

On June 18, 2024, Burke submitted her *Section 9 Complaint Form*.

On June 19, 2024, Chamberlain's and Burke's complaints were consolidated into this action.

On June 19, 2024, New Era ADR issued the *Notice of Hearing* confirming the evidentiary hearing to be held on June 22, 2024 beginning at 10:00 a.m. CT.

The final hearing was held via Zoom conference on June 22, 2024 commencing at 10:00 a.m. CT and concluding at 11:07 p.m. CT. During the hearing, Chamberlain appeared along with her counsel, Ashlyn L. Hare and John C. Clune of Hutchinson Black and Cook, LLC, Burke appeared along with her counsel, Patrick Walsh, Julian Shuttelworth, James deBoer, and Shane Finn of Stulberg & Walsh, LLP, USAF appeared through its representatives, Phil Andrews and Christina Pachuta, and its counsel, Stephen A. Hess of the Law Office of Stephen A. Hess, and Nazlymov appeared along with her counsel, Howard Jacobs and Katy Freeman of the Law Offices of Howard L. Jacobs. In addition to the Parties and counsel, the following individuals attended the videoconference hearing as observers: Emily Azevedo (USOPC Office of the Ombuds, Senior Associate Athlete Ombuds) and Lucy Denley (USOPC, Associate Director of Dispute Resolution). At the conclusion of the hearing, the Parties confirmed they were provided a full and fair opportunity to submit and argue necessary facts, allegations, legal arguments, evidence, and present all witnesses they deemed appropriate. Subsequently, no Party or counsel filed an objection or indicated additional time was necessary to fully and fairly present this matter for consideration.

On June 23, 2024, the Arbitrator issued the following *Operative Award*:

Thank you to all of the parties, counsel, witnesses, and the affected athletes for your participation in the arbitration of this matter on June 22, 2024. Counsel for the parties were well prepared and thoroughly addressed the facts and circumstances with little time to prepare for the expedited hearing. I have considered all of the facts, allegations, arguments, testimony, and evidence submitted by the parties in the present proceeding and have reviewed the case *de novo*. After conducting such review and providing Ms. Chamberlain, Ms. Burke, and all affected athletes, including Ms. Nazlymov, a full and fair opportunity to be heard, I find that USA Fencing's decision to place Ms. Nazlymov on the Olympic team should not be disturbed. The Claimants argued that there are "suspicions" of bout manipulation and referee misconduct that led to victories for Ms. Nazlymov in certain contests. No evidence was offered to show that Ms. Nazlymov was in any way personally involved in any kind of bout manipulation or attempted to gain an advantage through referee misconduct. Multiple witnesses admitted that certain referee calls could have gone either way, that contests could not be re-scored after the contests, and reasonable and well-trained referees often differ on calls especially those made in real time without the assistance of video replay. Based on the evidence currently available, Claimants did not meet their burden to establish that any of decisions of referees who officiated the relevant bouts were the product of fraud, corruption, partiality, or other misconduct. Accordingly, the decision of USA Fencing is upheld. I wish the parties well in future competitions and endeavors. A reasoned decision will follow in due course.

II. Evidence Submitted by the Parties

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

A. Chamberlain

Chamberlain submitted exhibits labeled C-1 - C-25 and called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Maia Chamberlain
2. Ariana Klinkov
3. Rob Handelman
4. Warren Chamberlain
5. Phil Andrews

B. Burke

Chamberlain submitted exhibits labeled C2-1 - C2-31 and called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Marcus Schulz
2. Nora Burke

C. USAF

USAF submitted exhibits labeled R-1 - R-9. USAF did not call any additional witnesses.

D. Affected Athletes

Nazlymov submitted exhibits labeled AA-1 - AA-26 and called the following witnesses at the final hearing who were sworn in and provided testimony under oath:

1. Fikrat Valiyev
2. Jacobo Morales
3. Vatali Nazlymov
4. Tatiana Nazlymov

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

III. Notice to Affected Athletes

On June 19, 2024 at 7:25 a.m. CT, Stephen A. Hess, counsel for USAF, issued written notice via email to the Parties and Affected Athletes. A copy of the notice is set forth verbatim as follows:

Greetings:

I am writing as counsel to USA Fencing to notify you that a Complaint and Demand for Arbitration. have been filed by Nora Burke to challenge Tatiana Nazlymov's nomination to the Olympic team. Your rights may be affected by adjudication of the dispute, and you may have the right to participate in the arbitration. If you have the right to participate but decline to do so, you will still be bound by any decision in the arbitration.

If you decide to participate, you should communicate that decision immediately to the arbitration administrator, Anthea Spires at anthea@neweraadr.com.

If you have questions about the process or need help with regard to your potential participation, you can seek advice from Kacie Wallace, the USOPC Athlete Ombuds. She can be reached at the email address above, or Kacie and her staff can be reached at 719.866.5000.

IV. Jurisdiction

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

An amateur sports organization, a high-performance management organization, or a paralympic sports organization is eligible to be certified, or to continue to be certified, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete . . . , which arbitration under this paragraph shall be conducted in accordance with the standard commercial arbitration rules of an established major national provider of arbitration and mediation services based in the United States and designated by the corporation with the concurrence of the Athletes' Advisory Council and the National Governing Bodies' Council, as modified and provided for in the corporation's constitution and bylaws, except that if the Athletes' Advisory Council and National Governing Bodies' Council do not concur on any modifications to such Rules, and if the corporation's executive committee is not able to facilitate such concurrence, the standard commercial rules of arbitration of such designated provider shall apply unless at least two-thirds of the corporation's board of directors approves modifications to such Rules. . . .

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

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

Section 9.1 of the USOPC Bylaws provides as follows:

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

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

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

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

V. Selection Procedures

USAF is the NGB for fencing in the United States and is recognized as such by the USOPC. USAF is authorized as the NGB for the sport of fencing to "establish procedures for the determination of eligibility standards for participation in competition" and to "recommend to the [USOPC] individuals and teams to represent the United States . . ." 36 U.S.C. § 220523(a)(5-6). In accordance with Section 8.4.1(d) of the USOPC Bylaws, USAF must establish clear procedures approved by the USOPC and timely disseminate such procedure to the athletes and team officials.

USAF adopted certain policies and procedures for qualification for the 2024 Olympic Games in Paris, France ("**Olympics**"). USAF drafted and adopted the *USA Fencing Athlete Selection Procedures – 2024 Olympic Games* dated June 23, 2023 and signed July 14-15, 2023 ("**Procedures**"). See *Exhibit R-7*. The Procedures were approved by the USOPC. In pertinent part, the Procedures provide as follows:

1. SELECTION SYSTEM

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

1.1.1. Nationality/Passport requirements:

Athlete must be a national of the United States at the time of selection.

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

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

Any competitor in the Olympic Games must be a national of the country of the National Olympic Committee (NOC) which is entering such competitor. For additional information regarding an athlete who is a national of two or more countries, has changed his or her nationality or acquired a new nationality, refer to the Olympic Charter (Rule 41).

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

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

1.1.4. Other requirements (if any):

- Athlete must be a current member of USA Fencing and [sic] in good standing at the time of selection.
- Athlete must successfully complete all Games Registration requirements by stated deadline.
- Any athlete age 18 or older will be required to undergo a background screen in accordance with the current USOPC Background Check Policy.
- Any athlete age 18 or older as of the Closing Ceremony will be required to remain current with the U.S. Center for SafeSport's education and training requirements in accordance with the USOPC Athlete Safety Policy.

1.2. Tryout Events:

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

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

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

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

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

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

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

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

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

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

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

The National Coach must clearly demonstrate the ability of the proposed alternate Replacement Athlete to perform at a high level, specifically in international senior team events. Evidence may include bout sheets from previous senior-level international competitions. Junior and Cadet results will not be considered for these purposes. Team event performance will be given more weight than individual senior results.

The proposed alternate Replacement Athlete must:

1. Be ranked in the top 8 of the National Senior Team Point Standings as of the selection date, OR
2. Have previously competed in the Olympic Games in a team or individual event, OR
3. Have previously competed in the Senior World Championships in a team event.

The alternate Replacement Athlete will be recommended by the National Coach and approved only with a majority vote of the panel composed of the following:

1. National Coach for the opposite gender in the same weapon (if conflicted, a National Coach from another weapon will serve)
2. USA Fencing Chief of Sport Performance
3. A non-conflicted* retired Olympian from the same gender and weapon
4. Chair of the USA Fencing Athlete Council. If the Chair is currently competing in the weapon and gender of the proposed replacement, a non-conflicted* member of the Athlete Council will replace them. The member will be chosen by a majority vote of the Athlete Council. An ex-officio member shall be eligible to serve.
5. A non-conflicted* USA Fencing representative to the USOPC Athletes' Advisory Council. If this is not possible, a second member of the USA Fencing Athlete Council will be selected as described in number 4 above.

2. DISCRETIONARY SELECTION (if applicable)

Refer to section 1.3 above.

2.1. Rationale for utilizing discretionary selection (if any):

USA Fencing may use discretionary criteria to select an alternate Replacement Athlete in order to increase its medal potential in the team event.

2.2. Define the discretionary criteria to be used (if any):

Refer to section 1.3 above.

2.3. Name of the committee that will be responsible for making discretionary selections, along with a complete list of the members' titles:

Refer to section 1.3 above.

2.3.1. Process that will be used to identify and handle any potential conflicts of interest involving a member of the committee:

All members of the selection committee must comply with the USA FENCING's conflict of interest policy, to include completing and submitting a disclosure form for review by the USA FENCING's Ethics Committee prior to convening the committee.

Any member of the selection committee who has an actual, possible, or perceived conflict of interest must disclose it to the USA FENCING's Ethics Committee prior to the start of the selection process and/or recuse him/herself from the review process and/or voting. A conflict of interest exists when a personal, family, financial, professional, club, team or business interest of the committee member poses a direct or indirect relationship, connection, or affiliation, past or present, with an athlete in contention for the applicable team selection that could compromise the committee member's ability to participate in the selection process in an unbiased manner. If a conflict exists, the USA FENCING's Ethics Committee shall review the conflict and determine the committee member's level of involvement (e.g., whether that committee member must recuse him/herself from participating in discussions and/or voting). For example, if it is determined that a committee member must recuse him/herself from voting, the Ethics Committee may still determine that a committee member who has relevant and necessary information with respect to athlete performance, for example a national team coach or high performance director, may, if requested by the selection committee, provide such information to the committee so long as such information is provided in a fair and unbiased manner and so long as the committee member with the conflict of interest does not vote toward the final decision. The committee member must not otherwise influence other members of the committee in the selection process.

Additionally, any person (including any potentially impacted athlete or coach of a potentially impacted athlete) with a good faith belief that a committee member has a conflict of interest may report the alleged conflict of interest to USA FENCING's Ethics Committee. Reports may be made anonymously. No committee member shall retaliate in any way against a person who, in good faith, reports an alleged conflict of interest.

Any recused individual shall be replaced in accordance with the USA FENCING selection committee appointment process.

Exhibit R-7.

VI. Discussion and Analysis

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

A. *Standard of Review and Burden of Proof*

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

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

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

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

The arbitrator must determine whether USAF breached the approved and published Selection Procedures, applied the Selection Procedures inconsistently to athletes similarly situated, acted in bad faith towards or with bias against the athlete, and/or violated applicable federal or state laws. *Craig v. USA Taekwondo, Inc.*, AAA Case No. 77 190E 00144 11 JENF (Aug. 21, 2011); *Hyatt v. USA Judo*, AAA Case No. 01 14 0000 7635 (June 27, 2014); *Tibbs v. United States Paralympics*, AAA Case No. 71-190-E-00406 12 JENF (Aug. 28, 2012). Other arbitrations filed under the Act have determined this review to mean that a decision by USAF must have no rational basis, *i.e.* is unreasonable, arbitrary or capricious, and/or will not meet the Act’s requirements. *Rivera v. USA Cycling, Inc.*, AAA Case No. 01 16 0002 6302 (July 26, 2016). The Arbitrator’s role is not to determine whether USAF chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAF in establishing the Selection Procedures. *Id.* Rather, it is a *de novo* review, with no deference, of the application of the Selection Procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015).

B. Factual Background

In accordance with the Procedures and the Qualification System established by International Fencing Federation (“**FIE**”), athletes desiring to qualify for the Olympics in women’s sabre had to compete in a series of qualifying events to score points towards team selection for the Olympics. *See Exhibit R-7* at §§ 1.2-1.3. The top three (3) athletes in women’s sabre were nominated to represent the United States at the Olympics in Paris, France. *See Exhibit R-7* at § 1.3. Additionally, one (1) replacement athlete was nominated to serve as an alternate in accordance with the criteria established in Section 1.3 of the Procedures. *See Exhibit R-7* at § 1.3. After the qualifying events, the women’s sabre rankings were as follows:

| <u>Rank</u> | <u>Athlete</u> | <u>Points</u> |
|-------------|-----------------------|---------------|
| 1. | Elizabeth Tartakovsky | 7,168,000 |
| 2. | Magda Skarbonkiewicz | 6,242,000 |
| 3. | Tatiana Nazlymov | 6,137,000 |
| 4. | Maia Chamberlain | 5,982,000 |
| 5. | Lola Possick | 2,842,720 |
| 6. | Nora Burke | 2,417,000 |
| 7. | Chloe Fox-Gitomer | 2,246,460 |
| 8. | Siobhan Sullivan | 2,148,500 |

See Exhibit C-14. On December 18, 2023, USAF wrote a letter to Nazlymov stating, in pertinent part, as follows:

USA Fencing is in possession of data that show, more likely than not, preferential calls being made by two particular referees in international competition, meanwhile data also shows a statically improbable volume of allocations of the same to your bouts.

USA Fencing has prior to the Orleans Grand Prix brought to the attention of the FIE those issues together with the evidence that were in possession of in the name of fair play.

We have no reason at this time to believe that you are personally responsible, or even aware of these actions being taken by others to favor your intentional performance.

See *Exhibit C-1*. Then, in January 2024, during the San Jose North American Cup (“**San Jose Event**”) during a bout between Nazlymov and Kira Erickson (“**San Jose Bout**”), it was alleged that the bout was “irreparably tainted by referee misconduct.” USAF launched an investigation into alleged bout manipulation and also moved forward with an action against the involved referees.

On April 12, 2024, a hearing panel (“**Panel**”) convened a hearing addressing alleged misconduct by referees Jacobo Morales and Brandon Romo (collectively “**Referees**”) involving the San Jose Bout at the San Jose Event. It was argued that Referees were communicating regarding calls made in favor of Nazlymov during the San Jose Bout. Specifically, the last three calls during the San Jose Bout went in the favor of Nazlymov and Referee Romo communicated with Referee Morales prior to confirming the call in favor of Nazlymov. The Panel drafted a written opinion dated April 22, 2024 confirming that Referees violated the *FIE Technical Rules* and *FIE Ethical Code*. The Panel concluded as follows:

VIOLATIONS

Rule t.100 of the FIE Technical Rules provides:

The Referee alone decides as to the validity or the priority of the hit by applying the following basic rules which are the conventions applicable to sabre fencing. (Emphasis supplied).

Rule t.109 provides:

Everybody taking part in or present at a fencing competition must respect the FIE statutes and rules, including but not limited to the FIE Ethical Code and Safeguarding Policy. They must remain orderly and must not disturb the smooth running of the competition. During bouts no one is allowed to go near the pistes, to give advice to the fencers, to criticise the Referee or the judges, to insult them or to attempt to influence them in any way. Even the team captain must remain in the space assigned to him and he may only intervene in the situations and in the manner provided for in Article t.130 of the Rules. The Referee must stop immediately any activity which disturbs the smooth running of the bout which he is refereeing (cf. t.137.1–3). Any person who, for any reason, threatens or insults an official commits an offence of the 4th group and is penalised according to article t.169.

Any person present who witnesses a breach of the FIE Ethical Code or the Safeguarding Policy must report this to the Safeguarding Officer if present, or to the Supervisor or to the Directoire Technique. (Emphasis supplied) (Emphasis added).

Section 2.II.B.3 of the FIE Ethical Code provides:

Participants in a competition must not, in any way, manipulate the result of it in a manner contrary to sport ethics.

Section 3 of the FIE Ethical Code, Referees and Judges, provides that Referees:

1. Must maintain an objective and impartial stance during the competitions, not being influenced by any pressure from sportsmen, trainers, coaches, colleagues, leaders, media or general public.
4. Shall reach proper decisions taking into account any input from their assistants.
6. Shall avoid any action that might unfairly compromise or predetermine the outcome of the bouts.

The Panel finds that Morales violated Rules t.100 and t.109, as well as the above-referenced sections of the FIE Ethical Code, by providing input to Romo during the Erickson/Navlymov bout. The Panel similarly finds that Romo violated the same Rules and sections of the Ethical Code by asking for input from Morales.

See Exhibit C-9. The Panel stated it “makes no finding whether Morales was making the calls themselves or reaffirming calls made by Romo” during the San Jose Bout and “no credible evidence was presented that the calls made in the bout were impacted by any agreement or other collusion.” *See Exhibit C-9.* The Panel noted the calls in question “created the appearance of impropriety, which – regardless of whether there is actual impropriety—undermines confidence in the fairness of refereeing....” *See Exhibit C-9.* Accordingly, the Panel issued the following sanctions: 1) Referee Morales is not permitted to referee USA Fencing events for a period of nine (9) months; 2) Referee Romo is not permitted to referee any National USA Fencing events for a period of nine (9) months, but is permitted to referee local events; and 3) Referees are not permitted to be assigned to referee on the same strip for a period of five (5) years. *See Exhibit C-9.*

Following the above-referenced hearing and decision, USAF did not modify the team selection in women’s sabre for the Olympics. This proceeding followed.

C. Application of the Field of Play Doctrine.

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

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

On the field decisions are “best left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question relating to it.” *Yang Tae*

Young v. FIG, CAS 2004/A/704 (Oct. 21, 2004). Arbitrators should not “interfere with the application of the rules governing the play of the particular game” even when the referee makes an incorrect decision as long as such decision is not made with prejudice or fraud. *NAOC v. IAAF & USOC*, CAS 2008/A/1641 (Mar. 6, 2009); *Yang Tae Young v. FIG*, CAS 2004/A/704 (Oct. 21, 2004). In *Korean Olympic Committee v. ISU*, the panel stated as follows:

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

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

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

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

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

Rau v. USA Wrestling Assn., AAA Case No. 01-21-0003-7287 (June 1, 2021). Similarly, in *Anderson v. USA Boxing*, the parties argued that the field of play doctrine supported the referees decision and the arbitrator stated as follows:

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

Anderson v. USA Boxing, New ERA Case No. 24011101 (Jan. 19, 2024). "Arbitrators are not ombudsmen; they are authorized to resolve disputes under contracts and rules, not declare how the world should work in the large." *Lindland v. U.S. Wrestling Ass'n, Inc.*, 227 F.3d 1000, 1004 (7th Cir. 2000). Judges, and by extension arbitrators, are not "super referees." *Nat'l Collegiate Athletic Ass'n v. Yeo*, 171 S.W.3d 863, 870 (Tex. 2005).

Here, the crux of the dispute is whether the "decision is ... the product of fraud, corruption, partiality or other misconduct of the referee." There was no evidence presented to show that Nazlymov was involved in any attempt to improperly sway the opinion of a referee or to obtain illegitimate results from any bout, thus there was no evidence presented to show a referee's decision was the product of fraud, corruption, or partiality.

Claimants argued that "bout manipulation" fails into the fourth category under the field of play doctrine – "other misconduct of the referee." In furtherance of their arguments, Claimants point to the following rules as support: 1) in accordance with Rule t.100 of the *FIE Technical Rules*, "[t]he Referee **alone** decides as to the validity or the priority of the hit..." (*Exhibit C-18* at R. t.100 (emphasis in original)); 2) in accordance with Rule t.109 of the *FIE Technical Rules*, "[d]uring a bout no one is allowed ... to **criticise the Referee** or the judges, to insult them or to attempt to influence them in any way." (*Exhibit C-18* at R. t.109 (emphasis in original)); 3) in accordance with Rule II.B.3 of the *FIE Ethical Code*, "[p]articipants in competition must not, in any way, manipulate the result of it in a manner contrary to sports ethics." (*Exhibit C-19* at R. II.B.3); and 4) in accordance with Rule 3, Referees and Judges, of the *FIE Ethical Code*, Referees and Judges "[m]ust maintain an objective and impartial stance....," "[s]hall reach property decisions....", and "[s]hall avoid any action that might unfairly compromise or predetermine the outcome of the bouts." (*Exhibit C-19* at R. 3(1), (4), (6)). Chamberlain pointed to the finding of the Panel that the Referees violated Rule II.B.3 of the *FIE Ethical Code* and "manipulate[d] the result" of the San Jose Bout. See *Exhibit C-9*.

As explained above, the San Jose Bout was officiated by Mr. Romo. Mr. Romo is a Mexican national with little international experience as a referee. Mr. Morales, a more seasoned referee, sat on the strip in a chair during the San Jose Bout. During the San Jose Bout, Fikrat Valiyev, Nazlymov's coach, stood near the railing just to the left of where Mr. Morales was sitting. Towards the end of the San Jose Bout, Mr. Romo and Mr. Morales admittedly communicated regarding the

scoring of the last three (3) points of the San Jose Bout. All three (3) points were scored in favor of Nazlymov.

First, an argument was asserted that Nazlymov's coach, Mr. Valiyev, improperly communicated with Mr. Morales during the San Jose Bout. Mr. Valiyev is a highly decorated coach and referee and is considered one of the top referees in the world. Both Mr. Valiyev and Mr. Morales testified under oath that they merely exchanged pleasantries and did not have any substantive communications about the San Jose Bout or any specific call or opinion of the referee. Mr. Valiyev indicated he was coaching Nazlymov throughout the San Jose Bout and was communicating with her (as is common) during the San Jose Bout. There was no evidence offered to show that Mr. Valiyev attempted to "manipulate" the San Jose Bout or provided any input on the scoring of the San Jose Bout.

Second, an argument was asserted that Mr. Morales was making calls during the San Jose Bout rather than Mr. Romo. Like Mr. Romo, Mr. Morales is a Mexican national. Mr. Morales has extensive experience officiating international fencing contests. Mr. Morales testified that Mr. Romo began to look at him to "confirm" calls made during the San Jose Bout when the score was 12-12. Mr. Morales testified that Mr. Romo looked at him and said "izquierda" (*i.e.*, left) – the side attributed to Nazlymov – to which he agreed and confirmed with a hand gesture or nod. The video of the San Jose Bout was reviewed several times, but it was not clear whether Mr. Romo said anything out loud or not. The evidence presented, like that which was presented to the Panel, does not undermine Mr. Morales' testimony that he was merely confirming Mr. Romo's call. Mr. Romo testified is not uncommon for senior referees to confirm the calls of junior referees. The evidence does not support a finding that the "confirm[ation]" of the referee calls "manipulate[d] the result" of the San Jose Bout.

Third, an argument was asserted or insinuated that referees may have been paid to skew the results of Nazlymov's bouts. Although there is speculation in the fencing industry that bouts are being manipulated and money may have exchanged hands, all of the witnesses who provided any testimony on this topic confirmed they have never witnessed money exchange hands to manipulate a bout and, certainly, never witnessed such an exchange relating to any bout involving Nazlymov. There was no evidence to indicate any of the bouts at issue were the product of manipulation regarding alleged payments to referees.

Fourth, Burke argued that Nazlymov's results at the Algiers World Cup and the Grand Prix in Seoul, Korea should be invalidated due to referee misconduct and bout manipulation. Burke offered the testimony of Marcus Schulz, a former international referee, to address his review of the videos of the referenced bouts. Mr. Schulz testified that "impossible" errors were made by the referee during the Algiers World Cup and the Grand Prix in Seoul, Korea including three (3) errors and four (4) errors, respectively, that an international referee would not make without manipulation. There was very little attempt to show and address the purported errors. The videos of the bouts were played very briefly and were extremely choppy. The Arbitrator is not a field official and does not have the requisite training or skills to independently review videos of the bouts to determine whether the referees in these bouts committed error. Indeed, it is not the Arbitrator's obligation to do so. Accordingly, based on the evidence presented, there is no basis to remove Nazlymov's points for the Algiers World Cup or the Grand Prix in Seoul, Korea.

Like in *Rau v. USA Wrestling Assn.*, the Parties presented video (from an angle opposite the referee) of the San Jose Bout over and over again with use of slow motion and stopping of the video. Video was not available to the referee during the San Jose Bout. The witnesses uniformly testified that the Arbitrator cannot rescore San Jose Bout for multiple reasons including: 1) the flow of the San Jose Bout changed point-by-point and the athletes adjust to the calls made by the referee; and 2) Mr. Handleman testified “I can score it one way and we can find five others to score it the other way. It’s not relevant.” Judgment calls regarding who was the aggressor, who was defending, and who should be awarded a point is best left to the referee on the field of play. Even if the Arbitrator disagreed with the decisions and various calls, the Arbitrator is in no position to reverse calls that were made in real time during the pressure of the action.

The involved athletes are all skilled sabre practitioners and are articulate and bright women who strongly believe they should represent the United States in the Olympics. Their passion for competition and ethical results is inspiring. Although the Referees may have inappropriately communicated with one another during the San Jose Bout, based on the preponderance of the evidence, the evidence offered at the hearing does not support the overturning of USAF’s decision to award Nazlymov with a place on the women’s sabre team at the Olympics based on her qualifications from points scored at qualifying events under the terms of the Procedures. Based on the evidence submitted and known to date, the decision of USAF must stand.

VII. Decision

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

- The Arbitrator finds and concludes that the decision of the USAF must stand and Nazlymov shall retain her position on the sabre team at the Olympics;
- The Parties shall bear the costs and fees of this arbitration as incurred; and
- This award is in full settlement of all claims submitted in this arbitration. All claims not expressly granted herein are hereby denied.



Christian Dennie, FCI Arb
Arbitrator

Date: July 5, 2024