

NEW ERA ADR

Case No. 24040501

In the Matter of the Arbitration between

NIKOLAUS MOWRER, Claimant

and

USA SHOOTING, Respondent

and

RYLAN KISSELL and IVAN ROE, Affected Athletes.

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 ("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 July 1, 2024 Section 9 Complaint and Demand for Arbitration; Claimant's July 4, 2024 Prehearing Brief and exhibits; Respondents' USA Shooting's July 4, 2024 Prehearing Brief and exhibits; Affected Athlete Rylan Kissell's July 4, 2024 Prehearing Brief and exhibits; the parties' legal authorities and arguments, and witness testimony during an approximately six-hour video hearing on July 5, 2024, do hereby Award as follows:

The Arbitrator has undisputed jurisdiction to resolve this dispute, pursuant to §§ 9.1 and 9.2 of the USOPC Bylaws, and because Mr. Mowrer alleges that he was deprived of a participation opportunity at the Olympic Games, a "protected competition" under § 1.3(I) and (x) of those Bylaws. In his written submissions and during the July 5, 2024 hearing,

Mr. Mowrer claimed that USA Shooting deprived him of the opportunity to participate in the 2024 Olympic smallbore rifle shooting event in that it failed to properly apply the published USA Shooting Athlete Selection Procedures, 2024 Olympic Games, Rifle/Pistol (the "Selection Procedures"), when it allowed Ivan Roe to accept the smallbore rifle quota spot after he had previously qualified for the air rifle quota spot. Mr. Mowrer asserted that Mr. Roe should be placed in the air rifle quota spot in place of Rylan Kissell, and that Mr. Mowrer should be placed in the smallbore quota spot. Mr. Mowrer also asserted that USA Shooting improperly allowed Messrs. Roe and Kissell, and their teammates Sagen Maddalena and Mary Tucker to diverge from the air rifle Mixed Team pairing system set out in the Selection Procedures. Finally, he asserted that the published Selection Procedures are fatally vague and unreasonably ambiguous.

On July 5, 2024, a video hearing was held in this matter. In attendance were: Arbitrator Kristen Thorsness, Esq. OLY; Claimant Nickolaus "Nick" Mowrer; Mr. Mowrer's counsel Matthew Kaiser, Esq. accompanied by Madeline Maday; Respondent's counsel Stephen Hess, Esq. and Laura Peeters, Esq.; USA Shooting CEO Kelly Reisdorf; USA Shooting consultant Les Gutches; Affected Athlete Rylan Kissell; Mr. Kissell's counsel April Stone, Esq. and Matt Levin, Esq., accompanied by Anna Hong and Gabriel Rivas; Affected Athlete Ivan Roe; and USOPC Athlete Ombuds Emily Azevedo. The remaining Affected Athletes, Alexis Lagan, Sagen Maddalena and Katelyn Abeln were provided with the opportunity to participate in the hearing but declined to do so.

The Arbitrator issues this Operative Decision due to the expedited nature of this proceeding and in recognition of the need for a prompt outcome. A more detailed reasoned decision will be forthcoming.

Mr. Mowrer did not dispute that, at the conclusion of the three Ranking Matches for both air rifle and smallbore rifle, Mr. Roe legitimately placed first in both events, Mr. Kissell was second in the air rifle and Mr. Mowrer was second in the smallbore rifle. Although he suggested he had less motivation to use his best effort because he assumed that Mr. Roe had previously accepted the air rifle quota sport, Mr. Mowrer testified that he gave

his “100% maximum effort” at all three Ranking Matches and never tried to do less than his best. He agreed that USA Shooting did nothing to deprive him of the opportunity to finish first in these matches.

While Mr. Mowrer assumed that Mr. Roe was required to accept or decline the air rifle quota spot within 24 hours of his finishing first at the conclusion of the air rifle Ranking Matches in January 2024, he could point to nothing in the Selection Procedures or elsewhere that required this. Similarly, although Mr. Mowrer and some others believed that an athlete cannot accept two quota spots, he could not cite any authority or rule to support this belief. Furthermore, although he argued that a female shooting athlete was forced to give up one of her two qualified quota spots, he offered no evidence to support this claim. Finally, he acknowledged in his testimony that nothing in the Selection Procedures required USA Shooting to assign available quota spots before June 10, 2024.

The Arbitrator finds that:

- (1) Mr. Mowrer did not meet his burden to prove by a preponderance of the evidence that the selection process for the 2024 U.S. Olympic Shooting Team was arbitrary or capricious (i.e., there was no rational basis for the outcome), made in bad faith (i.e., with improper bias) or did not comply with applicable federal and state law. The Arbitrator finds that USA Shooting followed its published Selection Procedures and interpreted those Procedures in a rational and reasonable manner, without bias against Mr. Mowrer;
- (2) Mr. Mowrer did not meet his burden to prove by a preponderance of the evidence that USA Shooting treated similarly situated athletes differently in a manner that was unfair to Mr. Mowrer;
- (3) Mr. Mowrer’s claim that the terms of the Selection Procedures -- specifically sections 1.3.2 (Selection Qualification), 1.3.2.1 (Average Ranking System definition) and 1.3.2.3 (Rifle & Pistol Mixed Team) – were so vague as to deprive him of an opportunity to compete in the 2024 Olympic Games, is time barred. Section 9.9 of the USOPC Bylaws requires that any such challenge must have

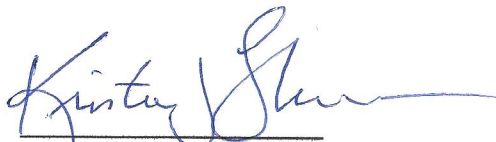
been raised within 180 days of issuance of the Selection Procedures. Mr. Mowrer's Prehearing Brief notes that the Selection Procedures were issued on August 18, 2023, much more than 180 days before his July 1, 2024 Complaint to the USOPC; and

- (4) Mr. Mowrer lacks standing to contest Mr. Kissell's appointment to the 2024 Olympic Team in air rifle. Mr. Kissell finished second in that event and was next in line for that quota spot after Mr. Roe as set out in the Selection Procedures. Mr. Mowrer finished second in smallbore rifle, so would only have standing to seeking appointment to the team if Mr. Roe had declined the smallbore quota spot (which did not happen) and it had been given to someone other than Mr. Mowrer. Similarly, because the Mixed Team pairings involve only the first, and possibly second, place finishers in the men's and women's air rifle Ranking Matches, the fact that Mr. Mowrer did not finish in the top two places in air rifle precludes him from challenging how the final pairings were made.

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

July 6, 2024.

By:



Kristen J. Thorsness, Esq., OLY
Arbitrator