

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re: AAA # 77 190 169 10 JENF
Raghu Nadmichettu and Mark Hazinski, Claimants
and
United States Table Tennis Association, Respondent

AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been duly designated by the American Arbitration Association, by agreement of the parties, and in accordance with the Ted Stevens Olympic Sports Act of 1978 and Section 9 of the United States Olympic Committee Bylaws, having been duly sworn, and having duly heard the proofs and allegations of the parties on an expedited basis, as permitted by the rules and agreed to by the parties, do hereby, award, as follows:

1.0 THE PARTIES AND SUMMARY

1.1 This complaint arises out of events occurring at the United States Table Tennis Association (“USTT” or “Respondent”) National Championships (“Nationals”) in Las Vegas, Nevada in 2009. The facts are relatively straightforward. Raghu Nadmichettu and Mark Hazinski (collectively, “Claimants”) are accomplished table tennis athletes who entered Nationals and did not complete the event, despite qualifying to do so.¹ Claimants were alleged to have signed a petition stating generally that they would boycott the remainder of Nationals and not continue to compete unless USTT met their demands. The principal demand alleged was that the prize money for winning the Open Men’s Singles be increased from the \$3,000 listed on the entry form to \$10,000. Other demands were for increases in the prize money for other places in the Men’s Singles event and various forms of hospitality and tournament amenities. According to the USTT Board of Directors Complaint, “[t]he current whereabouts of the petition are unknown.” After alleged discussions between an individual purportedly representing the Claimants and USTT officials, six athletes, including Claimants, were alleged to have intentionally defaulted after the Nationals quarterfinal matches were called. The USTT

¹ Other than Claimants, there were other athletes who were the subject of the USTT Board complaint to the USTT Ethics Committee. Even though none of those other athletes appeared at the hearing on this matter, the Arbitrator is of the view tht those other athletes were in the same position as the Claimants and should be treated similarly to the Claimants. The Arbitrator notes that none of the potentially affected athletes who were specifically invited to attend, and for whom provisions were made for their attendance, attendance, ever appeared at the hearing in this matter.

Ethics Committee determined on its own, on the basis of the USTT Board of Directors' Complaint and a hearing, to suspend the Claimants and the other athletes from USTT membership for one year.

1.2 Claimants were represented by their counsel, Edward Williams of Stewart Occhipinti, LLC. No other athletes appeared, whether they were the subject of the USTT decision at issue or whether they were "affected athletes" as defined below.

1.4 USTT is the USOC-recognized National Governing Body ("NGB") for the sport of table tennis in the United States. USTT was represented by its counsel, Steven Smith of Holme Roberts and Owen.²

2.0 JURISDICTION

2.1 This arbitrator has jurisdiction over this dispute pursuant to the Ted Stevens Olympic and Amateur Sports Act ("Act") 36 U.S.C. §220501, *et seq.*, because this is a controversy involving Respondent's opportunity to participate in national and international competition representing the United States. The Act states that:

An amateur sports organization is eligible to be recognized, or to continue to be recognized, as a national governing body only if it . . . agrees to submit to binding arbitration in any controversy involving . . . the opportunity of any amateur athlete . . . to participate in amateur athletic competition, upon demand of . . . any aggrieved amateur athlete. . . , conducted in accordance with the Commercial Rules of the American Arbitration Association, as modified and provided for in the corporation's constitution and bylaws. . .³

2.2 Section 9.1 of the USOC Bylaws provides as follows:

No member of the corporation may deny or threaten to deny any amateur athlete the opportunity to participate in the Olympic Games, the Pan American Games, the Paralympic Games, a World Championship competition, or other such protected competition as defined in Section 1.3 of these Bylaws nor may any member, subsequent to such competition, censure, or otherwise penalize, (i) any such athlete who participates in such competition, or (ii) any organization that the athlete represents. . . .

2.3 Under USOC Bylaws Section 1.3(u), "protected competition" means:

² The arbitrator wishes to acknowledge the excellent briefing and arguments, and overall grasp and communication of the subject matter, by counsel for both parties in this case. Counsel's preparation and clear communication made it easier to address this matter on an expedited basis, particularly given the less than 24 hours between when notice was given to the arbitrator and the start of the hearing and the need for a summary decision.

³ 36 U.S.C. §220521.

1) Any amateur athletic competition between any athlete or athletes officially designated by the appropriate NGB or PSO as representing the United States, either individually or as part of a team, and any athlete or athletes representing any foreign country where (i) the terms of such competition require that the entrants be teams or individuals representing their respective nations and (ii) the athlete or group of athletes representing the United States are organized and sponsored by the appropriate NGB or PSO in accordance with a defined selection or tryout procedure that is open to all and publicly announced in advance, except for domestic amateur athletic competition, which by its terms, requires that entrants be expressly restricted to members of a specific class or amateur athletes such as those referred to in Section 220526(a) of the Act; and

2) any domestic amateur athletic competition or event organized and conducted by an NGB [*sic*] or PSO in its selection procedure and publicly announced in advance as a competition or event directly qualifying each successful competitor as an athlete representing the United States in a protected competition as defined in 1) above.

2.4 USOC Bylaws Section 9.7 provides that, “If the complaint [under Section 9.1] is not settled to the athlete’s satisfaction the athlete may file a claim with the AAA against the respondent for final and binding arbitration.” Under both Sections 9.7 and 9.9 of the USOC Bylaws, the arbitration proceeding may be expedited.

3.0 PROCEDURE

3.1 The parties agreed to expedite this matter.

3.2 On or before April 16, 2009, the parties jointly agreed to appoint the arbitrator as the single arbitrator in this case.

3.3 A preliminary hearing was held by telephone on April 16, 2009.

3.4 The hearing in this matter was held by telephone on April 17, 2009.

3.5 On April 17, 2010, minutes after the hearing concluded, in accordance with the agreement of the parties, the arbitrator issued a summary decision granting the relief requested by Claimants.

3.6 The parties agreed that this reasoned award would follow the summary decision.

4.0 BURDEN OF PROOF

4.1 It is well-accepted that the standard of review for cases arising under Section 9 of the USOC Bylaws is *de novo*. Section 9 proceedings are not appeals of NGB decisions. Counsel for both sides agreed that this was a *de novo* hearing on the merits and not an appeal from another proceeding.

4.2 The burden of proof is not as clearly defined in the USOC Bylaws or the Act, or prior cases. However, after considerable deliberation, and given that this was a disciplinary action, the arbitrator adopted the formulation of the burden of proof put forward by Claimants, namely that the Respondent, as a NGB, bears the burden of proof to demonstrate by at least a preponderance of the evidence that the rule in question, or the NGB's application of the rule in question to the facts at hand, was reasonable and not for any improper purpose. This allocation of burden of proof makes particular sense where, as here, the Arbitrator was asked to hear this matter on its merits.⁴

5.0 ANALYSIS

5.1 The arbitrator has determined the following:

5.1.1 USTT did not follow its own basic pleading requirements in charging Claimants in a disciplinary matter:

- a) The USTT Bylaws at Article XV at Section 15.2 requires the Complainant (in this instance the USTT Board of Directors) to "set forth in clear and concise language... (i) the alleged violation, grievance, denial, or threat to deny, and (b) the remedy requested."
- b) The Supplemental Hearing Procedural Rules of the USTT require, at Rule 4, the same in identical language.

In this instance, the Complaint neither "sets forth... the alleged violation"; nor does it "set forth... the remedy requested." Nowhere does the Complaint cite the rule or rules violated by Claimants. Instead, all the Complaint does is purport to identify actions (or inactions) by "the athletes" without specificity, and without alleging how those actions (or inactions) violated any "USTT rule or regulation" (ii) "any provision of USTT Bylaws", or (iii) "any provision of the Ted Stevens Olympic and Amateur Sports Act relating to USTT's recognition as a National Governing Body." (See subpart "a" to Section 15.1 of Article XV of the USTT Bylaws). At the end of the "Complaint" the USTT Board, without alleging any specific violation of a rule, regulation, bylaw, or section of the Sports Act, simply asks the USTT Ethics Committee to look over everything in the Complaint, and if the USTT Ethics Committee finds some sort of "ethical violation",

⁴ The USOC Due Process Checklist also provides in its provision number 10 that the proponent of any charge bears the burden of proof by at least a preponderance of the evidence to establish their charge.

it should impose whatever penalty it thinks is appropriate. (See para 26, entitled “Request for Remedy”). As a result, the Complaint fails to meet USTT’s own pleading requirements. In addition, the Complaint does not allege any specific acts alleged to have committed by the Claimants herein, let alone bad acts. The two athletes’ names appear only twice in the Complaint: in the caption of the complaint, and then also that they are members of USTT (see USTT Ex 1 at paras. 5 and 7). While the Complaint is replete with allegations against other specifically named athletes, there are no such specific allegations of bad acts alleged against the two athletes who are parties to this action.

5.1.2 The Complaint does not satisfy the requirements of the USOC Due Process Checklist.⁵ Point “1” of the USOC’s Due Process Checklist provides that the NGB must provide “notice of the charges or alleged violations, with specificity and in writing, and possible consequences if the charges are found to be true.” (Emphasis added). As previously noted, the Complaint, in violation also of USTT’s own Bylaw XV, does neither. The Complaint is devoid of any specificity with respect to the actions of Claimants, and it lacks any notice of any possible consequences to Claimants if the charges against them are found to be true. In addition, the Complaint fails to assert any disciplinary action whatsoever that is requested to be taken against Claimants.

5.1.3 Finally, USTT did not follow its own basic procedural requirements. USTT’s own Bylaws require in Section 5.4 that “The membership of any member may be suspended or terminated at any time with cause by an affirmative vote of two thirds (2/3) of the Board of Directors. A member shall have the right to a hearing prior to termination.” Similarly, USTT’s Bylaws also require in Section 9.14(b)(5), regarding the duties of the Ethics Committee, that it shall “review and investigate matters of ethical impropriety and make recommendations on such matters to the Board.” USTT’s own officials admitted that the required hearing before the Board had never occurred with respect to Claimants.

5.2 Putting aside the clear procedural errors in the handling of this matter by USTT, and reviewing this matter on the merits, the Arbitrator has determined that USTT could not discipline Claimants in the manner presented. In effect, USTT punished Claimants for expressing their views of their treatment at an event. No USTT rules require athletes to compete after they enter an event. In fact, USTT was unable to point to any USTT rule requiring this. USTT relied upon a statement in USTT’s Nationals entry form that does not address the point directly; instead the USTT Nationals entry

⁵ While the USOC’s Due Process Checklist may not have the force of law, its tenets represent generally-accepted due process principles under American law, and it appears to have been promulgated, and never withdrawn or challenged, by the USOC or questioned by an arbitrator. As a result, the Arbitrator finds the USOC Due Process Checklist to be an appropriate standard against which to judge the due process provided by a NGB to an athlete in disciplinary and other matters. The view of the Arbitrator is consistent with that of arbitrators in other USOC Section, or Article, IX cases.

form provides simply that “the Laws of Table Tennis” will apply. Review of what was proffered as the “Laws of Table Tennis” reveals that the international federation rules for the sport of table tennis provide in the ITTF Handbook in Section 3.05.03.01 that, “Players, coaches and officials shall uphold the object of good presentation of the sport; in particular players have to do their utmost to win a match and shall not withdraw except for reasons of illness or injury.” The Nationals entry form and the provision of the ITTF Handbook quoted in the prior sentence were the only rules relied upon by USTT for the proposition that, because the Claimants had withdrawn from the event not for injury or illness, USTT could suspend them for the period of time that they did. The Arbitrator questions whether these provisions stand for the proposition cited. Assuming that a basic reference to the “Laws of Table Tennis” could even be understood to refer to the “ITTF Handbook” (as presented in evidence by USTT), the ITTF Handbook provides only that players have to try to win a match and cannot withdraw from that match except for reasons of illness or injury. Given that the ITTF rules make a distinction between a “match”, a longer “event”, and a much longer “competition” (*see, e.g.*, ITTF Handbook Section 3.05.02.08), it is difficult to understand the argument of USTT that based upon Section 3.05.03.01 a player must continue playing in an event or a competition after they complete a match and withdraw from future matches, the event, or the competition. While USTT may have disagreed with the arguments or requests of Claimants with respect to the conduct of the Nationals or their treatment as athletes, and while there may have been less onerous methods for the Claimants or athletes to make their views known short of withdrawing from an event or competition, absent a clear provision in a NGB’s own bylaws or rules, or a clear provision in the IF rules (if otherwise properly referenced), stating otherwise, or requiring athletes to compete, the Arbitrator refuses to hold that USTT can suspend athletes from future protected competitions for simply withdrawing from an event or competition. To do so would fly in the face of the purposes of the Ted Stevens Olympic and Amateur Sports Act, the USOC Bylaws, and the well-accepted principles of due process embodied in the USOC Due Process Checklist.⁶ In addition, the Arbitrator bases his decision on the fact that the Complaint fails to cite a single rule violation or breach of any ethical standard, so the Arbitrator had no basis upon which to consider applying the facts to a rule to determine if a violation occurred. Accordingly, and to make the record clear, the Arbitrator denies the Complaint as filed by the USTT Board of Directors and grants the Complaint of the Claimants.

6.0 DECISION AND AWARD

6.1 On the basis of the foregoing facts and legal aspects, this arbitrator renders the following decision:

⁶ There are certainly other means by which a NGB can discipline athletes for conduct a NGB deems inappropriate, short of impacting the rights of athletes to compete at protected competitions. For example, some NGBs do not attempt to impact an athlete’s competitive rights in these circumstances but instead exact a monetary fine that, if properly set forth in the NGB’s rules or a binding athlete agreement, might otherwise pass muster.

a. Claimants' Complaint has been upheld and Claimants' suspension should be voided.⁷

b. The Complaint of the Respondent's Board of Directors has been denied and the decision of Respondent's Ethics Committee is of no force or effect.

c. The parties shall bear their own attorney's fees and costs associated with this arbitration.

d. The Administrative fees and expenses of the American Arbitration Association shall be borne by the USTT, and the compensation and expenses of the Arbitrator shall be borne equally by the USTT.

e. This Award is in full settlement of all claims and counterclaims submitted to this Arbitration. All claims not expressly granted herein are hereby denied.



Dated: April 23, 2010.

Jeffrey G. Benz
Arbitrator

⁷ The arbitrator wishes to emphasize that all of the athletes originally the subject of the decision of the USTT Ethics Committee should be treated identically to the Claimants for purposes of their suspension (in other words, no athlete can or should be suspended as a result of the conduct alleged in the USTT Board Complaint or as a result of the decision of the USTT Ethics Committee in this matter).