

**SPORT DISPUTE RESOLUTION CENTRE OF CANADA (SDRCC)
CENTRE DE RÈGLEMENT DES DIFFÉRENDS SPORTIFS DU CANADA
(CRDSC)**

NO: SDRCC 19-0417

JUSTIN KARSTADT
(CLAIMANT)

AND

GYMNASTICS CANADA (GYMCAN)
(RESPONDENT)

AND

JACKSON PAYNE
(AFFECTED PARTY)

Party Representatives:

Justin Karstadt, Claimant
Lilian Hee-Karstadt, Representative for Justin Karstadt
Mike Burns, Representative for Justin Karstadt
Carl Karstadt, Representative for Justin Karstadt

Ian Moss, Chief Executive Officer, Gymcan
Ed Van Hoof, Representative for Ian Moss
Jason Woodnick, Representative for Ian Moss

Jackson Payne, Affected Party
Bin Fan, Representative for Jackson Payne
Scott Rayment, Representative for Jackson Payne

Arbitrator: Janice Johnston

AWARD

1. This matter arises from a request for arbitration filed by the Claimant, Mr. Justin Karstadt, on September 6, 2019. I was appointed by the SDRCC to act as Arbitrator based on the agreement of the parties and have filed the requisite Declaration of Independence.
2. A Preliminary Meeting was held by way of conference call on September 9, 2019. During this call, I confirmed that the parties had agreed to proceed by way of written submissions followed by a conference call. The parties agreed upon a time frame for the filing of submissions and additional documents.
3. After the receipt of and a review of the materials filed by the parties, a conference call was held on September 12, 2019, to allow the parties to respond to and clarify the positions being taken by the other parties and to allow for any final submissions. I would like to thank the parties and their representatives for the extensive and comprehensive submissions that were filed. They provide a thorough analysis of the respective positions of the parties. The jurisprudence provided by the parties was also helpful to me in coming to the conclusions that follow.
4. The record before me included the decision of the Selection Committee as well as comprehensive written submissions from all of the parties. I was also provided with a witness statement from Mr. Anthony Smith, former Canadian Men's Head Coach, and a statement from the Affected Party, Jackson Payne, with a copy of his Medical History.

Background

5. This case is about team selection. The Claimant, Justin Karstadt, is a gifted athlete in the sport of Men's Artistic Gymnastics ("MAG"). He has competed domestically, internationally and as a National Collegiate Athletic Association athlete. In this case, he is appealing the decision of the Gymnastics Canada Men's Artistic Selection Working Group that nominated him to be the

travelling reserve for the 2019 World Championship Team that is participating in the 2019 World Championships in Stuttgart, Germany, as opposed to a full member of the competing 5-Man Team.

6. The World Championship trials were held August 23-25 and the internal announcement of the team selection was made on August 26. The Claimant appealed through the “request for review”, an informal process provided for in the Selection Process document, and this appeal was denied by the Selection Working Group (SWG) on August 30, 2019. The roster for the team has to be finalized by September 16. Therefore, due to the short turnaround time, the parties agreed to bypass the next more formal step in the internal appeal process and to move the appeal directly to the SDRCC.
7. The Claimant has identified three areas of concern with regard to the manner in which the team selection occurred. Specifically, concerns were raised with regard to the application of the published selection criteria by SWG in making team-selection decisions:
 - i) That the SWG did not conduct the selection of the 5-man team in a manner that conforms with generally accepted principles of natural justice and procedural fairness;
 - ii) Specifically, that the SWG did not follow the specified selection process regarding Section 4.5 (Injuries), Section 4.0 (Competitions to be considered) and Section 7.3 (Modification to the Process); and
 - iii) That the SWG used insufficient data to determine the three criteria listed in the Selection Process: competitive stability, consistency of performance, ability to perform in high pressure situations.

The Selection Criteria

8. The Selection Criteria was published in March, 2019. The relevant parts of it provide:

1.0 Introduction

The purpose of this document is to set out the process and criteria that will be used by the Men’s Artistic Gymnastics (MAG) Program of Gymnastics Canada to select athletes and coaches to the 2019 World Championships in Stuttgart, Germany with the goal of selecting the best possible gymnasts to help meet the objectives of the program.

At the time of creation of this document there are no official registration deadlines for World Championships. Therefore, dates and timelines in this document may be adjusted.

1.1 Objectives

The objective of this selection process and procedures is to select the best possible delegation for these championships who will be capable of achieving the following target:

- Qualify in one of the nine remaining team spots for the 2020 Olympic Games

[...]

3.0 Eligibility

Athletes are eligible for selection to the Team provided that:

- they are a Canadian Citizen and have a passport that is valid until at least the end of April 2020;
- they are born in 2001 or before;
- they are a Senior NT athlete in 2019 or a Canadian National Team member currently training and competing for an American University and registered with a Canadian club;
- they are in compliance with all relevant GYM CAN and FIG requirements for eligibility including possessing a valid FIG license with an expiry date no earlier than October 31, 2019.
- they have read, understood, and accepted the selection process outlined in this criterion, and they have signed and returned the athlete commitment form (Appendix 1) to the PM-MAG by the required deadline.

[...]

4.0 Selection Process

The selection process has been developed to select the six athletes with the greatest potential to meet the stated objectives. Part one of the selection process will assess results obtained at the 2019 Canadian Championships, Elite Canada, FISU Games, and Pan Am Games.

Following the stated competitions, a maximum of 12 athletes will be identified by the SWG based on the following:

- Evaluation of results from the competitions stated above including achieving the combined targeted team D scores and E scores listed below
- Demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations

[...]

The selected athletes and their coaches will be invited to the World Championship Trials in August in order to determine the six (6) athletes who will participate at World Championships. The Worlds Trials will be part two of the selection process and will consist of two competition days.

Following both days of competition at the Worlds Trials, the athletes with the top two All-Around scores, combined from Day 1 and Day 2, will be

named to the World Championship team if they have achieved a minimum two-day total of 164 points. The remaining four athletes, including the reserve athlete, will be selected by the SWG following the trials.

- If no AA athletes meet the combined point total requirement then the entire selection of the team will go to the Selection Working Group.

Additional selection to the team will be based on the following criteria achieved at the 2019 Canadian Championships, Elite Canada, FISU Games, Pan Am Games, and Worlds Trials competitions, and will compliment or compensate for the named team members' strengths and/or weaknesses:

- Evaluation of results from the competitions stated above including achieving the combined targeted team D scores and E scores listed below
- Demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations

[...]

4.5 Injuries

An athlete injured or ill at any time leading up to the selection, or once the team has been selected, must provide an official medical report/certificate to the PM-MAG as set out below. Failure to do so may result in the athlete's name being withdrawn from the process or team.

Step 1. The athlete and their club's head coach must inform the MAG IST Lead and Program Manager by email, with acknowledgement or a read receipt from the PM-MAG **within 24 hours**, if their athlete is injured or ill in a way to jeopardize their participation or the quality of their performances at either competition and provide the following information:

- date when the injury/illness occurred;
- means taken to have the injury/illness evaluated by a physician or specialist;
- date at which a written detailed report will be provided.

Step 2. The athlete and their club's head coach must provide the following typewritten information **within 5 days following step 1**:

- detailed nature of the injury (documented by physician, not by therapist) including whether or not this is a new, overuse, or chronic injury;
- ability to pursue full training and to compete (all apparatus/some apparatus), as recommended by the physician or medical specialist;
- recovery/rehabilitation measures;
- recommendation(s) regarding pursuing training and ability to train and/or compete as expected;
- expected date for return to partial (specify) and complete training.

The coach must provide a written report stating the nature and the amount of training the athlete will do **each week** for the next four weeks. If requested by the MAG NTHC or IST Lead, the coach must provide an updated training plan for the next four weeks. GYM CAN reserves the right to have the athlete

examined by a physician or medical specialist selected by GYMCCAN at the expense of the athlete and by the timelines set by GYMCCAN.

[...]

7.3 Modification to the Process

The NTHC, in consultation with the SWG, reserves the right to make changes to this document to ensure the identification of the best delegation possible for the 2019 World Championships in case of:

- major change to the information provided by FIG;
- unforeseen circumstances beyond the control of GYMCCAN;
- a situation which impacts any step of the selection process and prevents the SWG from fairly applying the process as written. The NTHC may take into consideration any factor or circumstance they deem relevant.

Any changes to this document must be endorsed by the CEO of Gymnastics Canada and will be communicated directly to the coaches and athletes involved in the process.[Emphasis in original]

The Selection Process

9. There was no dispute that the Selection Process, including the selection criteria, was appropriately established and communicated. I am satisfied that the SWG was properly established in accordance with the selection criteria and had the full authority to carry out the selection for the MAG World Championship team based upon the technical expertise that the members possessed within this Group. The SWG members were volunteer technical experts in the discipline of Men's Artistic Gymnastics and were representatives of various technical groups within the discipline such as coaching, athlete and judging disciplines.
10. As set out above, the selection process was a two-part one.
11. Part one consisted of an evaluation of results from the 2019 Canadian Championships, Elite Canada, FISU Games and Pan Am Games and an assessment of each athlete's demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations.
12. The Selection Process allowed for the identification of a maximum of 12 athletes to be invited to the World Championship Trials. In fact, only eight athletes were invited. All invitations to athletes to compete at the World

Championships Trials were at the discretion of the MAG Head National Team Coach and MAG Program Manager. Invitations were extended to two athletes (William Emard and Jackson Payne) who were unable to compete in all the identified competitions within the selection time frame due to injury.

13. Part two of the selection process was an evaluation of the results from the Trials and again an assessment of each athlete's demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations.
14. At the Worlds Trials, no athletes achieved a minimum two-day total of 164 points. Therefore, all of the team selection was done by the SWG.
15. In the Respondent's submissions, the process that was followed by the SWG was outlined as follows:

21. Upon completion of the World Championship Trials – a two-day competition held at the INS in Montreal on August 24/25th, the SWG convened to determine the final World Championship team selection. All athletes were aware of the importance of performance at the Trials itself as the final (and most important) selection component for the team. The SWG executed the following process to determine the team selection for the 2019 MAG World Championship team.

- a. Section 4.0 of the selection document provides an objective selection option specific to Trials performance – automatic selection to the team of the top two athletes achieving a two-day total of 164 points. No athletes met the criteria at the Trials.
- b. Section 4.0 of the selection document then provides for the subjective selection of the remainder of the team by the SWG. While not stated specifically in the Selection Document, both the MAG and WAG selection working groups have, for many years, utilized a software programme called "*Team Selection Assistant*" (TSA) that provides a statistical and objective analysis of multiple scenario's [sic] for team selection based upon probable team score outcomes – various "best score" combinations can be inputted into the software in order to determine what is the best combination of athletes to be considered based upon the athletes available for selection and based upon their respective specialties on apparatus. The TSA is a well proven programme that is generally accepted in the artistic gymnastics community as a valid tool to provide a level of objectivity in a very subjective environment – every team scenario is unique based upon the athletes being considered.

c. The SWG confirmed the eligible athletes for consideration (based upon competition results, citizenship verification and injury status). It is important to note in this appeal that one athlete, Jackson Payne, had sustained a serious injury at the start of the 2019 competition season and was unable to compete for the duration of the season until the final World Championships Trials – this was highlighted to the SWG and considered in their deliberations. With the exception of William Emard, who missed one competition within the selection period, all other athletes being considered for team selection were able to compete in the competitions identified for consideration in the selection criteria.

d. The SWG, with the assistance of the TSA, determined the team needs based upon the only selection consideration; *the best possible chance of achieving a “top nine” team position at the 2019 World Championships;*

i. The SWG reviewed all eligible athletes for consideration. Their first decision was to eliminate two athletes from consideration – one “specialist” athlete who contributed significantly towards the potential team score on one apparatus but would have left the team vulnerable in other apparatus (it would have created a “three-up, three to score” scenario on other apparatus that was deemed too risky in a “one -shot” Olympic qualification for the team) and one all-round athlete who was not showing a high enough level of score consistency by apparatus.

ii. This left 6 athletes to be considered for the team – all 6 athletes would be selected. The remaining athlete scores were inputted into the TSA for determination of best team score possibilities. In all scenarios [sic] tested by the TSA, the best combination of three counting scores per apparatus towards a highest team total put Jackson Payne ahead of Justin Karstadt in team selection. The other four athletes (Rene, William, Sam, Corey) were consistently counting in the TSA analysis for potential highest team score; therefore, the only distinction in the TSA assessments was between Jackson and Justin.

iii. In making its final decision, the SWG deliberated on the matter of Jackson Payne missing much of the season due to injury. The SWG was satisfied that Jackson has made a full recovery (as confirmed by GymCan’s Chief Therapist and Jackson’s personal therapist), that Jackson clearly presented the level of Difficulty and Execution required in his routines at the World Championship Trials (his only recent opportunity to show form), and that Jackson was the best contributing athlete to complete the team based upon the TSA analysis of best score possibilities. In fact, in all TSA scenarios considered, Jackson was identified over Justin as the best contributing athlete between the two (see attachments to this submission).

iv. Furthermore, the SWG did consider the matter regarding “competitive stability, consistency of performance and ability to perform under high pressure situations” in respect to the discussion of selecting Jackson Payne over Justin Karstadt. The SWG were confident that Jackson has exhibited all these traits through his performance at the World Championship trials – his only chance to perform within the time period identified in the selection document.

v. Finally, the SWG selected Justin Karstadt as the “travelling reserve” athlete.

[Emphasis in original]

16. Therefore, what is set out above outlines the process followed by the SWG in selecting the team that was to compete at the World Championships.

Onus of Proof

17. This case involves a dispute over team selection. As such, Section 6.7 of the Canadian Sport Dispute Resolution Code (the “Code”) applies:

6.7 Onus of Proof in Team Selection Disputes

Where an athlete is involved in a proceeding as a Claimant in a team selection dispute, the onus will be placed on the Respondent to demonstrate that the criteria were appropriately established and that the selection decision was made in accordance with such criteria. Once that has been established, the onus of proof shall shift to the Claimant to demonstrate that the Claimant should have been selected in accordance with the approved criteria. Each onus shall be determined on a balance of probabilities.

Standard of Review

18. Section 6.17 of the Code provides:

6.17 Scope of Panel’s Review

- (a) The Panel shall have full power to review the facts and apply the law. In particular, the Panel may substitute its decision for:
 - (i) the decision that gave rise to the dispute;
 - [...]
 - (iii) and may substitute such measures and grant such remedies or relief that the Panel deems just and equitable in the circumstances.

19. Pursuant to this provision, the parties did not dispute that the SDRCC has a wide discretion. A review of the jurisprudence and decisions previously rendered by the SDRCC makes it clear that the standard of review to be applied is one of reasonableness. In *Beaulieu and Canadian Snowboard Federation and Gardiner* SDRCC 13-0214, Arbitrator Décary articulated the standard as follows:

[23] Arbitrators are guided by two general principles. The first one is that deference is owed to the sporting authority's experience and expertise. It is neither the role nor the duty of an arbitrator to substitute his own appreciation of the appropriate solution unless there are valid grounds to do so. The second one is that the standard to be applied in determining what constitutes a valid ground, is the reasonableness of the decision. This is where it is helpful to compare the process with judicial review and seek guidance in judicial pronouncements that have defined what are the general grounds that entitle a reviewing body to intervene with the original decision and replace it with its own. It is in that context that my comments in *Mehmedovic v. Judo Canada*, SDRCC 12-0191/92 with respect to reasonableness should be read. Simply put, in sport arbitration, where deference to the experience and expertise of sport authorities is a starting point, the test is whether the outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and of the policies at issue.

20. I agree with this observation. It is appropriate for me to adopt a standard of review similar to that which would be applied by an appeal court in an application for judicial review. The appropriate standard of review is not correctness but the less onerous standard of reasonableness.

21. In *Canada (Director of Investigation and Research) v. Southam Inc.* [1997] 1 S.C.R. 748 (SCC) at para 56, the Court articulated the following test for reasonableness:

[...] an unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it.

22. See also in *Maloshicky v. Canada (Canada Customs Revenue Agency)*, 2005 FC 978 at para 10:

[...] A reasonable decision is not necessarily a correct decision. There can be more than one reasonable decision. It does not matter whether or not I would have made the same decision. The reasonableness standard means that the decision should not be interfered with unless clearly wrong in the sense of being based on a wrong principle or a misapprehension of the facts.

23. Accordingly, this is the standard that I will utilize in this case. I will now provide a review of the submissions of the parties and my decision. I have read and considered all of the submissions filed, but as I noted at the outset, they are very thorough and lengthy. In the interests of getting this decision to the parties within the tight time frame that I am working in, I have only

summarized and set out the submissions that I consider to be the most pertinent and relevant.

Decision

24. The Claimant asserts that the SWG erred in not appointing Mr. Karstadt to the 5-man team as opposed to Mr. Payne. It was argued that the roles of the two athletes on the team should be reversed. Specifically, the Claimant requests:

We are requesting the SDRCC rule in favour of our Appeal since the SWG did not follow the Selection Process listed nor conduct the selection in a manner that conforms with generally accepted principles of natural justice and procedural fairness in their selection of the 5-Man Team for the 2019 World Championships. Throughout the entire selection process, Justin Karstadt has demonstrated that he has earned his spot on the 5-Man team. We understand that it is not normally the role of the Arbitrator to determine who is a better athlete and should be on the 5-Man Team. With insufficient time for the SWG to revisit their decision, based on the data presented, we are requesting the Arbitrator to rule in favour of including Justin Karstadt in the 5-Man Team

25. As I noted earlier, the Claimant is of the view that the SWG: did not conduct the selection of the 5-man team in a manner that conforms with generally accepted principles of natural justice and procedural fairness; did not follow the specified selection process with regard to Section 4.5 (Injuries), Section 4.0 - Competitions to be considered and Section 7.3 - Modification to the Process; and used insufficient data to determine the three criteria listed in the Selection Process, which were competitive stability, consistency of performance and ability to perform in high pressure situations.
26. Although in the end it appears that the Claimant did not question the legitimacy of Mr. Payne's injuries and the application of Section 4.5 (Injuries) by the SWG, having reviewed the document entitled "Medical History 2019 as it pertains to the World Championship Team Selection" that was provided by Mr. Payne, I am satisfied that he did suffer from a legitimate documented injury. He was under the care of a physician and other health professionals. I

am also satisfied that granting Mr. Payne a medical exemption and allowing him to compete in the World Trials was a fair and reasonable decision. Athletes get injured all the time and the Respondent pointed out that the manner in which Mr Payne was treated was a common practice and had been the process for years. It is interesting to note that the decision to include Mr. Payne in the Trials does not appear to have been questioned until after the selection decision was announced.

27. The decision of the SWG to rely only on the performance of Mr. Payne at the World Trials was questioned by the Claimant. Mr. Karstadt asserted that the selection criteria were not followed as all of the competitors were not evaluated on their performance in the named competitions. He argued that this is a violation of Section 4.0 - Competitions to be considered and Section 7.3 as it was an improper modification to the Process. Mr. Payne did not compete in the competitions that were to be considered and the criteria were not followed for him. As Mr. Payne was injured and did not compete in the named competitions, it was argued that the SWG should have looked at other earlier competitions than the named ones.
28. It was suggested that, in order to have a larger pool of data to evaluate Mr. Payne on (both in terms of results and the other criteria - demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations) the SWG should have looked at other competitions. The selection criteria should have been modified to include competition data prior to the named competitions. The Claimant then went on in the written submissions to provide a thorough and exhaustive comparison of the results achieved by Mr. Payne as opposed to the better results of Mr. Karstadt at these competitions.
29. In response to this position, the Respondent argued:
 11. The Claimant appears to take the position that, in the case of the 5th team selection position, the SWG did not have enough data to properly weigh the performance variables between the Claimant and the Affected Party due to the Affected Party not having the ability to compete in the majority of named competitions within the selection time period. As a solution, the Claimant

indicates that the SWG should have considered data (results) from outside the selection time period. The Claimant appears to indicate that, had the SWG considered other “data points”, then these extra results would not be in favour of the Affected Party and would make a significant distinction in favour of the Complainant.

12. It is the position of Gymnastics Canada that such a proposal by the Claimant would not be a “reasonable” approach to the selection process because it effectively changes the parameters for consideration for the entire team, not just for the 5th active position. By implementing the option provided by the Claimant, the SWG would, effectively, be changing the intent of the criteria itself in that it would now be taking into account competitions that were not listed as possible considerations for performance evaluation after the competitions had been completed. It is the feeling of Gymnastics Canada that the SWG did have enough information (both objective and subjective) within the identified parameters to make a distinction between athlete performance in order to make a rationale selection for the 5th position on the team.

[...]

14. Finally, the results of the Affected Party at the World Trials, the most important competition within the selection period, were significant to the point of the SWG believing that this athlete met their “onus of proof” in the selection process; the Affected Party was under the most pressure of all eligible athletes at the Trials because this was the only competition that they had to present their capability to the judges. The detail of the World Trials results have been provided in the detailed submission but it should be stated that it was in the opinion of the SWG that the Affected Party not only provided the best performance option for the 5th position on the team (in respect to the achievement of the stated team objective) but that the Affected Party also met the technical standards required for consideration of selection. This is not to take away from the performance of the Claimant at the World Trials – he, too, showed quality of performance to also be selected to the team by the SWG.

30. The Claimant takes issue with the characterization of the Trials as the most important competition within the selection period and suggests that the athletes were not told this. Although the athletes may not have been told this specifically, clearly the selection process sets out a two-part selection process. Part one of the process was an assessment of results at named competitions and a review of the other stated criteria. Based on this, athletes were invited to the Trials. Step two of the process was the Trials themselves. During the Trials, the selection criteria make it clear that the top two competitors, if they achieved a stipulated two-day total, would be *automatically* named to the World Championship team. It seems to me that

this aspect of the selection process in and of itself makes it clear how important the Trials are and would be an incentive to the competing athletes to attempt to achieve their best possible results. I am satisfied that the characterization of the Trials as the *most important competition* was an entirely reasonable one.

31. In assessing whether Mr. Payne should be selected for the team, the SWG relied on his performance at the Trials as that was the only performance they had. He had been injured and had not been competing. While it is true that the SWG could have modified the process pursuant to Section 7.3, that is not the point. The SWG could have considered and implemented some other process such as that suggested by the Claimant, namely a review of earlier competitions, but I agree that had they done so it could have and likely would have resulted in other concerns being raised.
32. As I noted earlier, the appropriate standard of review of the decisions made by the SWG is reasonableness. As was noted in *Beaulieu and Canadian Snowboard Federation and Gardiner*.

Simply put, in sport arbitration, where deference to the experience and expertise of sport authorities is a starting point, the test is whether the outcome falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and of the policies at issue.

If I feel that the decision made by the SWG to only consider the results achieved by Mr. Payne at the World Trials was a reasonable one in all of the circumstances, then it is not my role to second-guess the decision and replace it with what I might consider to be a better one.

33. After having given this careful consideration, I believe that the decision to evaluate Mr. Payne just on his performance at the World Trials was a reasonable one and should not be interfered with. Accordingly, I am satisfied that the Respondent has demonstrated that the criteria were appropriately established and that the selection decision was made in accordance with such criteria pursuant to Section 6.7 of the Code. The Respondent has met the onus of proof in Team Selection Disputes pursuant to that Rule.

34. In *Bastille and Speed Skating Canada*, Arbitrator Mew noted:

It is difficult to do justice to the wealth of information and material submitted by both the claimant and the affected party in support of the claim made by each of them to the fifth discretionary position on the team. I was left in no doubt that both of them are highly accomplished and dedicated athletes. As an outsider to the sport of speed skating, I would not presume to be in a better position than an expert Selection Committee or, indeed, an internal appeal panel of SSC, to say how the results achieved by the athletes in various past competitions or any of the other non-exclusive criteria in the Policy should have been weighed and, hence, which athlete should have been selected. Provided that SSC followed its own rules, and did so fairly, an arbitrator at this level of the process should rarely if ever interfere.

35. I agree completely with these observations. I have no doubt that Mr. Payne and Mr. Karstadt are both highly accomplished, skilled and dedicated athletes. They both made the team going to the World Championships. Having said that though, I completely understand the Claimant's unhappiness and frustration with not being a full member of the team, but merely going in the role of travelling reserve.

36. In his submissions, the Claimant reviews in great detail scores and results from numerous competitions to demonstrate that he should have been the one selected to the team. The selection criteria provided for a consideration of the results, or in other words the scores achieved on the various apparatus, but it also contained subjective criteria. In addition to the scores, the SWG also considered demonstrated competitive stability, consistency of performance and ability to perform in high-pressure situations.

37. The Claimant took issue and questioned the reasonableness of the SWG in applying these criteria to Mr. Payne and Mr. Karstadt and selecting Mr. Payne. Given that Mr. Payne competed only in the World Trials, it was asserted that he had not demonstrated competitive stability, consistency of performance and ability to perform in high-pressure situations for a variety of reasons. As I noted earlier, in sport arbitration, where deference to the experience and expertise of sport authorities is a starting point, the test is whether the outcome falls within a range of possible, acceptable outcomes that are defensible in respect of the facts and of the policies at issue.

38. I am satisfied that the decision that Mr. Payne had demonstrated competitive stability, consistency of performance, and ability to perform in high-pressure situations, which in my opinion is an extremely subjective evaluation, meets this test. I am not in a position to nor do I think it is appropriate for me to second-guess this decision.
39. As was noted by the Claimant in his submissions, "We understand that it is not normally the role of the Arbitrator to determine who is a better athlete and should be on the 5-Man Team." However, that is exactly what the Claimant is in fact asking me to do. As noted in the Respondent's submission set out earlier in this award, part of the evaluative process involved the utilization of a software programme called "Team Selection Assistant" (TSA) that provides a statistical and objective analysis of multiple scenarios for team selection based upon probable team score outcomes – various "best score" combinations were inputted into the software in order to determine what was the best combination of athletes.
40. The Claimant in his submissions asks me to review results and scores and based upon what he urges to be relevant, to substitute my decision for that of the SWG who utilized this software. It is not appropriate for me to do so. The question that I must ask and answer is whether or not the decision to assess Mr. Payne in the manner the Respondent did was reasonable in all of the circumstances. The question is not whether it was the best way to proceed but whether or not it was reasonable to act in the manner in which the Respondent did.
41. After having given careful consideration to this matter, I am of the view that the decision reached by the SWG should stand and not be overturned. The decision by the SWG was reasonable and I am not prepared to reverse the roles of Mr. Payne and Mr. Karstadt on the team. I am sympathetic to the position of the Claimant, but with regret must dismiss his appeal. I wish there was some way I could allow both Mr. Payne and Mr. Karstadt to compete but I cannot. Only one of them can be on the 5-man team.

42. Before I leave this matter, I want to suggest to the Respondent that the Selection Criteria for all future competitions be amended to include clarification on when medical exemptions shall be granted, the basis for granting one and the procedure to be applied to an athlete who has received an invitation based on a medical exemption. Had this been clearly set out in the Selection Criteria, the situation before me might have been avoided. This suggestion should come as no surprise to the Respondent as it was acknowledged in the submissions filed that clarity was needed.
43. I retain the jurisdiction to deal with any issues arising out of the implementation or interpretation of this award.

Dated in Toronto this 15th day of September, 2019



Janice Johnston
Arbitrator