



DECISION OF THE FEI TRIBUNAL

dated 23 July 2008

Alleged Abuse Case No.: 2008/01

Horse: SUNDANCER 6

FEI Passport No: GER20578

Persons Responsible: Ms Madeleine Brugman, NED
Mr Andrew Hoy, AUS

Event: CCI 3* Barroca d'Alva, POR, 5-9 March 2008

1. COMPOSITION OF PANEL

Mr. Ken E. Lalo
Mr. Erik Elstad
Mr. Patrick A. Boelens

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Persons Responsible (PRs):
The FEI Tribunal took into consideration the numerous briefs, witness statements and other documents and evidence presented by the three parties in the case file and submitted subsequently, as well as witness statements presented during the oral hearing, and weighed them all

when deliberating the case.

2.3 Oral hearing: On 22 May 2008 in Lausanne FEI Headquarters with closing arguments concluded by means of a conference call on 27 May 2008.

Present: The FEI Tribunal Panel

For the FEI:

Mr Alexander McLin, Secretary General

Ms Laetitia Zumbrunnen, Legal Counsel

Ms Catherine Bollon, Coordinator of the Legal Department

Mrs Jean Scott Mitchell, Ground Jury President, witness

Mr Andrew Griffith, Technical Delegate, witness (by telephone)

Mr Lourenço Fernandes Thomaz, Chief Steward, witness

Mr Michael Stilwell, Steward, witness

Ms Margaret Lees, Groom of Ms Brugman, witness (by video conference)

Mr João Alberto Almeida Gomes de Sousa Guimarães, International Event Rider, witness

Mr Ruy Fonseca, International Event Rider, witness

Mr Dan Jocelyn, International Event Rider, witness

For the PR:

Ms Madeleine Brugman, Person Responsible

Dr Lucien W Valloni, Legal Counsel of Ms Brugman

Mr Andrew Hoy, Person Responsible

Dr Monika Gattiker, Legal Counsel of Mr Hoy

Mr Salvatore Folque, International Event Rider, witness

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 22nd edition, effective 15 April 2007 ("**Statutes**"), Arts. 1.4,

34 and 37.

General Regulations, 22nd edition, effective 1 June 2007 ("**GR**"), Arts. 142, 143, 153, 154 and 161 through and including 174.

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

Rules for Eventing, 22nd edition, effective 1 January 2006 ("**ER**").

Veterinary Regulations, 10th edition, effective 1 June 2006 ("**VR**"), Article 1024 and Annex XI.

FEI Code of Conduct for the Welfare of the Horse ("**Code of Conduct**").

3.2 Persons Responsible: Ms Madeleine Brugman
Mr Andrew Hoy

3.3 Justification for sanction:

GR Art. 143:

"1. No person may abuse a horse during an event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a horse, including without limitation any of the following:

1.7. To abnormally sensitise or desensitise any part of a horse;

1.9. To use any device or equipment which cause excessive pain to the horse upon knocking down an obstacle.

2. Any person witnessing an Abuse must report it in the form of a protest (Art 167) without delay. If an Abuse is witnessed during an event, it should be reported as a protest (Art 167) to an Official. If the Abuse is witnessed at any other time it should be reported as a protest (Art 167) to the Secretary General for referral to the FEI Tribunal."

4. DECISION

Factual Background

4.1 The matter decided by the Tribunal of the Fédération Equestre

Internationale ("**FEI**") deals with an alleged horse abuse committed by Ms Madeleine Brugman (the "**Competitor**") and by Mr Andrew Hoy, who is the alleged trainer of the Competitor (the "**Trainer**"), on the Competitor's horse, Sundancer 6 (the "**Horse**"), while warming-up for the jumping phase of the CCI 3* Barroca d'Alva (the "**Event**"), on 9 March 2008.

- 4.2 The Competitor is an international eventing rider and a member of the NED-NF. She has been competing at an international level for some 17 years both in Jumping and later in eventing competitions. Since 1992, she represented the Netherlands at many international events in both jumping and eventing.
- 4.3 From 5 to 9 March 2008, the Competitor participated in the Event with the Horse.
- 4.4 During the Event, on 9 March 2008, towards the end of the show jumping competition, following rumors regarding the use of irregular bell boots including on the Horse in the warm-up arena, the Stewards at the Event closely monitored part of the warm-up of the Horse. Upon the Horse exiting the warm-up arena, these Stewards saw the Trainer removing a pair of bell boots from the Horse and placing them on a chair situated between the warm-up arena and the show jumping arena on which some other horse tack, including tack belonging to the Competitor, had already been placed. This chair was allegedly "controlled" or supervised by the Stewards.
- 4.5 One of the Stewards went to this chair and saw a pair of spiked bell boots (overreach boots used on the horse's forelegs in which metal spikes are inserted so that, when the horse touches or knocks down an obstacle, the spikes hurt the horse, in particular around the coronary band of the forelegs) under a horse's rug and on top of a pink grooming bag that belonged to the Competitor. The Stewards did not interfere at that moment but decided to keep the bag under close observation.
- 4.6 After the Competitor had finished her show jumping round, and after a number of other competitors had finished their respective rounds and

the show jumping competition was over, the Trainer, at the Competitor's request, went to collect the Competitor's grooming bag from the chair and was stopped by the Stewards who did not allow him to do so.

- 4.7 Mr. Andrew Griffiths, the Technical Delegate at the Event ("**TD**"), was called to the scene and took the grooming bag and the spiked bell booths that were on top.
- 4.8 The Ground Jury, composed of Mrs. Jean Mitchell (President), Mr. Guy Otheguy (Member) and Mr. Manuel Neves Veloso (Member), was on site and investigated the matter on the same day, 9 March 2008. The Ground Jury obtained statements from Mr. Lourenço Fernandes Thomaz, Chief Steward, Mr. Michael Stilwell, Steward, Mr. João Alberto Almeida Gomes de Sousa Guimarães, International Event Rider, Mr. Ruy Fonseca, International Event Rider, Mr. Dan Jocelyn, International Event Rider, and presented the matter to the PRs obtaining their statements.
- 4.9 The Ground Jury referred the matter to the Appeal Committee pursuant to Article 163 GR, without first disqualifying the Competitor or the Trainer. The Appeal Committee was composed of one member, Ms. Blanca Varadel Ray.
- 4.10 The Appeal Committee rendered its decision on 9 March 2008, referring the matter to the Secretary General of the FEI for transmission to the FEI Tribunal, pursuant to Article 164.4.5 GR, without first disqualifying the Competitor or the Trainer.

Law - Jurisdiction

- 4.11 The FEI Tribunal has jurisdiction over this matter pursuant to the Statutes.

Persons Responsible

- 4.12 Under Article 142 GR: "*The Person Responsible shall be the competitor who rides or drives the Horse during an Event [...]*". Therefore, the

Competitor is a Person Responsible in this case.

4.13 Article 142 GR further states that the owner and other support personnel, not limited to grooms and veterinarians, may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant decision about the horse. The Trainer is co-owner of the Horse, he was present on the show grounds during the relevant period and he removed the bell boots from the Horse. Therefore, the Trainer is viewed by the Tribunal as an additional Person Responsible in this case.

Elements of "Abuse"

4.14 The principle of the horses' welfare is of paramount importance, and one of the pillars of the equestrian sport promoted and regulated by the FEI, as expressed by the Code of Conduct, Statutes and GR. Anyone regulated by the FEI who puts a horse's health or physical or mental condition at risk, or who acts or fails to act in a manner which causes or is likely to cause pain or discomfort to a horse, must be held responsible for such conduct.

4.15 Under the heading "*Abuse of horses*", Article 143 of the GR reads as follows:

"1. No person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including without limitation any of the following:

[...]

1.7. To abnormally sensitise or desensitise any part of a horse;

1.9. To use any device or equipment which cause excessive pain to the horse upon knocking down an obstacle.

[...]"

4.16 According to the general definition contained in Article 143 GR, the

following requirements must be met for a case of abuse to be realized:

- act or omission;
- which causes or is likely to cause;
- pain or discomfort to a horse.

4.17 Paragraphs 1.7 and 1.9 of this Article 143 GR concretizes this broad definition by giving examples of the types of acts or omissions that ought to be qualified as abuse.

4.18 The use of spiked bell boots on a horse, whether in the competition arena, in a training arena or elsewhere, falls clearly within the definition of abuse, as it clearly meets all three requirements of Article 143 GR. The use of such a device clearly falls under paragraph 1.9 of Article 143 GR and possibly also under paragraph 1.7 of this Article. Spiked bell boots serve no legitimate purpose in horse training or within the competition, and their sole purpose is to cause pain to the horse thus, allegedly, making the horse more careful with its forelegs over the show jumping obstacles.

4.19 The Tribunal finds the use of such boots to be cruel and offensive to the spirit of the sport, and considers anyone using them to be not worthy of being part of the FEI family. The Trainer himself, in response to questions from the Tribunal during the oral hearing, has confirmed that he views the use of spiked bell boots as being cruel.

4.20 The fact that spiked bell boots were found at the Event is worrying and possibly means that someone has been using this cruel device. This is to be vigorously fought by the FEI and by every person who loves horses and the equestrian sports.

4.21 The mere placement of spiked boots on a horse's legs is an intentional act and will, therefore, if proven, be considered as an intentional abuse of horse. As such, it will entail severe sanctions. The Tribunal believes that a suspension of at least two years would not be an inappropriate sanction in a case where such use of spiked boots is proven.

The PRs' Main Arguments

4.22 In defense, the Competitor's main arguments are:

4.22.1 That the matter was not properly reported to the Secretary General of the FEI and, through him, to the Tribunal;

4.22.2 That there were numerous procedural deficiencies in the way the case has been prosecuted, which require it to be dismissed; and

4.22.3 That even if the case is not dismissed, the FEI was not able to present sufficient evidence to prove, in accordance with the required level of proof, that the spiked bell boots were placed on the Horse or used by the Competitor.

4.23 In defense, the Trainer generally repeats the Competitor's main arguments and further argues that he is not a "person responsible" and cannot be held responsible, even if a case is proven against the Competitor, since he did not act as the Competitor's trainer.

4.24 The Competitor's counsel argues that this case is not a matter of fair practices by the PR, but of fair procedures by the FEI and that, in as much as an abuse is to be vigorously fought by the FEI, this can only be done by the use of fair procedures.

Reporting an Abuse

4.25 The PRs argue that the matter was to be handled by the Ground Jury in accordance with Article 1024 VR and Annex XI VR, namely, as a bandage/ boots control and that, by not doing so, the case was not properly handled at the initial stages and that, at the very least, this has limited the PRs ability to defend themselves. The PRs argue that the Stewards who were on the scene when the Horse was ridden in the practice arena with bell boots on could have easily stopped the Competitor (during the practice or on leaving the warm-up arena) in order to conduct a simple check of the bell boots. This easy process would have eliminated the need to use circumstantial evidence and would have provided clear evidence, substantiating the PRs' position.

- 4.26 The PRs argue that the FEI Manuel for Stewards indicates that the FEI Stewards shall intervene in time in order to prevent any abuse of horse. The Stewards present at the warm-up arena were alerted about a potential abuse, but, instead of intervening, merely watched the Horse from a distance.
- 4.27 The Tribunal determines that a boots and bandage control in accordance with Article 1024 VR and Annex XI VR could have been conducted by the Stewards at the Event, but that an abuse may have also been reported in other ways. The FEI has enacted Article 143 GR allowing abuse to be reported by a broad number of people in many ways, in order to ease the procedural requirements and assist the fight against abuse. Therefore, this argument does not require the case to be dismissed.
- 4.28 Nevertheless, the Tribunal is of the opinion that the Stewards had a clear opportunity to check the bell boots upon the Competitor leaving the warm-up arena and before they were removed, thus alleviating all parties from holding a very complex evidentiary hearing and from the need to use "indirect" evidence to support either the prosecution or the defense in this case. This resulted in a long process, lack of clarity and expense to the parties. The Tribunal notes that this and numerous other cases reviewed by the Tribunal highlight the need to educate FEI Officials.
- 4.29 While not argued by the PRs, the Tribunal notes that both the Ground Jury and the Appeal Committee were required to disqualify the Competitor at the time of referring the matter to the higher instance (Ground Jury to the Appeal Committee and the Appeal Committee to the Secretary General for referral to the Tribunal), in accordance with Articles 163 and 164 GR.

Evidentiary Matters and Procedural Deficiencies

- 4.30 The PRs argue numerous procedural errors in this case, including:
- 4.30.1 The FEI witnesses received a full set of the case documents, thus able to align testimonies, prepare for cross examination and react to PRs defenses.

- 4.30.2 The FEI did not provide the PRs with all documents available in this case or cited by the FEI.
- 4.30.3 The FEI witnesses stayed in the same room at the hearing, and received information regarding the questions asked at the hearing before being called to testify.
- 4.30.4 The FEI witness statements were at least partially drawn by the FEI Legal Department.
- 4.30.5 The Technical Delegate and the Deputy Chief Steward at the Event continued to investigate the case beyond their period of jurisdiction, which ended half an hour after the announcement of the final results, by speaking with potential witnesses, collecting evidence and coordinating witness statements after the case was already managed by the FEI Legal Department.

4.31 The Trainer's counsel argues that these procedural deficiencies breach the principle of fairness in procedure and the principle of good faith in that *"the interests of the athletes must be recognized not only at events but in any matters of the FEI involving an athlete and therefore also in procedures on medication or horse abuse. Protection of the horses' welfare may be the most important objective of the FEI. However, the horses' welfare is perfectly protected even if the FEI complies with the minimal rules of fairness in procedure on horse abuse."* (Statement filed by Trainer's counsel dated May 27 2008, pp.1-2).

4.32 The Tribunal is of the opinion that, by providing witnesses with a full set of the case documents and the statements provided by other witnesses before their testimony, as well as permitting the coordination of statements prior to the hearing, including through calls, meetings or discussions with at least one of the FEI witnesses, the Steward, Mr. Michael Stilwell, at the very least raises concerns about the possible alignment of the various testimonies, permitting witnesses to prepare for cross-examination and, thus, limiting the ability of the PRs to properly defend themselves.

4.33 The Tribunal does not believe that these procedural deficiencies require the case to be dismissed. Nevertheless, the Tribunal must take these into account when considering the oral testimonies provided by the

witnesses at the hearing in support of the FEI case, since there was at least the possibility of coordination between witnesses and since the PRs were limited in their ability to cross-examine the witnesses. Due to these procedural deficiencies, these witness statements carry less evidentiary weight. The Tribunal will provide more evidentiary weight to the remaining untainted evidence and in particular the Ground Jury report and the statements gathered during the Event and to some of the witness statements provided by the FEI witnesses before receipt of the case file.

Standard of Proof

- 4.34 According to the applicable rules, the standard of proof which the FEI is required to meet in order to prove its case is the balance of probabilities (Section 22.1 of the Internal Regulations of the Tribunal).

Evidence Presented – Proving the FEI Case

- 4.35 The only direct evidence connecting spiked bell boots to either of the PRs or to the Horse was provided by two witnesses. One witness, Mr. Ruy Fonseca, himself a rider, claimed to have seen bell boots with some strange material inside placed by the Trainer next to a fence in the warm-up arena. He later noticed the Competitor warming-up while the Horse had bell boots on. If this is taken to evidence that the spiked bell boots were the ones on the Horse, it contradicts the vast testimony indicating that the Horse had bell boots on during the warm-up and no testimony mentioning that bell boots were placed on the Horse in or near the warm-up arena. The same witness claims to have later noticed the Trainer placing the same boots, having removed them from the Horse, on the chair, and to have noticed this strange material inside. This was from a distance of some 10 meters away. The second witness, Mr. João Alberto Almeida Gomes de Sousa Guimarães, a student and rider, testified to have seen the spikes when the Trainer removed the bell boots from the Horse, at a distance of some 3 meters from him. During the hearing, a simulation of removing bell boots from a wooden horse leg was conducted. Mr. João Alberto Almeida Gomes de Sousa Guimarães appears a very credible witness. Nevertheless, the simulation and the fact that numerous other

witnesses standing at somewhat similar distances could not see the spikes indicate to the Tribunal that it was virtually impossible to notice the spikes from a distance. It is only on close examination that the spikes can be noticed.

- 4.36 The remaining evidence is circumstantial or indirect in that it tries to connect between bell boots (without clear evidence as to whether these were regular ones or spiked) removed by the Trainer from the Horse and placed on the chair between the warm-up arena and the competition arena, on top of the Competitor's grooming bag and under a blanket, and spiked bell boots noticed and "examined" (without touching) by a number of witnesses in the same place.
- 4.37 Abuse cases may be proven through circumstantial evidence, since abuse is typically practiced away from the public eye. In the event that direct evidence cannot or can no longer be produced, a decision may be based on indications or on a high degree of probability. This was confirmed by the CAS in its decision CAS 96/159 & 96/166, *A., C., F. and K. vs. FEI*, Award of 27 March 1998, CAS Digest II 447, which confirmed the earlier decision of the FEI's Judicial Committee (the predecessor of the Tribunal).
- 4.38 However, the testimonies presented indicate that the chair was not properly "controlled" and no timely inventory of all horse tack placed on the chair was conducted; and the PRs were able to cast substantial doubts on the indirect evidence allegedly connecting the PRs to the spiked bell boots.
- 4.39 Had the Tribunal been satisfied that the evidence presented establishes that the chair on which the bell boots were placed was properly "controlled" and that the spiked bell boots were the only bell boots on the chair, it would have been satisfied that the FEI had met its burden of proof and would have found against the PRs.
- 4.40 Various witnesses brought by the FEI to support the alleged "control" over the chair indicated that the bell boots were placed on the chair under a blanket and that this blanket was later not there, although they could not say who had removed it, when and whether it was a

blanket used on the Horse (testimonies of Mr. João Alberto Almeida Gomes de Sousa Guimarães, and other witnesses). Various witnesses indicate that the Horse returned to the stable with bell boots but cannot establish whether these bell boots were taken from the chair or from somewhere else.

4.41 Mr. Salvador Folque, a rider, testified on behalf of the PRs. Mr. Folque clearly stated that he saw the Horse returning to the stable with bell boots on (thus evidencing that there were other bell boots in addition to the spiked ones remaining on the chair), about the lack of "control" over the chair and about the fact the Mr Michael Stilwell tried to influence his evidence. The Tribunal found Mr. Salvador Folque's evidence to be credible.

4.42 The FEI argued that bell boots are used to protect the coronet band and hooves of the forelegs from overreach by the hind legs and that, therefore, if used in the warm-up arena they clearly must also be used in the competition ground since the likelihood of overreach is greater there. This was supported by substantial evidence and is also within the judicial knowledge of the Tribunal. The Competitor argued that she has always used bell boots in the warm up arena as a training device, since the bell boots provided a buffer while the horse was touching a jump in the warm up arena causing the horse to pick up its legs better on the first touch of an obstacle without such boots on entering the competition arena. Apparently, on leaving the arena and going back to the stable the boots were used again since the Horse misbehaved the day before and was more prone to overreach and hurt itself.

4.43 Relating only to the permitted evidence presented on behalf of the FEI in this case, the Tribunal concludes that the FEI was not able to substantiate a case against either PR. The allowed evidence had various unresolved contradictions and inconsistencies and was therefore not sufficient for the FEI to meet the required standard against either PR.

4.44 While the Tribunal concludes that there were many inaccuracies and contradictions in the statements provided by the FEI witnesses, and that these most possibly include assumptions rather than mere facts,

the Tribunal concludes that there was no evidence of any manipulation over or any threatening of the witnesses by the FEI as suggested by the Trainer's counsel. The discussions between Mr. Stilwell and Mr. Griffith and some witnesses while the case was pending most probably resulted from lack of clarity regarding roles of FEI Officials once a case is already with the Legal Department. There is no evidence of any intent to manipulate or reach an untrue decision in this case. Making such suggestions when these are not fully supported was, in the opinion of the Tribunal, unnecessary.

The Trainer

- 4.45 The Trainer argues that he did not act as the Competitor's show jumping trainer, that he merely assisted the Competitor in setting up the warm up jumps and that he therefore cannot be considered a PR under Article 142 GR. The Trainer argues that, even if a case could be substantiated against the Competitor, no case could be made against the Trainer.
- 4.46 Ample evidence was brought on behalf of the Trainer to indicate that the Trainer only trained the Competitor for the Dressage portion of the Event, and not for its show jumping phase.
- 4.47 The Tribunal does not believe that it should make a decision on this point. The Trainer removed the bell boots from the Horse on leaving the warm up arena. Had the bell boots been spiked, the Trainer would have had clear knowledge of this fact, at least on removing them, and thus would have had a duty to report the abuse. Silence or omission to report combined with the removal of the bell boots from a Horse whose warm up he assisted with, at the very least by placing the practice jumps, would have been sufficient to establish a case of abuse against the Trainer. At that point the relationship between the Trainer and the Competitor might have been relevant in determining the Trainer's knowledge and pre-meditation as well as to the issue of sanctioning.

PRs Good Standing

4.48 The Tribunal received ample witness statements regarding the Competitor's and the Trainer's exemplary history of professionalism, devotion to horse welfare and attention to horse care. Noted among such witnesses is Mr. Wayne Roycroft, the Chairman of the FEI Eventing Committee, who indicated that he has been a good friend of the Trainer for decades and described the Trainer as someone that would not compromise the health of his or other's horses. The Tribunal does not comment on these statements since they are not required for the decision taken in this case.

5. DECISION

5.1 As a result of the foregoing, the Tribunal concludes that the FEI did not meet its burden of proof and did not provide sufficient evidence to substantiate a case of abuse against either the Competitor or the Trainer.

5.2 The Tribunal notes that, in defending the case, the PRs had limited travel costs (travel to the hearing of the PRs, one witness and their Swiss counsels). The somewhat prolonged hearing resulted partially from certain repetition in the various briefs submitted by PRs counsels before, during and after the hearing and from the fact that such briefs were overly broad and not pin pointed to the key arguments available in defense. It is also noted that certain delays were caused in this case due to numerous pleadings made by the PRs and their counsels following the hearing and the teleconference. These required further unnecessary deliberations by the Tribunal, delaying the submission of this decision. Taking these into account, the Tribunal assessed limited costs in the amount of CHF 3,000.- to be paid by the FEI to the Competitor and to the Trainer, to be divided equally between them.

6. DECISION TO BE FORWARDED TO:

6.1 **The PRs:** Yes

6.2 **The President of the NF of the PRs:** Yes

6.3 **The President of the Organising Committee of the event through his NF:** Yes

6.4 **Any other:** Counsels of the PRs

7. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 23 July 2008

Signature: 