

**UNITED STATES OLYMPIC & PARALYMPIC MOVEMENT ARBITRATION RULES**

*Administered by New Era ADR, Case No. 24062101*

In the Matter of the Arbitration Between:

COLBY LANGE (“**Claimant**”),

v.

USA CYCLING (“**Respondent**”),

And

GRANT KOONTZ, and PETER JASPER MOORE (“**Affected Athletes**”)

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**OPERATIVE AWARD**

I, THE UNDERSIGNED ARBITRATOR, having been designated by New Era ADR, and in accordance with the Ted Stevens Olympic and Amateur Sports Act, 36 U.S.C., §220505 et seq., and Section 9 of the United States Olympic and Paralympic Committee ("USOPC") Bylaws, (effective April 1, 2024) and the USOPC Arbitration Rules (“Arbitration Rules”), having been duly sworn, and having heard and considered the arguments of the parties and their counsel regarding during an approximately 13-hour hearing held on Monday, July 1, 2024, and having considered the parties’ written submissions, exhibits, and legal authorities, provide this Operative Award as follows:

**I. Procedural Background**

On June 21, 2024, Claimant Colby Lange filed a Section 9 Complaint and Demand for Expedited Arbitration. Respondent USA Cycling (USAC) filed its Pre-Hearing Statement on June 28 2024. A Prehearing Brief on behalf of Affected Athlete Grant Koontz was filed, June 29, 2024.

An arbitration hearing in this matter was conducted on Monday July 1, 2024, conducted in accordance with Section 9 of the U.S. Olympic & Paralympic Committee Bylaws. Parties in attendance included Claimant Colby Lange and his Counsel, Howard Jacobs and Katy Freeman. Stephen Hess appeared as Counsel for Respondent USA Cycling, along with USAC Representative Shane Garman. Duly notified Affected Athletes included Peter Moore, who appeared on his own behalf, and Grant Koontz, who was represented by counsel Cameron Baker. Representatives with Observer Status included Kacie Wallace and Emily Acevedo with TEAM USA Ombuds Office, and Lucy Denley, USOPC Dispute Resolution Unit, along with Claimant’s father, Peter Lange.

The Arbitrator heard testimony from the following witnesses: Claimant Colby Lange and Mr. Lange’s personal coach Neal Henderson. The Respondent called Adam Duvendeck, OLY, USA Cycling Track Selection Committee Member; Coach Jono Hailstone, USA Cycling Men's Endurance Track National Coach; and Jim Miller, USA Cycling Chief of Sport Performance. Affected Athlete Peter Moore and Grant Koontz also provided testimony. In addition to the

witness testimony, Counsel introduced several key exhibits also filed in their pleadings. The Arbitrator is grateful to the parties, witnesses and able counsel for their cooperation and professionalism.

## II. Party Contentions

Claimant contends that the USAC Selection Committee failed to follow and fairly apply the “USA Cycling Athlete Selection Procedures for the 2024 Olympic Games (Track), for Paris, France, Men’s Track, dated February 15, 2023 and January 18, 2024 (Revised) (“**Athlete Selection Procedures**”) (Claimant Exhibit 1), and the incorporated **USA Cycling’s Discretionary Athlete Selection Procedures (“Discretionary Selection Procedures”)** (Claimant Exhibit 5) to name the athlete for the one quota spot to represent Team USA in the Men’s Omnium track cycling event in the 2024 Summer Olympic Games in Paris, France.

Claimant’s request for relief is that the Arbitrator order USAC to award him the spot as the US entrant in the Men’s Omnium Olympic track cycling event or, alternatively, to remand the decision to the Selection Committee for further consideration under the Discretionary Selection Procedures.

The position of both USA Cycling and Grant Koontz is that the Claimant’s request be denied.

## III. Jurisdiction and Standard of Review

Jurisdiction. The Arbitrator has jurisdiction to resolve the parties’ dispute, specifically, whether Respondent has denied Claimant the opportunity to participate under Section 9.2 of the USOPC Bylaws. The parties confirmed accepted to arbitral jurisdiction to hear this dispute and proceeded without objection in these proceedings.

Burden of Proof. “Section 9 jurisprudence requires [Claimant] to prove [the NGB] reached its approved and published Athlete Selection Procedures for the [2024 Paris Olympic Games], applied them inconsistently to athletes similarly situated, acted in bad faith towards or with bias against [Claimant], and/or violated applicable federal or state laws (e.g., Ted Stevens Olympic and Amateur Sports Act).” *See Hyatt v US Judo*. The Claimant thus has the burden of proof to demonstrate by a preponderance of evidence that USAC failed to appropriately apply its rules to the facts at issue.

Standard of Review. The standard of review in Section 9 eligibility cases, as noted in *Dueling*, provides that “where the specific procedures require the exercise of discretion by the national governing body (NGB) is whether the NGB breached its approved and published Selection Procedures, applied its 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 at 5 (August 21, 2011); *Hyatt v. USA Judo*, AAA 01 14 0000 7635 (Jun. 27, 2014).

The Arbitrator's role is not to determine whether the NGB chose the best process for selecting teams, or to substitute lay judgment for the expert professional judgement of USAC in establishing Selection Procedures. Rather, it is a *de novo* review, with no deference, of the application of the published selection procedures to the facts of the individual case. *Komanski v. USA Cycling*, AAA Case No. 01-15-0004-9907 (Nov. 15, 2015) at 5.

#### **IV. Operative Award Findings**

Given the exigencies of time, the following process concerns outlined indicate a probability that the Claimant in this case has met its burden in demonstrating that the USAC Selection Committee failed to properly follow its Selection Procedures and fairly apply the Discretionary Procedures Criteria, and provides the basis for the Operative Award.

1. The Athlete Selection Procedures 2.3.1 require that all members of the Selection Committee and USAC staff participating in selection must comply with the USAC Principles of Ethical Conduct and Conflict of Interest Policy. According to the Minutes for Meeting #1, June 4, 2024, the Independent Ethics Committee did not make its determination until after Meeting #1 in which Coach Hailstone presented the three athlete nominations. Although the Coach made disclosures and his conflict was disclosed to the Selection Committee, the ASP Rules 2.3.1 were not fully complied with. An Ethics clearance made after the fact of a critical meeting on athlete nomination does not comply with the letter of Rule 2.3.1. At this point the Coach has been cleared by the Ethics Committee, with disclosures; however, he was not at the time he was the sole presenter of the nominations to the Selection Committee.

2. The Selection Committee Member (Adam Duvendeck (discipline expert), testified that he did not read the Claimant's Olympic Track – Athlete Event Petition Form, dated April 28, 2024. The Nomination Spreadsheet prepared by Coach Hailstone, while a useful summary for committee consideration, this did not include text of Claimant's Petition under "Athlete Comments." The Athlete's Comment Column for the Claimant says "Please refer to the Document I have emailed with Jono Hailstone, Gary Sutton, Craig Griffin and Jim Miller. It contains an explanation of how I meet each of the criteria I am applying under, along with additional helpful data. This link will also take you to the document [dropbox link]. The Claimant testified that the link to the dropbox shows that it was never opened. The spreadsheet does contain commentary under the Athlete Comments for Mr. Koontz and Mr. Moore. Mr. Duvendeck testified that the Selection Committee looked primarily, if not exclusively, at the spreadsheet prepared and presented by Coach Hailstone. He said he never looked at the Claimant's Petition. Given the absence of the Claimant's Commentary on the Nomination Spreadsheet, and the admission that at least one of three SC members did not read the Petition, and that no other person is presenting the nominations at the SC Meeting, a fair application and consideration of the Claimant's Petition cannot be inferred. Part of the submission process includes the athlete's petitions where each states their case. The Selection Committee (Adam Duvendeck (discipline expert), Craig (USAC Cycling Discipline Director, Lauren (10 year athlete).

3. The Coach testified he only presented each athlete's best performance in a Nations Cup and did not consider any C1 competitions and also discounted or disregarded

performance or results for competitions that he considered ‘off-season.’ The Selection Criteria provide for an assessment of “Top Level Competition” and nothing in the Discretionary Criteria mentions a distinction for “on/off season.” The Selection Procedures define the “Qualification Period” to be January 1, 2023 to April 14, 2024. Athletes Lange and Moore testified they had not heard of any “in and out of season” or seen that criteria distinction in any document. More testified “There’s no real off-season, it’s full-gas racing year-round.” The questions regarding consideration of “Top Level Competition” and imposing criteria not stated in the rules suggests a defect in adherence to the Selection Procedures.

4. The June 4, 2024 Minute Meeting #1 notes do indicate the Coach Hailstone presented on Category A.ii “Medal Capable.” However, the considerations noted above temper that. It is possible that the Selection Committee, with its expertise, could have further inquired on these concerns, but again if only the only data presented for each athlete is from their best performance in a Nations Cup, application and assessment of the Category A.ii factors appears to not have been fairly applied.

5. The Minutes Notes on “Future Medal Capable” show that Coach Hailstone presentation included consideration of the Data to Support Discretionary Selection Criteria, other than “Aero drag,” which Coach Henderson and Peter Moore testified are “critical indicators of performance.” The Minutes do not say why data for that criteria was not available for all athletes. At the hearing, counsel for the Claimant did point out concerns with some of the Coach responses to Selection Committee questions. Again, had the Selection Committee read the Claimant’s Petition, many of those questions were addressed by the Claimant.

6. At Meeting #1, the Selection Committee voted (3/3) to accept the nomination for Grant Koontz for Future Medal Capable category. Yet, three days later at Meeting #2 (Selection meeting for the Women’s Track Endurance), the same three Selection Committee members were present, in addition to Ryan Cooper and Gary Sutton who were not at Meeting #1. Coach Hailstone was not present. The Meeting notes indicate that the Selection Committee then reopened discussion on the MTE selection and “agreed that none of the three athletes” met the definition of “Future Medal Capable.” The notes also state

“Criterion D for this selection was to select medal capable athletes and team, leaving no further criterion to nominate ... and instead agreed that “the logical ‘Best Predicted Finish’ be used instead and that the data and nominate presented at meeting #1 supported a selection based on the criterion. **The Selection Committee agreed (voted 3/3) to amend the nomination to all three athletes being nominated under ‘Best Predicted Finish’ rather than FMC.**

The category of “Best Predicted Finish” is not in the published Discretionary Selection Procedures.

Counsel cited *Duerhing v. USA Cycling*, at paragraph 69 (“Contrary to Claimant’s assertion, USAC did not create a new criterion of “best athlete.” It simply used this language in describing the already existing criterion”). *Duerhing* also noted that the Selection Procedures in *that* case stated that:

“The primary purpose of discretionary athlete nomination is to ensure that:

- a. USA Cycling has the ability to nominate the best physically, psychologically and technically prepared athlete in order to produce medal-winning performances.” *Duerhing* at para. 69

In this case, testimony at the arbitration (Mr. Miller) indicated that the USAC and Selection Committee believed the “Best Predicted Finish” category was appropriate under the circumstances and precedent based on at least the case cited above. I note, however, that the Respondent did not identify such similar language in the current Selection Procedures applicable in this case did. Whether these considerations are encompassed within published Category D-Furtherance of USAC High Performance Goals may be appropriate for the Selection Committee to consider.

## V. Operative Decision

Based on the very intensive timeframe in which to make this Operative Award, the Arbitrator has attempted to process all of the party positions and understand that it is not the Arbitrator’s role to substitute my judgment for the merits of which athlete is selected.

The Arbitrator concludes that the Claimant in this case has identified the breach by USAC as a failure to follow and fairly apply its Selection Procedures. In reviewing USAC’s application of its Selection Procedures, the Arbitrator is no substituting my judgment for that of the experts on the properly composed Selection Committee, but is rather reviewing the application of the Selection Procedures and Discretionary Criteria as published, to the facts of this particular case. The Selection Committee did not appear to exercise its independent duty to evaluate critical information and criteria that is called for in the USAC Selection Procedures and Discretionary Selection Process Criteria. With this said, I reiterate that I found no evidence of actual bias or impropriety but direct that the Selection Committee consider accordingly.

The Arbitrator concludes that the Claimant has met their burden in demonstrating deficiencies in with USAC Selection Committee’s compliance with the applicable Athlete Selection Procedures and application of Athlete Discretionary Procedures and Criteria.

ACCORDINGLY, The Arbitrator Rules for this Operative Award that

**A. Claimant’s requested relief is DENIED in part, and GRANTED, in part.** As follows:

1. Claimant’s Request that the Arbitrator order USAC to name him to USA Cycling’s Olympic Team in the Ominium Event is denied.
2. Claimant’s Request that the decision be sent back to the Selection Committee for further consideration of the USA Cycling Discretionary Procedures is granted.

- B. The Reasoned Decision will follow within 30 days;
- C. The parties shall bear their own attorney's fees and costs associated with this arbitration;
- c. The administrative fees of New Era and the compensation and expenses of the Arbitrator shall be borne by the parties as incurred; and
- d. This Award shall be in full and final resolution of all claims and defenses submitted to this Arbitration. The Arbitrator has considered all the arguments made by the parties, whether they are specifically referenced in this Award. All claims not expressly granted herein are hereby denied.

IT IS SO AWARDED.

Dated: July 2, 2024

***Maureen Weston***

Arbitrator