

SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)

CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA (CRDSC)

N°: SDRCC 22-0551

**SHAQUILLE MURRAY-LAWRENCE
(CLAIMANT)**

AND

**BOBSLEIGH CANADA SKELETON (BCS)
(RESPONDENT)**

AND

**BEN COAKWELL
ANTHONY COUTURIER LAGACÉ
JAY DEARBORN
SAM GIGUÈRE
CYRUS GRAY
MARK MLAKAR
CHRIS PATRICIAN
(AFFECTED PARTIES)**

Attendees at the hearing:

For the Claimant: Shaquille Murray-Lawrence

Dr. Emir Crowne

Amanda Fowler

Brittany Bates

Rheanna Geisel

For the Respondent: Sarah Storey

Chris Le Bihan

Arif Chowdhury

Desmond Mitic

For the Affected Parties: Jay Dearborn

Samuel Giguère

Mark Mlakar

SUMMARY OF THE DISPUTE

1. Mr. Shaquille Murray-Lawrence (the “Claimant”) has appealed Bobsleigh Canada Skeleton’s (“BCS” or the “Respondent”) application of its National Bobsleigh Program Internal Nomination Procedures for the XXIV Olympic Winter Games Beijing 2022 (“INP”) submitting that its Criteria, while properly established, was not properly applied. He also submits that in naming him as an alternate to the BCS National Olympic Team for the Olympic Winter Games (“OWG

Team”), the Respondent exercised its discretion for an improper purpose and made a decision that was grossly unreasonable.

2. The Respondent argues that it rightly exercised the discretion afforded to it in its INP and that its decision was reasonable.

3. Should the Claimant be successful he would be selected to the OWG Team and one of the seven (7) Affected Parties could lose his place as a crew member on the OWG Team and become an alternate.

PROCEDURAL HISTORY

4. In fulfillment of its responsibility as a National Sport Organization (“NSO”), the Respondent publishes nomination criteria prior to each Olympic Winter Games.

5. For the Beijing Olympic Games, the Respondent’s High Performance (“HPC”) and Selection Committees (“SC”) published and communicated an INP on 24 August 2021 and communicated its final OWG Team roster on 20 January 2022. The Claimant was named as an alternate and not an official crew member of the Respondent’s OWG Team.

6. On 21 January 2022, the Claimant appealed the Respondent’s Olympic Team Selection decision in accordance with the Respondent’s INP Appeal Policy.

7. The Parties appointed Janie Soublière from the SDRCC’s roster of Arbitrators to hear the urgent matter.

8. A Preliminary Call was held with the Parties at 5:00 p.m. (EST) on 21 January 2022 during which the procedural calendar was fixed and a discussion took place regarding who should be considered Affected Parties. Further to hearing both Parties’ positions on this matter, the Arbitrator declared that if there is even a small chance that the seven proposed individuals’ rights may be impacted, they must be given the opportunity to participate. She therefore ordered that all seven athletes be added as Affected Parties.

9. The production of all submissions was accelerated in accordance with the Arbitrator’s directions and at 2:00 p.m. (EST) on 22 January 2022, a videoconference hearing was held. Although some Affected Parties were present for the hearing, they elected not to participate or make submissions, even if given many opportunities to do so.

10. At the end of the hearing, all Parties confirmed that they were satisfied that the procedure had been conducted fairly and impartially.

11. On the evening of 23 January 2022, the Arbitrator’s short decision was issued as follows:

This is my decision pursuant to the Canadian Sport Dispute Resolution Code (January 1, 2021)

On the evidence before the Tribunal, the Respondent has established that it properly applied its National Bobsleigh Program International Nomination Procedures for the XXIV Olympic Winter Games Beijing 2022 and the Claimant neither establishes that the Respondent exercised its discretion for an improper purpose in so making this decision

nor that the Respondent's decision not to select him to the Team was unreasonable. The Request by the Claimant is hereby denied.

Written reasons for my decision will follow within the timelines prescribed by the Canadian Sport Dispute Resolution Code.

12. The Arbitrator wishes at the outset to commend all the individuals who participated in this case on their cooperation, notably in light of the expedited proceedings. Selection cases that pit one athlete against another are never easy, whether for the parties or for the arbitrator. Their outcome necessarily leaves one party broken-hearted. The reasons below outline why, further to the Arbitrator's objective assessment of the facts, evidence, applicable law and jurisprudence, the outcome here is reasonable.

JURISDICTION

13. This appeal is brought before the SDRCC pursuant to Section 2.1.b) of the *Canadian Sport Dispute Resolution Code (2021)* (the Code) as provided for at article 15 of the INP.

14. All Parties have recognized the SDRCC Tribunal's jurisdiction to settle the dispute and this decision is rendered in accordance with Section 6.12 of the Code.

THE PARTIES

15. The Claimant, Mr. Shaquille Murray Lawrence, is a male athlete competing in the sport of Bobsleigh.

16. The Respondent, Bobsleigh Skeleton Canada, is the NSO for the sports of Bobsledding and Skeleton.

17. The Affected Parties, Ben Coakwell, Anthony Couturier Lagacé, Jay Dearborn, Sam Giguère, Cyrus Gray, Mark Mlakar and Chris Patrician are male athletes competing in the sport of Bobsleigh. Should the Claimant be successful and be named as a crew member on the OWG Team, one of the seven Affected Parties will be relegated to being one of the OWG Team's alternates.

SUBMISSIONS

18. The Claimant and Respondent filed written submissions with the Tribunal and all seven Affected Parties elected not to.

19. Below is a summary of the relevant facts and allegations based on the Claimant and Respondent's written submissions, pleadings and evidence. While the Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, she refers in her Decision only to the submissions and evidence she considers necessary to explain her reasoning.

The Claimant

20. Succinctly, the Claimant submits that

- He is a distinguished bobsledder with six (6) first place finishes in the North American Circuit (“NAC”) in 2021 alone, earning an Olympic Quota for Canada because of his efforts.
- He contends that Mr. Dearborn (in particular) ought not to have been selected ahead of him as a crew member, let alone a crew member for “Team Austin¹”, the team he has been competing with all year.
- If one were to look at the International Bobsleigh and Skeleton Federation’s results alone, the Claimant is better suited - and more qualified - than Mr. Dearborn who has 35 days of results.
- Article 7.2 of the INP indicates that no particular factor is determinative. This provision is couched in the exercise of the Respondent’s discretion. The Claimant argues that “*there is no such thing as absolute and untrammelled discretion*”.
- The Claimant has been racing with Team Austin for all of the 2021-2022 season, whereas one of the Affected Parties, whom the Claimant argues should be the only Affected Party, Mr. Dearborn, has never raced with them. On this basis alone, and numerous others alleged and identified in his evidence, the decision to replace the Claimant with Mr. Dearborn for the Olympics runs afoul of the “statutory scheme” of a 4- man bobsleigh team under which the Respondent’s selection decision was made.
- The Claimant seeks to be named to the OWG Team as a Bobsleigh crew member as the Respondent:
 - a. failed to follow its own INP selection procedures;
 - b. exercised its discretion for an improper purpose thereby violating its INP; and/or
 - c. relying on the *Canada v. Vavilov*³ case, made a selection decision that was grossly unreasonable.

The Respondent

21. Succinctly, the Respondent argues that:

- Its Decision squarely complied with and was made pursuant to the INP. Consistent with the process governing the decision makers, its HPC⁴ provided information to the SC⁵ about all athletes who were considered for nomination, including the Claimant.
- Selection decisions are very technical in nature. SDRCC precedent has established that decision making is to be left to the NSO and the skilled decision makers with expertise,

¹ Team names reflect the team Pilot’s name – in this case Taylor Austin.

² Citing *Roncarelli v. Duplessis*, [1959] S.C.R. 121, at p. 140,

³ *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65.

⁴ The HPC is comprised of 3 experts, Mr. Le Bihan, High Performance Director, Todd Hays Head Coach, and Morgan Alexander, National Program High Performance Manager, all who had storied careers and are former Olympians.

⁵ SC is comprised of Sarah Storey, Dr. Stephen Norris, Alicia Hatt, Sheridon Baptiste, John Worden, and Susan Auch, all experts, professionals and former or current BCS athletes.

just as is the case for any judicial review where deference is accorded to the expert in the field⁶.

- The INP authorizes the Respondent to exercise discretion in dealing with unforeseen circumstances and defer to the judgment of technical staff and to weigh a variety of factors differently, depending on the circumstances, to achieve the purpose of the INP and its guiding principles. Such discretion is designed to ensure that the best rosters are nominated for the OWG Team.
- Nomination to the Olympic Bobsleigh Team is impacted by considerations beyond the individual performances of each athlete in any particular testing metric. Metrics, without further inquiry, do not tell the whole story. Technical staff must exercise discretion and consider the composition of the OWG Team as a whole in order to fulfill their mandate.
- As its OWG Team selection decision falls within a range of possible, acceptable outcomes which are entirely defensible in respect of the facts, under the INP Criteria and especially given the circumstances, the Respondent requests that the Claimant's appeal be dismissed.

APPLICABLE LAW

22. The selection criteria document entitled National Bobsleigh Program Internal Nomination Procedures for the XXIV Olympic Winter Games Beijing 2022 applies to the present dispute.

23. Article 7.2 of the INP reads:

7.2. FACTORS TO BE CONSIDERED

In the event BCS uses discretion, the SC and/or HPC and/or HPD may consider all relevant factors achieved within the NBP-QP including but not limited to the following:

a) NBP Performance Score Rubric (Appendix B); and/or

b) Performance Indicators:

- *Athletic Testing results;*
- *Individual and/or Team Ice House Push Testing and/or Evaluation results;*
 - *Competition Season Push Evaluation results;*
- *International Competition results;*
- *IBSF rank(s);*
- *Competitive Readiness, as defined in clause 8.;*
- *Sliding competency including but not limited to demonstrated driving knowledge and skill, pushing and loading technique, riding position and/or other related technical proficiencies contributing to optimal start and on track speeds; and/or*
- *Commitment to a BCS approved IPP, as applicable.*

For the avoidance of doubt, no particular factor, including but not limited to the NBP Performance Score Rubric and/or the Performance Indicators will be determinative in the

⁶ SDRCC 18-0348, SDRCC 15-0265, SDRCC 20-0481

use of discretion and other factors may be considered as deemed appropriate in the circumstances.

24. At Table 1, found at page 7 of the INP, the table indicates that Quota Place No.3 shall be:

Designated to any eligible athlete at the sole discretion of the HPC in accordance with these BCS NBP INP, otherwise designated to the third highest ranked eligible athlete based on the 2021-22 IBSF Ranking List, per discipline.

25. Article 6.2.2. reads:

Bobsleigh Crew & Ap Alternate Athlete Nominations Bobsleigh Crew, including Ap Alternate Athletes as described in the IBSF BQS, shall be nominated at the sole discretion of the HPC in accordance with these BCS NBP INP.

DISCUSSION

The Onus of Proof

26. It is necessary before embarking on a further analysis of the facts and evidence to reiterate the onus of proof in such disputes as provided for the Code

6.10 Onus of Proof in Team Selection and Carding Disputes

If an athlete is a Claimant in a team selection or carding dispute, the onus will be on the Respondent to demonstrate that the criteria were appropriately established and that the disputed decision was made in accordance with such criteria. Once that has been established, the onus shall be on the Claimant to demonstrate that the Claimant should have been selected or nominated to carding in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

27. The Claimant has agreed that the Respondent has appropriately established its INP criteria and clears the first hurdle of Section 6.10. Thus, what the Arbitrator is called to decide is whether the Respondent's selection decision was made in accordance with the established INP criteria and in the affirmative, the Arbitrator must determine if the Athlete successfully establishes that he should have been chosen to the OWG Team based on the same criteria. All of these determinations are to be made on a balance of probabilities.

Was the Respondent's Selection decision made in accordance with the established criteria?

28. The INP criteria at article 7.2 reproduced above provide a non-exhaustive list of factors which are considered first by the HPC when making selections for the OWG Team, then by the SC when ratifying the same.

29. Although the Respondent has argued that all crew members of the OWG Team might be affected by this decision, it is evident that the most likely person to be affected will be Mr.

Dearborn. Therefore, the Arbitrator's assessment focuses on the same, just as the Claimant's submissions do.

30. Mr. Le Bihan submitted extensive objective evidence which establishes that the HPC's decision was made with the properly established article 7.2 criteria. His evidence outlined the various data compiled by the Respondent in preparation for team selection, including individual metrics, competition results (individual and team-based), where and who they competed against, the context of the race, the level of race, the number of races, where and what position on the sled they raced in, competitive readiness, and overall general health throughout seasons.

31. The Arbitrator is satisfied that all criteria, including individual and team-based metrics, were considered by the Respondent in making its decision and provides the following succinct observations on the same based on the most relevant of the various BCS metrics chart provided in the Respondent's evidentiary package and relied upon in its Brief⁷.

Athletic Testing results and Individual and/or Team Icehouse Push Testing and/or Evaluation results;

32. Although their scores are close and the Claimant did have better scores than Mr. Dearborn on a few athletic tests, on the whole, Mr. Dearborn edges out the Claimant in all these categories.

International Competition results;

33. It is evident that the Claimant has great North American Circuit (NAC) results. Nonetheless, the Respondent's evidence, which the Arbitrator accepts, is that World Cup races have greater weight when evaluating this criteria. The logic of course being that World Cup events are the same pool of athletes against whom the OWG Team will be competing against at the OWG. Conversely, the NAC has been described as a development league where few if any of the top countries and international contenders compete.

34. Mr. Dearborn has better International results at World Cup events (at both 2-man and 4-man brakes) and the Respondent's evidence is that this was an additional persuasive factor in his favour⁸. So too is this factor compelling to the Arbitrator.

Competition Season Push Evaluation results;

⁷ The Arbitrator notes that although the Claimant has also submitted some data and charts, the Respondent successfully established that these are inaccurate.

⁸ Mr. Murray-Lawrence competed in nine (9) events in the 4-man discipline. He had six (6) 1st place finishes and two (2) 2nd place finishes. (<https://www.ibsf.org/en/athletes/athlete/11693/Murray-Lawrence>)
Mr. Dearborn competed in one (1) event in the 4-man discipline. He finished fifth (5th). He competed in four (4) events in the 2-man discipline. He finished 18th, 10th, 6th and 2nd. (<https://www.ibsf.org/en/athletes/athlete/11684/Dearborn>)

35. Although the Claimant argues that he was at a disadvantage because he was fatigued on the day of his head-to-head push evaluation against Mr. Dearborn, in which Mr. Dearborn edged him out, the Arbitrator rejects this argument as all Athletes must be ready to compete at all times.

36. For the Arbitrator to disregard the results of a head-to-head push for subjective reasons would result in the whole of the competition metrics being rethought and each head-to-head battle results needing to be reassessed. This is an irrational proposition. Selection decisions in all sports, including Bobsleigh, are based on a version or other of competitive readiness and the Claimant should have been ready for the head-to-head (just as the Respondent has argued all OWG Team athletes are expected to be ready for their intense schedule at the Beijing Olympics and lists competitive readiness as one of its INP criteria).

Competitive Readiness

37. This term is defined at Article 8 of the INP as “the ability of the athlete to achieve equal or superior performance(s) onsite at the 2022 OWG, as compared to the performance(s) the Athlete achieved during the NBP-QP.” It is pertinent to all of the above points that Article 8 of the INP reads:

The final decision on Competitive Readiness will be made by the HPC, in its sole discretion, using such available information as the HPC deems appropriate, including but not limited to:

performance results and progress throughout the NBP-QP, the suitability of the training and IPP, fitness and other Competitive Readiness indicators, submitted medical documentation, consultation with relevant personnel, and/or any other relevant performance related information.

38. Thus, the Arbitrator finds that the Respondent, using all the available and exhaustive data and metrics that it had compiled, decided that Mr. Dearborn was more “competition ready” than the Claimant, e.g.: that Mr. Dearborn could achieve equal or superior performance(s) to those of the Claimant onsite at the 2022 OWG, as compared to the performance(s) he achieved during the qualification period.

Position Competency

39. This appears to have been the tipping factor with Mr. Dearborn identified as being competent for both the 2-man brake and 4-man brake position, whereas the Claimant was identified solely as having competency for the 4-man brake.

OWG Circumstances

40. Finally, the Arbitrator refers to the last paragraph of Article 7.2 of the INP which provides that:

For the avoidance of doubt, no particular factor, including but not limited to the NBP Performance Score Rubric and/or the Performance Indicators will be determinative in the use of discretion and other factors may be considered as deemed appropriate in the circumstances.

41. On this point, the Arbitrator is satisfied that a key factor in the decision was the competition schedule for the OWG.

42. The Respondent's evidence is that the condensed schedule in Beijing is likely to result in an individual crew member being asked to compete in 2-man brakes as well as 4-man brakes. These are circumstances that are unique to the OWG schedule.

43. Mr. Le Bihan's evidence in direct examination (which is confirmed in the position competency Chart submitted in evidence), as was Ms. Storey testimony when referring to her SC meeting (and her handwritten notes taken during the same and submitted as evidence which clearly underline the word "versatile" beside Mr. Dearborn's name), is that Mr. Dearborn is a more versatile athlete than the Claimant in terms of Position Competency (as explained above) and thus could easily step into either the 2-man brakes or 4-man brakes crew position for Team Austin, or another Pilot's team, at the OWG.

44. The anticipated circumstances of the OWG competition and training schedule were an important additional factor that was considered by the Respondent in exercising its discretion of picking the best possible team to compete in the unique circumstances that will be present in Beijing. This is a calculated decision made by the HPC and its qualified members; a decision that was then ratified by the SC and its qualified members. It must be emphasized that the HPC is comprised of former Olympic athletes - all of whom have been in the proverbial trenches and that the SC is also comprised of experts in bobsleigh and professionals. That the members of both Committees are so experienced and knowledgeable only reinforces the Arbitrator's conclusion that their decision was made in respect of and in accordance with the INP.

45. In summary, the Arbitrator's assessment of these metrics alongside the testimony of Mr. Le Bihan and Ms. Storey and the Claimant and Mr. Spring allows her to reach the following succinct conclusions:

- The Claimant has more competitive experience with Team Austin and has been committed to the team.
- The Claimant has had outstanding results in the NAC and helped the Respondent earn its 3rd quota place for the OGs.
- Mr. Dearborn edges out the Claimant in the Respondent's performance metrics.
- Mr. Dearborn has better results in World Cup races (in both positions).
- Mr. Dearborn is a more versatile athlete than the Claimant in that he is proficient both in 2-man and 4-man brakes whereas the Claimant's uncontested strength lies in 4-man brakes.
- The Competitive Schedule at the Olympics is such that a crew member (Mr. Dearborn) will likely be called upon both for 2-man and 4-man brakes for Team Austin.

46. The Arbitrator finds that the Respondent's decision to name Mr. Dearborn to the OWG Team (arguably and likely in lieu of the Claimant) was therefore grounded in the fact that his objective performance score rubric and other performance evaluators (as defined at article 7.2 INP), were similar or better on average than those of the Claimant, but also, what certainly tipped the scales in his favour, is the fact that his Position Competency allows him to be moved into either the 2-man or 4-man brake position at the OWG - which it appears the Claimant would not have been able to do as proficiently.

47. The Respondent thus satisfies its onus of proving that its INP was properly applied.

Does the Claimant establish, on a preponderance of the evidence, that he should have been selected in accordance with the approved criteria?

48. The Claimant has sought to have the Respondent's decision overturned on the basis that the "*Respondent exercised its discretion for an undue cause*" and that its decision was "*unreasonable.*"

49. The Arbitrator found above that the Respondent properly applied its INP. In addition to applying the non-exhaustive yet express criteria outlined therein and analysing the data and information before it in order to make an informed decision, the HPC and SC also gave great pause to the Olympic schedule and considered Mr. Dearborn's versatility at both the 2-man and 4-man brakes position to be an additional factor justifying his selection to the OWG Team.

50. There is nothing before the Arbitrator that can allow her to conclude that the Respondent's discretion was applied for an improper use - the Respondent's primary goal, as clearly outlined in its INP, which it has and continues to properly apply, is *to nominate the maximum number of medal potential NBP athletes to the COT for the 2022 OWG.*

51. The Arbitrator thus shifts her focuses to the Claimant's contention that the respondent decision was (grossly) unreasonable.

52. It has long been established that the standard of review in such cases brought before the SDRCC is that of reasonableness⁹. In *ADR 02-0011*, it was said that the "*Tribunal's role is to determine whether the decision [being reviewed] is unreasonable, or otherwise made in bad faith or in an arbitrary or discriminating manner*". The same test applies here but requires an additional layer of scrutiny further to Supreme Court's decision in *Vavilov* - which among others discusses the standard of review to be applied in administrative reviews like the one at hand.

Was the decision unreasonable?

53. Both Parties have rightly applied and relied on *Vavilov* to defend their position. The Arbitrator's analysis thus begins "*with a presumption that reasonableness is the applicable standard in all cases.*"¹⁰

54. Deference is not absolute. While an Arbitrator's review of a Selection Committee decision should respect the expertise of the decision-making body, it must not give them unfettered discretion to make decisions - even when this "untrammelled" right is provided in selection criteria, as it is in the INP.

55. As the Claimant's counsel rightly argued, the Respondent's decision must withstand a certain degree of scrutiny as stated at par 13 of *Vavilov* which reads:

⁹ See *Dunsmuir v. New Brunswick*, 2008 SCC 9 and *Dunsmuir* and more recently *Canada v Vavilov*, 2019 SCC 65 (hereinafter *Vavilov*).

¹⁰ Par 10 *Vavilov*

Reasonableness review is an approach meant to ensure that courts intervene in administrative matters only where it is truly necessary to do so in order to safeguard the legality, rationality and fairness of the administrative process. It finds its starting point in the principle of judicial restraint and demonstrates a respect for the distinct role of administrative decision makers. However, it is not a “rubber-stamping” process or a means of sheltering administrative decision makers from accountability. It remains a robust form of review.

56. The Claimant argues that the Selection Committee’s decision must withstand a probing analysis and that as a result there must be reasons, of some sort, for its decision that can be scrutinized. This point is well made, but does not assist the Claimant here.

57. The testimony and evidence of both Mr. Le Bihan and Ms. Storey, which the Arbitrator accepts, demonstrate the extensive analysis that took place by a qualified team of experts and professionals prior to selecting the OWG Team, by way of various performance metrics charts, results tabulations and consideration of the many elements outlined in article 7.2 of the nomination criteria among other considerations, as expanded upon above.

58. The ample data that was prepared, shared and analysed by the HPC in making its decision is compelling and has been scrutinized, by the HPC, the SC and now, this Tribunal.

59. Additionally, although in the future it might be desirable for formal minutes of the SC to be prepared to minimise the likelihood of such disputes, the Arbitrator is satisfied that Ms. Storey’s handwritten meeting notes provide additional persuasive supporting evidence of the extensive discussions that took place at the Selection Committee level before they ratified the HPC’s nomination list.

60. Based on the evidence before the Arbitrator, both the Claimant and Mr. Dearborn have very close results in terms of objective metrics and data compiled throughout the pre-season and competitive seasons, with Mr. Dearborn having a slight edge.

61. Although the Claimant has put forward some objective evidence it sought to have the Arbitrator rely upon (and alleged that this evidence was exactly what had been provided to him in emails although he did not produce said emails), the Arbitrator accepts the more thorough and complete compilation of metrics that was prepared by the HPC, and that was, and this is uncontested, clearly the basis for both their OWG selection and the SC’s ratification of the same.

62. The Claimant makes a valid and compelling argument that his commitment to BCS and to Team Austin in particular, as well as his experience competing, travelling and bonding with the same team of individuals throughout the season, make the Respondent’s decision to not put forward a similar composition for Team Austin for the OWG illogical and ill-founded.

63. Mr. Spring, who testified on behalf of the Claimant, echoed this sentiment and said “[...] *considering the guys that you work with all year are the guys with whom you will get the best results, it makes no sense to change a team right before a major event.*”

64. When asked who the superior brakeman was (between the Claimant and Mr. Dearborn) Mr. Spring offered: “[...] *they are so similar, but in my opinion Shaq has more experience with Team Austin so he would be the better choice.*”

65. Mr. Spring conceded that push evaluations may happen in Beijing and that their results could change the composition of the OWG Team if the HPC and coaching staff so decide. He said “[...] coach Hays likes to try things and shake things up [...] I think it’s detrimental to the team.” He then went on to say that he understands that crew composition can change right before the Olympics (as the emails produced by the Claimant have corroborated) and that “[...] *ultimate decisions are made by the coaching staff. They are the final decision maker, probably with input from strength coach and others.*”

66. Mr. Spring’s testimony was most informative and ultimately, did not assist the Claimant for the following reasons. First because it confirms the Respondent’s submission, which the Arbitrator accepts, that the HPC and coaching staff has at all times been, and continues to be (as evidenced by the December emails), willing to update the composition of teams. Second because it confirms that the final decision maker with regards to crew members is the HPC and that their informed decisions are made with input from various individuals.

67. It is noteworthy that like the Claimant, the Arbitrator’s opinion is also that in a team sport, team chemistry is usually primordial. Thus, the Claimant is quite right to question the HPC’s logic of not selecting the Claimant to Team Austin after they had successfully competed together in so many NAC events. However, the Respondent has established that its selection decisions are not made in a silo. The INP expressly outlines a variety of non-exhaustive factors to be considered, over and above team experience, at the discretion of the coaching staff, HPC and SC when selecting the OWG Team. On this point, and as aptly identified by the Respondent, par 93 of *Vavilov* reads (emphasis is mine)

In conducting reasonableness review, judges should be attentive to the application by decision makers of specialized knowledge, as demonstrated by their reasons. Respectful attention to a decision maker’s demonstrated expertise may reveal to a reviewing court that an outcome that might be puzzling or counterintuitive on its face nevertheless accords with the purposes and practical realities of the relevant administrative regime and represents a reasonable approach given the consequences and the operational impact of the decision. This demonstrated experience and expertise may also explain why a given issue is treated in less detail.

68. Thus even if, and solely on basis of the team chemistry, the Respondent’s decision may somewhat seem counterintuitive to the Claimant, to Mr. Spring and to the Arbitrator, the Arbitrator is also satisfied on the basis of Mr. Le Bihan’s and Ms. Storey’s evidence that the Claimant’s experience in the NAC with Team Austin and their team chemistry was taken into consideration, amongst many other factors (all outlined above), in the Respondent’s determination.

69. The Arbitrator is satisfied and the evidence reflects that the Respondent’s decisions are taken in respect of the INP in furtherance of their short-and long-term objectives as outlined in the INP. The high-performance coaching staff have their own short- and long-term coaching methods (e.g.: “*he likes to shake things up*”), competition strategies and development plans and these are all informed by the team members’ metrics and data compiled in relation to each individual athlete and each team, as well as in light of the unique circumstance in which each selection decision is made. Further to an extensive and expansive consideration of the same, those data,

factors and circumstances have resulted in the HPC and SC naming Mr. Dearborn to the OWG Team in lieu of the Claimant.

70. Further to a robust review of the process and decision, the Arbitrator finds that the data-driven decision made by the HPC, a group with demonstrated and uncontested expertise, represents a reasonable approach to Team Selection. The Respondent's decision not to select the Claimant certainly falls within a range of possible outcomes¹¹.

Was the Selection Committee's decision arbitrary, discriminatory or biased?

71. The decision was not arbitrary as it respected and was made in application of the established INP criteria.

72. There is nothing before the Arbitrator that leads to the conclusion that the INP sought to discriminate against the Claimant, or against any other Bobsleigh athlete that may have been named to the OWG Team, to a particular crew, as an alternate or left off the OWG Team altogether.

73. So too is there nothing before the Arbitrator that leads to a conclusion that the Respondent's decision was biased. Objective criteria were applied throughout the decision-making process. In light of the importance for the Respondent to have a brakeman be able to compete in both the 2-man and 4-man breaks at the OWG, Mr. Dearborn's versatility, established at the World Cup level and in his performance evaluation results, simply edged out the Claimant's uncontested but singular proficiency at the 4-man brake crew position.

74. It is regrettable that the Claimant feels like "[he's] been given a slap in the face". He appears to be a formidable athlete, passionate about Bobsleigh and has been instrumental in allowing Team Austin to participate in the Olympics by helping them earn the third Quota Spot. On the evidence, he is clearly viewed as an integral part of the Respondent's program, and is highly respected by both his teammates and by the Respondent. The application of the INP and the discretionary authority applied by the Respondent and expressly provided in Table 1, Article 7.2 and Article 8 of the INP which resulted in the Claimant being named as an alternate for the OWG takes nothing away from his achievements. He is an Olympian. And, as an alternate, will travel to Beijing with the OWG Team at the Respondent's cost, even if not as an accredited athlete, he will be there to continue to assist the OWG Team and step in as a substitute in case of medical emergency. In this capacity, he remains a team player and an integral member of Team Austin and will surely have other opportunities to compete for Team Austin or another Pilot's team at other international events including the next OWG.

75. The Arbitrator realises that this is a bitter pill to swallow for the Claimant. However, on the evidence, the INP Criteria was properly and objectively applied, taking into account all the factors and performance indicators outlined in the INP as well as other factors that were considered crucial to the SC decisions in naming the OWG Team that it felt would allow Canada to achieve the best results in Beijing.

¹¹ SDRCC 15-0255 and SDRCC 12-0181

76. The Claimant thus neither satisfied his burden of establishing that the Claimant's decision was unreasonable nor that he should have been selected to the Respondent's OWG Team.

CONCLUSION

77. Further to her robust review of the challenged decision, the Arbitrator finds that the Respondent did not apply its discretionary power in an arbitrary, biased or prejudiced manner in making its OWG team selection and that the Respondent's decision was reasonable. No alternative remedies are to be granted.

ORDER

78. The Claimant's appeal is hereby dismissed.

79. Pursuant to Article 6.12 of the Code, this decision is final and binding on all Parties but the Arbitrator retains the right to deal with matters ancillary to this dispute.

Signed in Beaconsfield, this 1st day of February 2022.



Janie Soublière, Arbitrator