



DECISION of the FEI TRIBUNAL

dated 3 December 2007

Positive Medication Case No.: 2006/28

Horse: Ballybolger Bushman

FEI Passport No: IRL03630

Person Responsible: Mr Sam Watson, IRL

Event: CIC 2* Ballindenisk, IRL, 22-23 April 2006

Prohibited Substance:

Procaine

1. COMPOSITION OF PANEL

Mr Pierre Ketterer
Prof Dr Jens Adolphsen
Mr Ken E. Lalo

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The FEI Tribunal took into consideration all evidence and documents presented in the case file, and at the hearing, as also made available by and to the PR.

2.3 Oral hearing: By teleconference on 22 October 2007.

Present: The FEI Tribunal Panel

For the FEI:

Laetitia Zumbrunnen, Legal Counsel
Mikael Rentsch, Legal Counsel
Fiona Paratte, Legal Assistant
Dr Frits Sluyter, Director FEI Veterinary
Department, Witness

For the PR:

Sam Watson, Person Responsible
Stephen Lanigan-O'Keeffe, Legal Counsel
John Watson, Father of the PR, Witness

Observer

Bernie Kelly, Secretary of Mr Lanigan-O'Keeffe

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 21st edition, effective 21 April 2004, ("**Statutes**"), Arts. 001.6, 057 and 058 and Statutes 22nd edition, effective 15 April 2007, ("**New Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 21st edition, effective 1 January 2005, Arts. 142, 146.1 and 174 ("**GR**") and General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174 ("**New GR**").

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

Veterinary Regulations, 9th edition, effective 1 January 2002, revised April 2005 ("**VR**") and Annex IV (Prohibited Substances).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Persons Responsible: Mr Sam Watson

3.3 Justification for sanction:

GR Art. 146.2: "Any horse found to have a Prohibited Substance in any of its tissues, body fluids or excreta at an event [...] is automatically disqualified, together with the competitor [...], from all competitions at that event, [...] unless the Judicial Committee decides based on the evidence to terminate the proceedings of the case."

Subsequent to the adoption of the New Statutes, the Judicial Committee is now referred to herein as the "Tribunal".

4. DECISION

4.1 Consideration of the evidence:

- a. Ballybolger Bushman (the "**Horse**") participated in CIC 2* Ballindenisk from 22 to 23 April 2006 (the "**Event**"). The Horse was ridden by Mr Sam Watson who is the Person Responsible in accordance with GR Article 142 (the "**PR**").
- b. The Horse was selected for sampling on 22 April 2006. Analysis of the urine sample no. FEI-7275 taken from the Horse was performed by the approved central laboratory of

the FEI, the Laboratoire des Courses Hippiques ("**LCH**"), in France (Certificate of Analysis FEI-7275 dated 11 May 2006).

- c. A Certificate of Analysis dated 15 May 2006 was issued by LCH (the "**Wrong Certificate**"). The Wrong Certificate mentioned blood instead of urine as the fluid examined at the laboratory and mentioned flunixin instead of procaine as the detected substance. The Wrong Certificate was received by the FEI and then sent to the PR on 13 June 2006 together with a complete Analysis Report. The complete Analysis Report did identify that urine was the fluid examined and that procaine was the detected substance. The complete Analysis Report, therefore, correctly cited the relevant information, while the Wrong Certificate to which the complete Analysis Report was attached contained wrong information.
- d. On 14 and 29 June 2006, the PR's father, Mr John Watson, submitted a request that the Tribunal terminate the proceeding of the case based on the facts that (1) a clerical mistake was present in the Wrong Certificate; (2) the "agent of the competitor", his father, did not submit the Medication Form 1 necessary in that situation before the Event but that retrospective submission was permitted under the wording of the Annex VII VR (Medication Form 1); (3) the PR was a full-time student, his father is the owner of the Horse and the rider should not therefore be regarded as the Person Responsible.
- e. On 9 January 2007, Dr Yves Bonnaire, Director of LCH, confirmed that the Wrong Certificate was "incorrect in respect to the date and drug name" and that a corrected Certificate of Analysis, dated 11 May 2006, sent to the FEI and to the PR on 19 June 2006, contained the correct date, Prohibited Substance and matrix tested.
- f. On 14 February 2007, the FEI informed the PR that it had decided to request a confirmatory analysis and provided the PR with a deadline to inform the FEI whether he would ask for a representative to be present at the B-analysis. The PR questioned the FEI on the legal grounds of this decision, assuming that only the PR was entitled to request a confirmatory analysis. The FEI explained that the request of the confirmatory analysis was the result of the PR's contest of the results of the A-analysis on the grounds of the clerical mistake in the Wrong Certificate.
- g. The confirmatory analysis was carried out on urine at the Hong Kong Jockey Club Laboratory ("**HKJC**") from 13 to 15 March 2007 under the supervision of Dr W.H. Kwok, and was witnessed by Mr David Ip, Manager Security Operations at HKJC, at the request of the FEI. It confirmed the presence of Procaine (Counter-Analysis Report dated 15

March 2007).

- h. Procaine is a local anaesthetic acting inter alia on the locomotor system (Certificate of Analysis FEI-7275 dated 11 May 2006 and Medication Sub-Committee Report dated 8 June 2006) and accordingly is a prohibited substance specified in the VR (Annex IV).

The validity of the A-analysis

- i. The PR submitted that there were no valid proceedings as it was based on the Wrong Certificate which is invalid.
- j. The FEI argued that the complete Analysis Report refers only to procaine, and not to flunixin which proves that the Wrong Certificate contained merely a clerical error.
- k. The Tribunal does not see any reason to doubt the contents of the Certificate of Analysis dated 11 May 2006. The LCH is absolutely independent of any FEI competitor who participated at the Event. As the FEI Medication Control Programme Central Laboratory, the competence and independence of the LCH cannot be questioned absent a convincing basis in fact.
- l. The CAS has repeatedly considered that minor irregularities did not invalidate the results of the analysis: “[...] *if the Panel is satisfied that the sample tested came from the person or horse in question, and that the chain of custody is established, that no question of contamination arises, that the equipment used to test was appropriate and that the results were correctly interpreted, then it should not be deterred from upholding a verdict as to the presence of a prohibited substance merely because some departure from procedure may be proven, still less because of matters irrelevant to the validity of the test*” (Arbitration CAS 98/184, P. / FEI, 25 September 1998, CAS Digest II 197, para. 19, FEI Exhibit 16) confirmed by CAS decision (CAS 2003/A/477 B & S v/EFA: “*Minor irregularities, which cannot reasonably be considered to have affected the results of otherwise valid tests, will have no effect on such results*”).
- m. The Tribunal notes that the PR received the complete Analysis Report of the LCH which revealed the presence of procaine and was duly informed that the Certificate of Analysis dated 11 May 2006 was the base of the prosecution.
- n. The Tribunal considers that it is clearly demonstrated that the clerical error of the LCH has not affected the validity of the A-analysis result and consequently of these proceedings.

The Right of the FEI to request the B-analysis

- o. The FEI alleged that under Art. 146.6 GR, stating that "*any sample of urine or blood taken during a medication control [...] is considered to be property of the FEI*", it was entitled to request a confirmatory analysis.
- p. The FEI also specified that nowhere in the rules is it stated that the FEI is not allowed to request the B-analysis, and that it is common practice of the FEI to conduct any follow-up investigation as deemed necessary to have all the evidence related to a positive finding.
- q. On the other hand, the defense alleged that a clear rule allowing the FEI to request the B-analysis was necessary and the fact that this rule had been added in the Equine Anti-Doping and Medication Control Rules (EADMCRs) was proof of the need for such a rule and of a change of practice in this regard. Consequently, the defense concluded that the results of the B-analysis could not be used in these proceedings.
- r. The Tribunal is of the opinion that the current wording of the EADMCRs art. 7.1.4, effective as of 1 June 2006, stating that "*The FEI may nonetheless elect to proceed with the B Sample analysis*" serves only to formally publish an already common practice. The Tribunal is of the opinion that it is the duty of the FEI to conduct any follow-up in order to complete the investigation of a case.
- s. For this reason, the Tribunal deems that the performance of the B-analysis at the request of the FEI does not affect the validity of these proceedings.
- t. The Tribunal is, nevertheless, of the opinion that the results of the B-analysis are not required in these proceedings in order to substantiate the FEI's case, since the A-analysis is valid and the PR did not contest the accuracy of the testing methods or the test results and merely argued about their validity due to a clerical error in the Wrong Certificate.

Presence of the Prohibited Substance

- u. The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR under art. 174.6.2. GR. The finding on analysis of a prohibited substance is presumed to be a deliberate attempt of the PR to affect the performance of the Horse. The PR has the opportunity to seek to eliminate or reduce the otherwise applicable period of ineligibility and other sanctions, establishing that the treatment was not a deliberate attempt to affect the performance of the Horse and that the findings

are the results of legitimate treatment of the Horse, in accordance with GR Article 174.6.2.2.

- v. In his written explanation dated 29 June 2006, the father of the PR, Mr John Watson, states that on Saturday 8 April 2006, the Horse competed at CNC Tyrella, Northern Ireland. The Horse slipped and fell on his side over sand put down on a concrete road crossing. The Horse sustained skin grazes to two areas of his hindquarters, a small cut to his stifle and his elbow and a deeper puncture-type wound to his forearm. On his return from the course, the father of the PR washed off the Horse and cleaned his wounds with dilute antiseptic. Later, while seeing that some of the wounds had swollen, Mr Watson administered 20cc of "Neopen", an antibiotic being penicillin-procaine. He treated the Horse again on Sunday 9 April 2006 in the evening with 15cc and on Monday 10 April 2006 in the morning all intra muscular.
- w. Mr John Watson states that he had been in possession of this medicine because a few weeks earlier one of his broodmares had to be treated due to severe laceration to her knee. The vet had supplied 100cc of "Neopen" and 50cc remained after the treatment of the mare.
- x. Mr John Watson explains in his written explanation and at the hearing that he did not consider calling his veterinarian on a Saturday evening or on the Sunday as the degree of the emergency was not so serious and as he had the knowledge to treat the Horse. On Monday, an improvement was evident and so he did not call his veterinarian.
- y. Mr John Watson explains that he was not conscious that "Neopen" contained a Prohibited Substance and that, therefore, he did not submit a Medication Form 1 upon arrival at the Event. He provided the FEI with a completed Medication Form on 29 June 2006, following initiation of these proceedings, requesting the FEI to accept it retroactively.
- z. The FEI argued at the hearing that, under art. 1006.7 of the VR, *"if a horse requires urgent treatment prior to the event, an authorisation of treatment can be given retrospectively, only if the details of the case are reported to the Veterinary Commission/Delegate immediately upon arrival at the competition venue. Following veterinary recommendation, permission for such horses to continue in the event may be given by the Ground Jury (see Chapter VII)."* The FEI specified that the Ground Jury has jurisdiction only at the Event and that none of the conditions required to accept a retroactive Medication Form 1 were fulfilled except for the Horse being treated prior to the Event.

aa. Dr Frits Sluyter, Head of the FEI Veterinary Department,

explained at the hearing that no Medication Form has ever been granted after a positive test result. He added that the Vet Official at the Event would have accepted the Medication Form 1 if the Horse (1) had been fit to compete and (2) would have encountered no unfair advantage.

bb. According to the VR Article 1027 and Annex VII, the Tribunal considers that a Medication Form 1 can only be submitted before the start of the Event (22 April 2006) and that the Ground Jury has the sole competence to authorize the participation of a horse having received emergency treatment.

cc. Furthermore, the Tribunal notes that the PR did not submit any evidence in order to prove that the right to provide the FEI with a Medication Form was denied to him during the Event.

dd. The Tribunal, therefore, deems that the Medication Form 1 submitted on the 29 June 2006 by the father of the PR can not be accepted.

ee. Sam Watson, the PR, a full time student at Trinity College University of Dublin, stated that his father takes responsibility for the care of the horses at home and that he only rides at the weekends. The PR also explained that he is not involved with the day-to-day management or the treatments of the horses. He testified that he was not aware of the injection his father had given to the Horse and that he only asked him whether the Horse was fine.

ff. Dr Sluyter submitted a statement in which he stated that *"[t]he issue of allowing antibiotics with the exception of procaine-penicillin is not specified in the rules. We consider the choice of which antibiotic should be used to inject in a competition horse a matter of the treating veterinarian. We do not think it is wise if a PR decides to inject a leftover antibiotic from treatment of a previous horse in a competition horse with corresponding risks for welfare and testing. Treating veterinarians are aware that this substance should not be used in a competition horse that may be tested soon."*

gg. The Tribunal highlights that all antibiotics are permitted by the FEI with the exception of procaine-penicillin, as procaine can be detected for an extended and unpredictable time and acts as a local anaesthetic.

hh. The Tribunal is convinced, after consideration of all the evidence, of the possible causal link between the treatment and the test results.

ii. The PR has thus proved that it was not a deliberate attempt

to affect the performance of the Horse and that the findings are the result of a legitimate treatment of the Horse.

- jj. The Tribunal considers that the PR has therefore successfully rebutted the presumption of intent.
- kk. While it seems that the father of the PR was taking most of the decisions concerning the Horse, this does not alter the primary responsibility of the PR. The Tribunal has repeatedly expressed that it is the responsibility of competitors to ensure that their horses do not have any prohibited substances in their liquids while competing at international events. The PR should always inform himself of all treatments given to horses ridden by him and ensure that they are announced upon arrival at an event to the FEI Veterinary Official and that the relevant medication form is submitted before the start of the competition.
- ll. The Tribunal, therefore, concludes that the positive result is sufficient to establish that despite the explanations given, the PR was negligent by not having ensured that his Horse was competing drug-free at the Event.
- mm. In deciding the sanctions the Tribunal considered the substance involved, the explanation for the positive finding, the negligent conduct of the PR and his father and the PR's cooperation in the investigation.

4.2 Disqualification

As a result of the foregoing, the FEI Tribunal has decided to disqualify the horse Ballybolger Bushman and the PR from the Event and that all medals, points and prize money won at the Event must be forfeited, in accordance with Article 174.6.2 GR.

4.3 Sanctions

As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with GR Article 174:

- 1) The PR shall be suspended for a period of **two (2) months** to commence immediately and without further notice at the expiration of the period in which an appeal may be filed (30 days from the date of notification of the written decision) or earlier if the appeal is waived in writing by or on behalf of the PR.
- 2) The PR is fined **CHF 1'000.-**.
- 3) The PR shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

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

5.4 Any other: Mr Stephen Lanigan-O'Keeffe, Counsel of the PR

6. THE SECRETARY GENERAL OR HIS REPRESENTATIVE:

Date : 3 December 2007

Signature: [Signature]