi's total aggregate score also was 484, she and Ms. Simonton had a shoot-off to determine the second and third members of the three-person 2023 World Championships Team for women's skeet shooting, which Ms. Vizzi won.

Consistent with the determination of Ms. Simonton's 2023 National Team and World Championships total aggregate score, Ms. Smith's 1 Performance Point as well as Mr. Hancock's 5 Performance Points and Mr. Elliott's 2 Performance Points were included in their respective Selection Match 1, 2023 (Tucson) aggregate scores in determining their individual 2023 National Team and World Championships total aggregate scores. (Exhibit 116 and 219; Exhibit 117).

Ms. Rhode claims that she did not look at either of the two different Google spreadsheets for "National Team World Championships & Pan Am Selection" during the Selection Match 2, 2023 (Hillsdale) qualification firing rounds, which was a competitive decision. Thus, she was surprised when informed after the finals round of the women's skeet shooting competition that she and Ms. Simonton had the same total aggregate score for determining selection for the 2023 Pan American Games Team for women's skeet shooting, which required a shoot-off between them to determine the team's final spot. Ms. Rhode also claims she was not aware that there were two separate Google spreadsheets for Selection Match 2, 2023 (Hillsdale) (i.e., one for the National Team-World Championships team selection scoring, and another for the Pan Am team selection) until after being told by Sharee Waldron (Coach Waldron's wife), who was running the women's skeet shooting competition, that her shoot-off with Ms. Simonton would be solely for purposes of determining 2023 Pan American Games team selection.

After realizing that Ms. Simonton's 2023 National Team and World Championships Team total aggregate score included her 4 Performance Points, she claimed that their inclusion violated USA Shooting's revised 2023 Shotgun NTSP. Based on her belief that Ms. Simonton's 4 Performance Points should not be included and that she and Ms. Simonton had the same total aggregate score of 480 for purposes of selecting the 2023 World Championships women's skeet

shooting team, Ms. Rhode requested that their shoot-off result also determine the final spot for this team. Prior to their shoot-off, Ms. Waldron denied her request.

Ms. Simonton won the shoot-off with Ms. Rhode for the final spot for the 2023 Pan American Games women's skeet shooting team. Thereafter, Ms. Rhode requested a second shoot-off with Ms. Simonton to determine the final spot for the 2023 World Championships women's skeet shooting team, which was rejected by Mr. Waldron apparently based at least in part on advice from Julie Miller, USOPC Lead High Performance Team Member for the sport of shooting. In response, Ms. Rhode did not file any written protest with USA Shooting regarding the rejection of her request. USA Shooting CEO Craig Kozeniesky, who was present at Selection Match 2, 2023 (Hillsdale) and with whom she spoke about the denial of her request for a second shoot-off, advised her to file a Section 9 complaint with the USOPC.

PROCEDURAL BACKGROUND

On June 16, 2023, Claimant filed her Section 9 Complaint with the USOPC and her Demand for Arbitration with the AAA, which requested the following remedy:

As a primary request, as a result of (1) the improper inclusion of performance points in the squadding of 2023 Selection Match 2; and (2) the improper inclusion of performance points in calculating the Aggregate Score for 2023 Selection Match 2, the results of the 2023 Selection Match 2 be declared a nullity and the Match re-shot in a manner that complies with the Selection Procedures. As a secondary alternative request, if the primary request is denied, Kim Rhode and Samantha Simonton be ordered to compete in a shoot-off for the final World Championships position.

On July 14, 2023, the Arbitrator held a Preliminary Hearing by telephone in which the parties' counsel participated and agreed there was no objection to the Arbitrator's appointment or any dispute regarding his Section 9 jurisdiction in this case.

On July 17, 2023, the AAA confirmed the appointment of Professor Matthew J. Mitten to serve as the Arbitrator in this proceeding.

On July 17, 2023, Respondent emailed the following Notification to all Affected Parties (i.e., all men's and women's athletes who participated in the skeet or trap shooting competitions during the 2023 Selection Match 2 in Hillsdale, MI from May 18-22, 2023):

NOTIFICATION

THIS IS AN OFFICIAL NOTIFICATION ABOUT MATTERS THAT MAY AFFECT YOUR RIGHTS. PLEASE READ THIS CAREFULLY, AS IT PROVIDES YOU WITH INFORMATION, AS WELL AS AN OPPORTUNITY TO PARTICIPATE IN AN IMPORTANT MATTER THAT MAY AFFECT YOU.

On June 16, 2023, athlete Kim Rhode filed a Complaint with the United States Olympic and Paralympic Committee (“USOPC”) and the American Arbitration Association (“AAA”) against USA Shooting under Section 9 of the USOPC Bylaws. A copy of this Complaint (redacted to exclude personal information) is included with this Notification.

Ms. Rhode alleges that performance points were improperly included in the squadding of the 2023 Selection Match 2 and in calculating the Aggregate Score for the 2023 Selection Match 2. As a result, Ms. Rhode is requesting that: the results of the 2023 Selection Match 2 be declared a nullity and the Match re-shot in a manner that complies with the Selection Procedures. As a secondary alternative request, if the primary request is denied, Kim Rhode and Samantha Simonton be ordered to compete in a shoot-off for the final World Championships position.

You are receiving this notice because, if Ms. Rhode prevails in the arbitration, this could impact your position on the 2023 World Championships Team and/or your selection to the 2024 Olympic Team.

Professor Matthew Mitten has been appointed as the arbitrator for this matter. Professor Mitten has set a schedule and hearing date as follows:

Hearing: Monday July 31, 2023, starting at 9:00 am MT, to continue until completed.

Pre-Hearing Briefs: Due 11:59 pm PT on Friday, July 28 2023.

Exchange of Witnesses and Exhibits: Due 11:59 pm PT on Tuesday, July 25, 2023.

Under Section 9.7 of the USOPC Bylaws, “[a]ny individual identified as an affected party and so notified of the claim, will have the option to participate in the arbitration as a party. If an individual is notified of the claim, then that individual will be bound by the decision of the arbitrator even though the individual chose not to participate.”

If you wish to participate in the arbitration as a party, please advise USA Shooting immediately so you may be included in further communications about the proceedings.

Craig Kozeniesky

USA SHOOTING | CHIEF EXECUTIVE OFFICER

On July 24, 2023, in response to several questions from Affected Athletes and after consulting with the Arbitrator and Sara Pflipsen (USOPC Senior Counsel, Dispute Resolution and Athlete Affairs), the Team USA Athlete Ombuds sent the following email:

Dear Athlete –

We are reaching out to you as the Team USA Athlete Ombuds because you either responded to our initial questionnaire following the “town hall” on June 23 or to our email on July 21 that you would like to participate in the upcoming arbitration regarding the Section 9 / “right to compete” complaint.

We hope the following information provides you with a bit more understanding about how this process works and how you can participate in the arbitration hearing, which will happen over Zoom on July 31st. **IF YOU HAVE CHOSEN NOT TO PARTICIPATE**, please let us know by 12:00pm MT Tuesday (July 25th) at ombudsman@usathlete.org. Otherwise, we will forward your name and contact info to the arbitrator and the American Arbitration Association (AAA) to be included on all future notices regarding date, time, and Zoom login info.

Best,

Team USA Athlete Ombuds

FAQ: USA Shooting Section 9 Arbitration

1. Where can I learn more about Section 9 complaints and affected athletes?

The complaint has been filed under Section 9 - “Athlete Rights to Participate in a Protected Competition” of the USOPC Bylaws, which can be found [here](#). (Section 9.7 addresses “affected athletes”). An overview of the process can be found [here](#) under Section 9.

2. Do I have to attend/participate in the arbitration hearing?

If you have been identified as an affected athlete and received an email about this from USA Shooting, you are bound by the decision regardless of your attendance/participation in the hearing. You can read more about that in the link above to Section 9 of the USOPC Bylaws.

3. If I choose to attend/participate in the arbitration hearing, what’s my role?

Generally, any affected athlete who has received notice from USA Shooting may:

- Attend as an observer only; or
- Attend and actively participate as a party and speak.

4. If I intend to participate as an observer only, do I need to do anything?

No preparation is necessary. You should join the Zoom call a few minutes prior to the start of the hearing. Everyone will be expected to be prompt, introduce themselves, and state whether you are observing or planning to speak. After the intros, you should keep your camera and microphone off and may log off the hearing at any point. (Note: to minimize disruptions, the arbitrator may ask observers not to log back on once you have logged off.)

5. If intend to actively participate as a party and speak, do I need to submit anything in advance or do anything to prepare?

Neither written statements nor pre-hearing briefs need to be submitted by affected athletes. You should, however, organize your thoughts if you want to share your perspective in the hearing. With the number of people involved, the arbitrator will likely keep the discussion focused on the specific questions raised in the original complaint and not allow additional arguments. Therefore, please plan to align your perspective accordingly.

6. As a party, what should I anticipate on the day of the hearing?

You should join the Zoom call a few minutes prior to the start of the hearing. Everyone will be expected to be prompt, introduce themselves, and state whether you are observing or planning to speak.

After the intros, the arbitrator will likely proceed as follows: discuss the scope and process of the hearing, including how/when a decision will be communicated, invite any attorney representative to give an opening statement, and then ask the affected athletes if they have additional perspectives to share.

When you are given the opportunity to share your perspective, you will be asked to commit to telling the truth and speak only to the specific issues in question. You will be required to remain on the hearing in case there are questions about what you shared. If you have shared comments and need to drop off, please let the arbitrator know before doing so.

6. How long will the hearing take?

Hearings normally run at least 4 hours, and often the whole day. Again, if you share comments, you will be required to stay on until released by the arbitrator.

7. Where do I go if I need mental health resources or support?

Information about mental health resources available to Team USA Athletes can be found on the [Team USA Mental Health Webpage](#) or feel free to reach out to psychservices@usopc.org / 719-866-2388.

8. Where do I go if I have questions about the hearing?

Please feel free to email our office at ombudsman@usathlete.org. As a reminder, we serve Team USA athletes with confidential, independent, advice. We serve impartially and thus, cannot offer legal advice or representation to individual athletes. Nor are we formally part of the arbitration process, other than to support you, so cannot speak on behalf of you, the arbitrator, the USOPC or USA Shooting. We WILL, however, do our best to help you navigate this process and provide advice and support where we can.

On July 27, 2023, the Arbitrator issued the following Order:

Dear Athletes and Others,

Because of the large number of Affected Athletes and others who want to observe and/or participate in Monday's arbitration hearing, I am issuing the following Order as part of my efforts to conduct an efficient and orderly hearing as well as to provide the parties and affected athletes with a full and fair opportunity to be heard regarding the relevant and material issues in this Section 9 arbitration proceeding:

- 1) Each Affected Athlete shall provide a written statement of no more than 150 words explaining specifically why each of them believes they "may be adversely affected" by this Section 9 arbitration proceeding;
- 2) Each Affected Athlete who wants to provide an opening statement (no longer than 5 minutes), cross examine any witnesses, and/or otherwise speak at the hearing (either personally or through counsel) shall state their intention to do so as well as identify their respective counsel (if any); and
- 3) Every other person (e.g., coach, parent, etc.) who has expressed an interest in observing Monday's hearing shall provide a written statement of no more than 150 words explaining their respective individual reasons for requesting the opportunity to do so.

All requested information shall be provided by email to the Arbitrator and all other persons copied on this email by no later than Friday, July 28th at 6pm CT.

On July 28, 2023, the Arbitrator emailed all Affected Athletes who responded to his Order either personally or through their respective counsel and others who requested the opportunity to observe the July 31, 2023 arbitration hearing:

Greetings All,

In accordance with the attached Notice of Hearing, the evidentiary hearing for this case will be held on Monday, July 31st beginning at 08:00 AM PDT/9:00 AM MDT/10:00 AM CDT/11:00 AM EDT. The Zoom link to access the hearing is <https://americanarb.zoom.us/j/98073567270>.

All 19 Affected Athletes identified by their above respective emails and other persons having an interest in this arbitration proceeding who are copied on this email are permitted to observe this hearing. In addition, Sydney Grad (USOPC summer intern) and Cameron Baker (USOPC Legal Aid Program attorney) are authorized observers. Abigail Barnett (Marquette Law School 3L student) will be assisting me during the hearing and throughout the resolution of this case.

Stephen Hess is representing Affected Athletes Sam Simonton and Hayden Stewart; Ryan Lurich is representing Affected Athletes Austen Smith, Dania Vizzi, Vincent Hancock, and Connor Prince. These are the only Affected Athletes who requested an opportunity to speak personally or through their respective legal counsel before the July 28th 6pm CT deadline in my Order below.

I look forward to conducting an efficient and orderly hearing during which the parties will be provided a full and fair opportunity to be heard as will the Affected Athletes who have made a timely request to be heard.

The following Affected Athletes provided pre-hearing written statements:

Ms. Simonton and Mr. Stewart (by Mr. Hess)

“I am writing on behalf of Sam Simonton and Hayden Stewart. Each of these athletes finished in the top four of their respective disciplines. Both are immediately affected by any change in which the Performance Points are utilized, albeit in opposite ways. Specifically, Sam Simonton finished alone in third, and the exclusion of Performance Points would leave her in tie with Kim Rhode for third. Hayden Stewart finished alone in fourth. [I]f Performance Points are not utilized, Mr. Stewart would be in a tied for third place with Christian Elliott.”

Austen Smith

“I am a 2020 Skeet Women’s Olympian and currently stand in first place for the 2024 team. In my opinion, this match was conducted under rules that were approved by the US Olympic Committee and results should therefore be allowed to stand.”

Connor Prince

“I am an affected athlete because I am currently tied for 1st in men’s skeet. If we have to

reshoot Olympic trials part 1 it could significantly impact my position to make the Olympic team.”

Dania Vizzi

“I am a World Champion, World Cup medalist, and current National Team member. I am currently in 2nd place for the 2024 Olympic team, therefore this ruling could directly affect me. The selection match in question was conducted under rules that were approved by the USOPC and posted well in advance of the match. If an athlete had concerns about the selection procedure, they should have asked about it before the match started, not after we had all completed competing. I believe the match was conducted correctly and would like to attend and participate in the hearing.”

Austen Smith, Dania Vizzi, Vincent Hancock, Connor Prince (by Mr. Lurich)

“My clients all finished at the top after completion of the qualifying shoot; and in the case of Austen Smith, Dania Vizzi, and Vincent Hancock qualified for the national team. Thus, they arguably stand to be the most adversely affected by any decision in this arbitration process that alters the results of the shoot. An athlete’s qualification is contingent on their performance during the established qualifying event, and any subsequent changes to the rules or results could undermine the integrity of the qualification process. Such arbitration proceedings introduce uncertainty, leading to delays in confirming the athlete’s participation or even potential disqualification if the arbitration decision alters the standings. This uncertainty and anxiety can negatively impact the athlete’s mental focus and performance in future events. To ensure fairness and protect the athlete’s rights, any disputes about the rules of the competition should be resolved before the qualifying event’s conclusion.”

Alicia Gough

“I am a potentially adversely affected athlete of the Section 9 proceeding because of the timing and nature of the complaint. I wish to attend the hearing in support of Samantha Simonton and Hayden Stewart, and to show support also for the integrity of published sport procedures. The request to have the match re-shot would indicate that all participants of the first match are therefore affected. As a competitive athlete I have a personal interest in the arbitration, specifically the outcome as it will pertain directly to my training and competition schedule. I would have to sacrifice time and resources to attend another competition. Being notified and bound by this coming decision, I would like the opportunity to listen to the decision myself.”

Seth Inman

“I have been on and off the National Team for the past 20 years as a member of USA Shooting. I’m a member of the USAMU Shotgun Team and I am currently in the number two position after the first Olympic Selection Match. I am willingly to participate or just allowed to be an observer in the hearing as a witness to how I interpreted the selection procedure and how the match would be conducted. The decision of this arbitration will certainly negatively affect myself and my colleagues that I work with at the USAMU by erasing our performance and position in the Olympic Trials. Furthermore this will create more undue stress on our loved ones, as we will be forced to a possible rescheduling of the selection. Myself and my teammates were aware of the selection process and except our results good or bad.”

Fayth Layne

“I am an affected athlete because I could lose my national title for this year, as well as my current positions on both the Junior and National Team going into next year. It would

also affect me because parents are the only people that are funding me, so the possibility of the nationals that we already have shot being thrown away means that time and money was a waste. The money, dedication, and time that I spent working for these positions and goals I reached shouldn't be taken away from me because of a reshoot. It should be able to be solved between two people, not all the other athletes that fought for their position. However, if the outcome is a reshoot my parents and I want to be prepared to put down money if we have to so I can fight for my position again.”

Lia (Julia) Nelson (by Susan Nelson, her mother)

“I write as the parent of my dependent child whose shotgun career I manage. Please consider this message as our combined response why we want to observe Monday's arbitration and reserve the right to participate as an Affected Athlete. Julia is living in Italy this summer working on a graduate program research field practicum project regarding shotgun sports and environmental sustainability. She's scheduled to return to the States on August 27. She is a member of the USA National Development Team. If the selection match is re-shot before August 27, we will need to make extraordinary arrangements to have Julia return to the USA with her firearm and surrender her apartment and vehicle. We appreciate advanced warning. The rumor mill is rampant with misinformation and speculation. We strongly desire to hear first hand the evidence presented, arguments offered, and eagerly anticipated final resolution in a transparent fashion.”

Jake Wallace

“As a 10+ year National Team Athlete, World Cup Medalist, Pan American, and multiple World Championship Team member, who voiced concern on this particular issue at its flawed inception, along with other selection policies and procedures in the past, only to be brushed aside or marginalized. It is clear that in this situation, there were two groups of athletes, those in the know and those that were not, this is only compounded by USAS inconsistent and unclear process for ratification of these processes.”

On July 31 and August 1, 2023, the Arbitrator conducted an evidentiary hearing via Zoom Video Conference, which was approximately 19 hours in total duration. In addition to the parties, Affected Athletes identified above, and their counsel, the following persons participated in or observed the hearing: Jeffrey Holguin (who oversees 14 Army shooters, including Ms. Simonton and Mr. Stewart); Curtis Lynn (coach and father of Connor Lynn); Rod Smith (father of Austen Smith); Antonio Valiente (attorney for Craig Hancock, coach for several Affected Athletes); USOPC (Lucy Denley, Manager, Dispute Resolution; Sydney Grad, intern); Team USA Athlete Ombuds (Kacie Wallace, Emily Azevedo; Cameron Baker (Legal Aid Program attorney)); and Abigail Barnett, Marquette University Law School student and Editor-in-Chief, Marquette Sports Law Review, who assisted the Arbitrator.

During the hearing, the following people testified: Ms. Scherer; Ms. Rhode; Mr. Waldron; Mr. Stewart; and Ms. Simonton. Affected Athletes Gough, Simonton, Stewart, and

Vizzi provided brief statements requesting that Claimant’s requested relief be denied by the Arbitrator.

After the presentation of evidence and closing arguments, the parties, all Affected Athletes, and their counsel agreed that each was given a full and fair opportunity to be heard. The Arbitrator closed the hearing on August 1, 2023 at approximately 530pm CT.

On August 2, 2023, the Arbitrator issued the following Operative Award:

The Arbitrator has undisputed jurisdiction to resolve the dispute that is the subject of this Section 9 arbitration proceeding, specifically, whether Respondent has denied Claimant the opportunity to participate in the 2023 ISSF World Championships in Baku, Azerbaijan during August 14-September 1, 2023, which is a “protected competition” pursuant to Section 1.3(w) of the USOPC Bylaws.

Considering its express language and illustrative examples, some of the provisions of Respondent’s “2023 Shotgun National Team Selection—Updated 10/25/22” policy and procedure (“[October] 2023 Shotgun NTSP”) are ambiguous and confusing regarding the criteria for selecting its six-person National Team and three-person 2023 World Championships Team after 2023 Selection Match 2 (Hillsdale, MI, May 18-22, 2023), which violates the ASA, specifically 36 U.S.C. § 220522(10)(B), because its “selection criteria for individuals and teams that represent the United States” are not “clearly articulated in writing.”

The provisions of its [October] 2023 Shotgun NTSP that Respondent used to select its six-person National Team and three-person 2023 World Championships Team after 2023 Selection Match 2 substantially comply with the ASA’s requirements that “selection criteria for individuals and teams that represent the United States” are “fair”; were “properly communicated to athletes in a timely manner”; and were “consistently applied, using objective . . . criteria appropriate to the applicable sport [shooting]” (36 U.S.C. § 220522(10)).

Based on the record evidence, the Arbitrator determines that Respondent did not materially breach its approved and published [October] 2023 Shotgun NTSP, apply any of its provisions inconsistently to athletes similarly situated, or act in bad faith towards or with bias against Claimant.

Considering Respondent’s legitimate objective of using an objective performance-based procedure (which includes performance points for top-six competition results in the 2022 World Championships) to select its 2023 World Championships National Team; the legitimate expectations of Affected Athletes Sam Simonton, Austen Smith, Vincent Hancock, Christian Elliott, and Derrick Mein (who each earned performance points for top-six competition results in the 2022 World Championships); and Claimant’s lack of timely detrimental reliance on any ambiguities in or confusion regarding the [October] 2023 Shotgun NTSP, the Arbitrator determines that Claimant did not prove by a preponderance of evidence that she is entitled to her requested relief for Respondent’s violation of 36 U.S.C. § 220522(10)(B), specifically that 1) she and Ms. Simonton be ordered to compete in a shootoff [sic] for Respondent’s 2023 World Championships position and National

Team position 3; and/or 2) the results of Respondent's 2023 Selection Match 2 (Hillsdale, MI, May 18-22, 2023) be declared a nullity and the entire Match be re-shot.

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.

The Arbitrator will issue a written award with brief reasons by September 1, 2023.

JURISDICTION

Pursuant to Section 9.2 of the USOPC Bylaws, the Arbitrator has undisputed jurisdiction to resolve the dispute that is the subject of this Section 9 arbitration proceeding, specifically, whether Respondent has denied Claimant the opportunity to participate in the 2023 ISSF World Championships in Baku, Azerbaijan during August 14-September 1, 2023, which is a "protected competition" pursuant to Section 1.3(w) of the USOPC Bylaws and Article II A 26(d) of the Bylaws of USA Shooting.

LEGAL ANALYSIS

A. De Novo Arbitral Review and Claimant Burden of Proof

"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 any deference to any prior decision and in fact it would be incorrect to do so.

The burden of proof is not as clearly defined in the USOC Bylaws or the Act, although a line of cases has developed making the determination of the burden of proof in Section 9 cases turn on whether the case involves a disciplinary proceeding or a selection/eligibility issue. [B]ecause this case involves an athlete selection issue, the burden of proof rests with the athlete to demonstrate that the NGB failed to appropriately apply its rules to the facts at issue."

Craig v. USA Taekwondo, Inc., AAA Case No. 77 190E 00144 11 (2011) at para. 4.1 and 4.2.

B. Section 9 Team Selection Jurisprudence and ASA Legal Requirements

"Section 9 jurisprudence requires [Claimant] to prove [Respondent] breached its approved and published Athlete Selection Procedures for the [2023 World Championships], 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 [ASA]).” *Hyatt v. USA Judo, Inc.*, AAA Case No. 01 14 0000 7635 (2014).

As the NGB for the sport of shooting, USA Shooting is authorized by the ASA to “establish procedures for determining eligibility standards for participation in competition” and to “designate individuals and teams to represent the United States in international amateur athletic competition.” 36 U.S.C. §220523(a)(5) & (7). The ASA requires USA Shooting’s published criteria (i.e., its 2023 Shotgun NTSPP) for selecting individuals and teams that represent the U.S., including the athlete members of its team that will compete in the 2023 ISSF World Championships, to be 1) “fair”; 2) “clearly articulated in writing and properly communicated to athletes in a timely manner”; and 3) “consistently applied, using objective and subjective criteria appropriate to the applicable sport.” 36 U.S.C. §220522 (10).

“Regarding the athlete selection process for protected competitions such as the World Championships, [Claimant] has ‘the responsibility to athletes and others to make the rules clear, transparent, and easy to apply without confusion. . . . Athletes are entitled to know what standard they have to meet and precisely how such selections will be made.’ *McConeloug and USA Cycling*, AAA 30 190 00750 04 (July 20, 2004) at 7. ‘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 30 190 00056 06 (January 27, 2006) at p. 2. Arbitrators in Section 9 disputes are therefore obligated to apply the selection criteria as written. *Craig* at p. 6”

Komanski v. USA Cycling, Inc., AAA Case No. 01-15-0004-9907 (2015) at para. 4.3.

Similarly, in *Keeter v. USA Track & Field*, AAA Case No. 01-19-0002-0105 (2019) at 12, the Arbitrator explained that an NGB materially breaches its team selection procedures if its non-compliance with published criteria results in detrimental reliance by athletes who satisfy the criteria and are not selected to compete in a protected competition contrary to their legitimate expectation:

“This breach of USATF’s team selection rules denied the three Claimants the opportunity to participate in the 2019 Pan American Games, especially because they did not know that USATF would use 2018 competition results in selecting its team and they detrimentally relied on the express language of Section 1.2.1 providing that only competition results from January 1-June 10, 2019 would be used. *Hyatt and United States Judo, Inc.*, AAA Case Number: 01-14-0000-7635 (June 27, 2014) at 11 (“team

selection rules create the legitimate expectation that an athlete who satisfies the published qualification criteria will be selected for the team”).”

C. Respondent’s Application of its 2023 Shotgun NTSP (October 25, 2022) Substantially Complied with Section 9 Team Selection Jurisprudence and ASA Legal Requirements Except For 36 U.S.C. § 220522(10)(B)

In this case, Claimant does not contend and did not submit any evidence that Respondent applied its revised 2023 Shotgun NTSP inconsistently to athletes similarly situated, acted in bad faith towards or with bias against [her], or that any of its team selection criteria are not objective criteria appropriate for the sport of shooting. Claimant does not assert that either the original or revised 2023 Shotgun NTSP were not “properly communicated to athletes in a timely manner.”

Based on *Craig and Lea v. USA Cycling*, AAA Case No. 01 16 0000 8307 (2016), Claimant acknowledges the “burden of proof rests with [her] to demonstrate by a preponderance of the evidence that the [Respondent] failed to appropriately apply its rules to the facts at issue.” (Claimant’s Pre-Hearing Brief at 14).

Relying on *Komanski* and specifically referencing the statement that “Performance Points will be utilized at Selection Match 1, 2023 for the Proposed National Travel Selection Match 1, 2023 Results only” in its Section C (“National Team Policy”), Claimant asserts that Respondent breached its 2023 Shotgun NTSP as written by including 2022 World Championships Performance Points in Ms. Simonton’s aggregate score calculation for SM 2 2023 [i.e., Shooting Match 2, 2023 (Hillsdale)]. (*Id.* at 15-16). Claimant also asserts that Respondent improperly applied its 2023 World Championships Team selection criteria in its 2023 Shotgun NTSP by using these Performance Points “in establishing the squadding for SM 2 2023 and in calculating the aggregate score for SM 2 2023 [which] impacts the 2024 Olympic Selection process and has the effect of rendering portions of [Respondent’s] Olympic Selection Process impermissibly retroactive.” (*Id.* at 19). Thus, Claimant appears to implicitly assert that Respondent’s 2023 World Shooting Championships Team selection criteria, as applied, are not “fair” as required by the ASA.

Respondent contends that it complied with and properly applied its 2023 Shotgun NTSP, which “provide[d] for each athlete to be given a Total Aggregate Score comprised of their shooting results from each [2023] Selection Match [SM 1 and SM 2], plus Finals Points for

each Selection Match, plus Performance Points from the 2022 World Championship (counted once as part of the [SM 1] Tucson Aggregate Score),” by including 4 Performance Points in Ms. Simonton’s Total Aggregate Score. (Respondent’s Prehearing Statement at 8). It contends that the 2023 Shotgun NTSP expressly provided that “athletes who finished in the top six places at the 2022 World Championships would receive Performance Points” to be added to the athlete’s SM 1 aggregate score [i.e., Shooting Match 1, 2023 (Tucson)], which “was fully disclosed to athletes, approved by USA Shooting and understood to be an essential component of the 2023 [World Championships] Selection Criteria.” (*Id.* at 3). While conceding that its 2023 Shotgun NTSP are ambiguous regarding calculation of an athlete’s Total Aggregate Score for purposes of determining its 3-person 2023 World Championships team, Respondent contends that all athletes, including Claimant, understood that Performance Points would be part of its calculation prior to and during 2023 SM 2. Therefore, Claimant now is effectively asserting that Performance Points should be ignored and not counted, an after-the-fact contention that should be rejected by the Arbitrator.

Affected Athletes Simonton and Stewart contend that in calculating Ms. Simonton’s Total Aggregate Score, Respondent properly applied the 2023 Shotgun NTSP as written by including 4 Performance Points as part of her 2023 SM 1 aggregate score (and not again adding these points to her 2023 SM 2 aggregate score). They contend that “[t]he express exclusion of Performance Points from Pan American team selection confirms their inclusion in National Team (and World Championship) selection” and note there were no “formal objections, protests, or appeals before the completion of the Hillsdale competition [i.e., 2023 SM 2]” to the inclusion of Performance Points in determining the 2023 World Championships Team by any athletes, including Claimant. (Affected Athletes Simonton and Stewart Hearing Brief at 8 and 10). Even if the 2023 Shotgun NTSP are ambiguous, they assert that the “selection results unambiguously indicate that Performance Points from the 2022 World Championships were included in the calculations” and that “[n]othing in the application of the Selection Procedures to credit Performance Points is alleged to have changed the manner in which any athlete [including Claimant] competed” during the 2023 SM 2. (*Id.* at 9 and 11). Relying on *Keeter*, they effectively contend that Respondent’s inclusion of Performance Points in determining the Total Aggregate Score for Ms. Simonton and the four other U.S. athletes with top-six competition

results in the 2022 World Championships and selecting its 2023 World Championships National Team did not materially breach its 2023 Shotgun NTSP.

The dispositive issue in this case is whether Respondent materially breached its revised 2023 Shotgun NTSP by including the Performance Points earned by Team USA athletes at the 2022 ISSF World Championships (e.g., Ms. Simonton’s 4 points for her 3rd place finish) as part of their respective “Aggregate Score [for] Selection Match 1, 2023 [Tucson]” for purposes of selecting its 2023 National Team and World Championships Team after Selection Match 2, 2023 (Hillsdale).

In resolving this issue, the Arbitrator is guided by the contract interpretation principles articulated in *Pepcol Mfg. Co. v. Denver Union Corp.*, 687 P.2d 1310, 1313-1314 (Colo. 1984) by the Colorado Supreme Court:

“A fundamental rule of contract law is that the court should strive to ascertain and give effect to the mutual intent of the parties. 4 S. Williston, *A Treatise on the Law of Contracts* § 601 (W. Jaeger ed. 1961). Interpretation of a written contract is generally a question of law for the court. An integrated contract in the first instance is to be interpreted in its entirety with the end in view of seeking to harmonize and to give effect to all provisions so that none will be rendered meaningless. In the absence of contrary manifestation of intent in the contract itself, contractual terms that have a generally prevailing meaning will be interpreted according to that meaning. It is only where the terms of an agreement are ambiguous or are used in some special or technical sense not apparent from the contractual document itself that the court may look beyond the four corners of the agreement in order to determine the meaning intended by the parties. It is axiomatic that in the absence of an ambiguity a written contract cannot be varied by extrinsic evidence.

Whether an ambiguity exists is also a question of law. When an ambiguity is found to exist and cannot be resolved by reference to other contractual provisions, extrinsic evidence must be considered by the trial court in order to determine the mutual intent of the parties at the time of contracting. This extrinsic evidence may include any pertinent circumstances attendant upon the transaction, including the conduct of the parties under the agreement.”

[citations omitted].

Applying *de novo* review, the Arbitrator finds that several provisions of the revised 2023 Shotgun NTSP are “ambiguous and confusing” (August 2, 2023 Operative Award) as well as that some provisions have grammatical errors and misspellings, are arguably inconsistent, and apparently reference incorrect sections (e.g., “Section D.3” rather than “Section D.6”), which violate the ASA’s requirement that an NGB’s team selection procedures for protected competitions

must be “clearly articulated in writing” pursuant to 36 U.S.C. § 220522(10)(B). But Respondent’s violation of this statutory requirement alone is not necessarily a *per se* material breach of contract. Based on *Pepcol Mfg. Co.* and the specific facts of this case, the Arbitrator finds that this violation does not materially breach Claimant’s contract rights created by the revised 2023 Shotgun NTSPP because its terms permitted the inclusion of Performance Points in the calculation of an athlete’s SM 1, 2023 (Tucson) aggregate score for the purpose of selecting Respondent’s 2023 National Team and World Championships Team (including its three-athlete women’s skeet shooting team) after SM 2, 2023 (Hillsdale), which was confirmed in writing by emails from Coach Waldron to athletes participating in shotgun disciplines (i.e., men’s and women’s trap and skeet shooting) and generally understood by them prior to this dispute arising.

Prior to the June 2022 publication of Respondent’s original 2023 Shotgun NTSPP, Coach Waldron notified athletes, including Ms. Rhode, via two November 2021 emails that Performance Points for top-six places during the September 2022 World Championships would be included in calculating their respective scores for purposes of selecting USA Shooting’s 2023 National Team and World Championships Team. As member of USA Shooting and its board of directors, Ms. Rhode had at least constructive knowledge that any performance points earned by participating athletes during the 2022 World Championships would be a part of the objective criteria used to select Respondent’s 2023 World Championships Team. No athletes, including Ms. Rhode, objected to the usage of this objective criteria by Respondent for this purpose prior to the conclusion of Selection Match 2, 2023.¹

Respondent’s 2023 Shotgun NTSPP’s Section D 2 definition of “Aggregate Score Selection Match 1, 2023” and accompanying example expressly includes “Performance Points” (i.e., “[a]ny earned through 2022 World Championships”). “Aggregate Score Selection Match 2, 2023 (SM2),” which is defined in its Section D 6, includes “SM 1, 2023 aggregate score,” (which is synonymous with “Aggregate Score Selection Match 1, 2023” as defined in Section D 2) as part of its calculation. Although the Section D 6 definition of “Aggregate Score Selection

¹ In his pre-hearing written statement, Jake Wallace stated he had “voiced concern on this particular issue at its flawed inception” and that “in this situation, there were two groups of athletes, those in know and those that were not, this is only compounded by USAS inconsistent and unclear process for ratification of these processes.” Because Mr. Wallace was not called as a witness and he chose not to make any statement during the hearing, the Arbitrator is unable to determine his specific concerns.

Match 2, 2023 (SM2)” lists “Performance Points” as part of its calculation (which arguably is inconsistent with Section C of the 2023 Shotgun NTSP), the example provided for calculating this score states “None” for “Performance Points,” which ameliorates this apparent inconsistency. Moreover, it is undisputed that the 4 Performance Points that Ms. Simonton earned based on her performance in the 2022 World Championships (as well as those earned by Ms. Smith, Mr. Hancock, Mr. Elliott, and Mr. Mein in their respective shotgun disciplines during this competition) were only counted once (not twice) as part of the objective formula for selection of USA Shooting’s 2023 World Championships Team.

The express definition of “Aggregate Score Selection Match 1, 2023,” which includes “Performance Points” that are “earned through 2022 World Championships,” is the same in both the original and revised 2023 Shotgun NTSP. The October 25, 2022 revision modified the original 2023 Shotgun NTSP by expressly providing that Performance Points “will not be used” in selecting the members of USA Shooting’s 2023 Pan American Games Team. By retaining the exact same definition of “Aggregate Score Selection Match 1, 2023,” the Arbitrator concludes that the revised 2023 Shotgun NTSP permitted (indeed, arguably required) that Performance Points based on top-six placing in the 2022 World Championships be included in the objective calculation for selecting Respondent’s 2023 World Championships Team. Consistent with this conclusion and Coach Waldron’s testimony, the Arbitrator finds that its Section C provision stating “Performance points will be utilized at Selection Match 1, 2023 for the Proposed National Travel Selection Match 1, 2023 Results only, as referenced in Section D.3 below” mistakenly references this non-existing provision rather than Section D.6, which defines “Aggregate Score Selection Match 2, 2023 (SM2)” as including “SM 1, 2023 aggregate score” that expressly includes "performance points" its calculation.

Because both the original and revised 2023 Shotgun NTSP include Performance Points in the calculation of SM 1, 2023 (Tucson) and athletes earning Performance Points in the September 2022 World Championships did so before the October 2022 revision of the Shotgun NTSP, the Arbitrator rejects Claimant’s explicit argument that doing so has the effect of rendering portions of [Respondent’s] Olympic Selection Process “impermissibly retroactive” or any implicit assertion that the 2023 Shotgun NTSP, as applied, are not “fair” as required by the ASA.

Adhering to *Pepcol Mfg. Co.*'s contract interpretation principles, particularly its requirement that "in the absence of contrary manifestation of intent in the contract itself, contractual terms that have a generally prevailing meaning will be interpreted according to that meaning," the Arbitrator also rejects Claimant's argument that Respondent's inclusion of Ms. Simonton's and four other Affected Athletes' 2022 World Championships Performance Points in its calculation of published objective criteria to select its 2023 World Championships Team materially breached its 2023 Shotgun NTSP. Moreover, the Arbitrator's acceptance of her assertion effectively would preclude these athletes from receiving any incremental benefit for their respective top-six place finishes earned based on their trap or skeet shooting performances during the 2022 World Championships, contrary to their legitimate expectations that were created by Respondent's 2023 Shotgun NTSP selection criteria and procedures for selecting its 2023 World Championships Team. Therefore, the provisions of Respondent's 2023 Shotgun NTSP and their application by Respondent substantially comply with well-established Section 9 team selection jurisprudence and the ASA except the requirement that its team selection criteria and procedures are "clearly articulated in writing" in accordance with 36 U.S.C. § 220522(10)(B).

D. Appropriate Relief for Respondent's Violation of 36 U.S.C. § 220522(10)(B)

Now the Arbitrator must determine the appropriate remedy, if any, for an individual athlete (i.e., Ms. Rhode) when an NGB (i.e., USS Shooting)'s team selection criteria for a protected competition (i.e., 2023 ISSF World Championships) are not "clearly articulated in writing" as required by the ASA, but are "fair," "properly communicated to [all] athletes in a timely manner," were "consistently applied, using objective . . . criteria," not materially breached, and otherwise do not violate the athlete's legally protected rights.

Affected Athletes Simonton and Stewart assert that Claimant is estopped from being granted any relief in this arbitration proceeding because she waived any objections to the manner in which Selection Match 2, 2023 was conducted (i.e., use of Performance Points to change other athletes' shooting positions after the initial squadding; manner in which the 2023 World Championships Team was selected after the conclusion of Selection Match 2, 2023) because she did not follow Respondent's match protests and appeals procedures. (Section 9.13, International

Shooting Sport Federation and USA SHOOTING, SHOTGUN RULES FOR TRAP, DOUBLE TRAP, SKEET). Without explicitly asserting that her failure to do so bars any arbitral relief to which she otherwise is entitled, they also contend she failed to exhaust available USA Shooting administrative remedies by filing a grievance regarding denial of an athlete's opportunity to participate in a protected competition (e.g., 2023 World Championships) with its Judicial Committee pursuant to USA Shooting Bylaws, Article XII.

As a longtime member of USA Shooting and a current member of its board of directors, Ms. Rhode has at least constructive knowledge of these provisions of the ISSF and USA Shooting Shotgun Rules and USA Shooting Bylaws as well as a contractual obligation to follow them. On the other hand, when Ms. Rhode challenged the inclusion of 4 Performance Points in Ms. Simonton's total aggregate score for purposes of the selecting the 2023 World Championships Team after the Selection Match 2, 2023 women's skeet finals, chaotic circumstances arose, which included apparent vigorous disagreement among USA Shooting officials regarding the merits of her claims; confusion and uncertainty regarding the USA Shooting official with authority to resolve her post-match protest and request for a second shoot-off with Ms. Simonton to determine the third 2023 World Championships Team member; and the statement by USA Shooting CEO Craig Kozeniesky that Ms. Rhode should file a Section 9 claim. Therefore, the Arbitrator rules that Claimant's failure to file a written protest or a grievance with Respondent does not estop her from requesting the relief she seeks in this Section 9 arbitration proceeding or waive any right she otherwise has to its granting.

In the August 2, 2023 Operative Award, the Arbitrator concisely summarized the reasons for denying any relief to Claimant:

“Considering Respondent's legitimate objective of using an objective performance-based procedure (which includes performance points for top-six competition results in the 2022 World Championships) to select its 2023 World Championships National Team; the legitimate expectations of Affected Athletes Sam Simonton, Austen Smith, Vincent Hancock, Christian Elliott, and Derrick Mein (who each earned performance points for top-six competition results in the 2022 World Championships); and Claimant's lack of timely detrimental reliance on any ambiguities in or confusion regarding the [October] 2023 Shotgun NTSP, the Arbitrator determines that Claimant did not prove by a preponderance of evidence that she is entitled to her requested relief for Respondent's violation of 36 U.S.C. § 220522(10)(B), specifically that 1) she and Ms. Simonton be ordered to compete in a shootoff [sic] for Respondent's 2023 World Championships position and National

Team position 3; and/or 2) the results of Respondent's 2023 Selection Match 2 (Hillsdale, MI, May 18-22, 2023) be declared a nullity and the entire Match be re-shot."

While recognizing that all athletes, including Ms. Rhode, have legitimate expectations that USA Shooting's "selection criteria for individuals and teams that represent the United States" are "clearly articulated in writing" (i.e., not ambiguous or confusing; grammatically correct; free of errors, misspellings, inconsistencies, and references to incorrect sections), the Arbitrator reiterates his conclusion that her lack of timely detrimental reliance on Respondent's failure to comply with this ASA requirement justifies denial of her requested shoot-off with Ms. Simonton to determine 2023 World Championships position and National Team position 3. Without finding or suggesting that Ms. Rhode has breached her fiduciary duty as a member of USA Shooting's board of directors by filing this Section 9 arbitration and requesting the above relief, the Arbitrator does not believe that granting such relief to a board member absent timely detrimental reliance on the 2023 Shotgun NTSP not being "clearly articulated in writing" would be equitable and consistent with *Keeter*. In contrast to Ms. Rhode's assertions, Affected Athlete Stewart, who would benefit from an arbitral determination that Performance Points were improperly included as part of Respondent's objective criteria for selection of the 2023 World Championships Team (which would entitle him to a shoot-off with Affected Athlete Christian Elliott for the third spot on the men's skeet team), testified he understood the 2023 Shotgun NTSP "pretty good" and that these points would be used to select this team (but not the 2023 Pan American Games men's skeet team).

Based on the evidence of record, the foregoing legitimate objectives of USA Shooting and legitimate expectations of the five Affected Athletes who earned Performance Points in the 2022 World Championships and having these points counted once in selecting the 2023 National Team and World Championships Team after Selection Match 2, 2023 (Hillsdale) outweigh Ms. Rhode's request for individual relief that would adversely affect their collective interests and potentially contravene Respondent's duty to select "the most competent Amateur Athlete representation possible for the United States in the sport of ISSF Shooting."

DECISION AND AWARD

Based on the foregoing material facts and legal analysis, the Arbitrator decides and awards as follows:

Claimant's Section 9 Demand for Arbitration is partially upheld because Respondent violated the ASA, specifically 36 U.S.C. § 220522(10)(B), because its criteria for selecting its six-person National Team and three-person 2023 World Championships Team after 2023 Selection Match 2 are not "clearly articulated in writing," although all her requested relief in this arbitration proceeding is denied for the foregoing reasons.

The Administrative fees of the AAA totaling \$1,915.00 are to be borne as incurred. The Compensation of the Arbitrator totaling \$4,000 is to be borne as incurred.

The parties shall bear their own attorney's fees and/or expenses associated with this arbitration.

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.



Matthew J. Mitten, Arbitrator

September 1, 2023