



## **DECISION of the FEI TRIBUNAL**

**dated 10 March 2016**

**Case No.:** 2012/PI01

**Person Responsible:** Mr. Ali Mohammed Al Muhairi/UAE/10011714

**Events:** CEI4\* Euston Park, Thetford (GBR);  
CEI2\* Al Wathba, Abu Dhabi (UAE)

**Dates:** 25 August 2012; 2 March 2013

**Alleged Violation:** Violation of the Prohibition of Participation During Ineligibility

### **I. COMPOSITION OF PANEL**

Mr. Erik Elstad, chair  
Ms. Jane Mulcahy, QC, member  
Dr. Armand Leone, member

### **II. SUMMARY OF THE FACTS**

#### **1. Memorandum of case: By Legal Department.**

**2. Case File:** The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the Case File, as also made available by and to the PR.

### **III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

#### **1. Articles of the Statutes/Regulations which are applicable or have been infringed:**

Statutes 23<sup>rd</sup> edition, effective 15 November 2011 ("**Statutes**"), Arts. 1.4, 36, 37 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2012, Arts. 118, 143.1, 161.2, 168.4 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal 2nd edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2012.

FEI Equine Anti-Doping Rules ("EAD Rules"), 1<sup>st</sup> edition, effective 5 April 2010, updates effective 1 January 2012; and FEI Equine Anti-Doping Rules ("2016 EAD Rules"), 2<sup>nd</sup> edition, effective 1 January 2016.

**2. Person Responsible:** Mr. Ali Mohammed Al Muhairi

**3. Justification for sanction:**

GRs Article 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)".

EAD Rules Article 10.10.1: "No *Horse, Person Responsible* and/or member of the *Support Personnel* who has been declared *Ineligible* may, during the period of *Ineligibility*, participate in any capacity in a *Competition* or activity that is authorised or organised by the *FEI* or any *National Federation* or be present at an *Event* (other than as a spectator) that is authorised or organised by the *FEI* or any *National Federation*, or participate in any capacity in *Competitions* authorised or organised by any international or national-level *Event* organisation. In addition, for any *EAD Rule* violation, some or all of sport-related financial support or other sport-related benefits received by such *Person Responsible* and/or *Support Personnel* may be withheld by the *FEI* and/or its *National Federations*. A *Horse* subject to a period of *Ineligibility* shall remain subject to *Testing*. "

EAD Rules Article 10.10.2: "Where a *Person Responsible* and/or member of the *Support Personnel* who has been declared *Ineligible* or whose *Horse* has been declared *Ineligible* violates the prohibition against participation or attendance during *Ineligibility* described in Article 10.10.1 above, the results of such participation shall be *Disqualified* and the period of *Ineligibility* which was originally imposed shall start over so that the entire period of *Ineligibility* must be served again from the beginning with the first date of *Ineligibility* served fixed as the date of the later violation of the prohibition against participation or attendance. The new period of *Ineligibility* may be reduced under Article 10.5.2 if the *Person Responsible* and/or member of the *Support Personnel* establishes that he or she bears *No Significant Fault or Negligence* for violating the prohibition against participation or attendance. The determination of whether any *Person* has violated the prohibition against participation or attendance, and whether a reduction under Article 10.5.2 is appropriate, shall be made by the *FEI Tribunal*."

2016 EAD Rules Article 10.11.3: "Where a *Person Responsible* and/or member of the *Support Personnel* who has been declared *Ineligible* or whose *Horse* has been declared *Ineligible* violates the prohibition against participation or attendance during *Ineligibility* described in Article 10.11.1 above, the results of any such participation shall be *Disqualified* and a new period of *Ineligibility* equal in length up to the original period of *Ineligibility* shall be added to the end of the original period of *Ineligibility*. The new period of *Ineligibility* may be adjusted based on the *Person Responsible* and/or member of the *Support Personnel's* degree of Fault or other circumstances of the case. In addition, further sanctions may be imposed if appropriate. The determination of whether any *Person* has violated the prohibition against participation or attendance, and whether an adjustment shall be made by the *FEI Tribunal*. This decision may be appealed under Article 12."

#### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

##### **1. Factual Background**

- 1.1 On 21 March 2012, the Tribunal rendered its decision in the case of KARABIL KAIYA HAI (Case 2011/BS09), a case in which the PR had been the Person Responsible. The case had arisen since the horse KARABIL KAIYA HAI, a gelding, had tested positive for the Banned Substance Testosterone, at a level above the international threshold of 20 ng/ml. The Tribunal – taking into account the entire case file presented to it, including the fact that already back in 2009, the PR had committed an EAD Rule violation - decided to suspend the PR for a period of four (4) years. The Tribunal further decided not to accredit any period of the Provisional Suspension imposed on him at the beginning of the proceedings, since the PR had not respected the conditions of the Provisional Suspension; specifically the Tribunal found that during the period of Provisional Suspension the PR had attended several FEI and national events, had been present at the vet gate area and had appeared on the podium for the prize giving ceremony. The Tribunal therefore declared the PR to be ineligible through 21 March 2016.

## 2. The Proceedings

- 2.1 The alleged violation of the Prohibition of Participation during Ineligibility (the "**first violation**") was officially notified to the PR, through the United Arab Emirates Equestrian & Racing Federation ("**UAE-NF**"), on 2 November 2012.
- 2.2 Together with the Notification Letter the FEI submitted a statement by Mr. Kevin Croke, Chief Steward at the CEI4\* Euston Park, in Thetford, Great Britain (the "**Event**"). Mr. Croke explained that in the early afternoon of the Event he had seen the PR in the crewing/hold area, i.e. the field of play. That since he had been aware that the PR was suspended for a rule violation he had asked the PR – who in his opinion had been aware that he was not permitted on the field of play - to leave the area of field of play. Mr. Croke further explained that he had heard that the PR had returned to the field of play later on the same day, which he had been able to confirm through a youtube video, on which the PR was shown on the field of play during one of the final loops of the Competition. Together with his statement Mr. Croke also provided pictures of the PR in the field of play area during the Event as well as the youtube video, also showing the PR on the field of play at the Event.
- 2.3 On 23 January 2013, the PR stated that he acknowledged and accepted the first rule violation as alleged, and also explained being fully aware of the sanction, i.e. period of Ineligibility, imposed on him. Further, that he had not been officially riding or training horses at FEI controlled endurance events. That however in his capacity as Racing Manager for a member of the Ruling Family of Dubai it was his "*first calling and utmost duty to represent and advice the Sheikh whenever requested*". That this had also been the reason for his brief return to the field of play after he had previously been requested by the Chief Steward to leave that area.
- 2.4 On 14 February 2013, the FEI provided its Response to the PR's submission. The FEI argued that according to the wording of Article 10.10.1 of the EADCMRs it was clear that the prohibition applied to any Horse or Person Responsible on which a period of Ineligibility had been imposed, irrespective of that person's employment, status, relationship etc. That therefore the PR's commitments towards his employer were irrelevant in this context, and that he – as any other Person Responsible under a period of Ineligibility – had to respect the restrictions that were inherent to the period of Ineligibility. That the status during the period of Ineligibility was clearly and unequivocally stipulated in Article 10.10.1 of the EADCMRs, and that it followed from the wording that any capacity other than being a spectator at an event was prohibited during the period of Ineligibility; that consequently, any Person Responsible who was ineligible was not entitled to be present on the field of play, at any time during an event. The FEI therefore requested that the Tribunal ordered that the entire period of Ineligibility which had originally been imposed had to start over as stipulated under Article 10.10.2 of the EADCMRs.

- 2.5 On 20 January 2016, the FEI notified the PR that further violation(s) (the "**second violation**") had been reported to the FEI, and provided the PR with the opportunity to respond to such allegation(s). The FEI further provided statements by Mr. Abdul Aziz Sheikh, Mr. Nasri Nowwar and Mr. Horst Müller, who had acted as member of the Ground Jury, President of the Ground Jury and Technical Delegate during the CEI2\* in Al Wathba, Abu Dhabi, United Arab Emirates on 2 March 2013 (the "**Event II**"). The three officials stated that the PR had been present on the field of play (vet gate), and on the podium of the prize giving ceremony during the Event II. Mr. Nowwar further stated that he had requested the PR to leave the field of play, i.e. the vet gate, which the PR had done; further that the PR had acknowledged that he was not allowed on the field of play due to his suspension. That the PR had however explained that since the Event II was sponsored by the owner of the stables he had been working for as General Manager, it was very hard for him not to be with his team.
- 2.6 On 4 February 2016, the PR provided statements by himself, Mr. Müller and the UAE-NF. The PR explained that he had been present at the prize giving ceremony at the Event II, but only in the function as business manager for H H Sheikh Hamdan bin Rashid Al Maktoum's sponsorship of the event, and that the latter had asked him to thank all team members, FEI Officials and support staff on his behalf at the prize giving ceremony. Furthermore, that he had immediately left the vet gate area upon request by the President of the Ground Jury. That since that "inadvertent mistake" he had fully respected FEI Rules, and that he had not entered any field of play of any FEI Endurance competition since. Mr. Müller stated that, after the Event II, he had not witnessed the PR being present at any Endurance event. The UAE-NF explained that since the imposition of the period of Ineligibility of 21 March 2012 the PR had not been engaged or involved in any activities of the sport – other than as a spectator in the publicly accessible areas - on a national or international level. That the PR himself had provided explanations for his presence at the prize giving ceremony at the Event II, and that given these circumstances, the UAE-NF recommended for the PR's period of Ineligibility to end as originally imposed by the FEI Tribunal, i.e. 21 March 2016. Together with its statement the UAE-NF provided a list of twelve (12) FEI Officials – including Mr. Müller – confirming that the PR had not been seen on the field of play of any Endurance event after the Event II.
- 2.7 On 24 February 2016, upon request by the Tribunal regarding the delay in notifying the PR of the alleged second violation at the Event II, the FEI explained that given that the occurrence of the second violation was not in dispute, the FEI had not considered that the delay in notifying the PR of the alleged second violation prejudiced his case in any way and therefore had proceeded to submit the Case File to the Tribunal. In this respect the FEI argued that the PR had not denied that the alleged second violation had occurred nor had he raised any issues in relation to the delay in notifying him; the PR and the FEI Officials had confirmed in their respective statements that the PR had indeed entered the field of play at the Event II.

- 2.8 On 27 February 2016, the PR submitted two further statements, one by himself and one by the UAE-NF. The UAE-NF explained that any extension of the period of Ineligibility on the PR at this point in time was unreasonable, and would be an act of extraordinary punishment on the PR, considering that there had been nearly three (3) years between the alleged violation and the notification of such alleged violation by the FEI. The PR stated that he had accepted the four (4) year period of Ineligibility originally imposed by the FEI Tribunal with due respect and responsibility. That his suspension as horse trainer had affected his entire career, and had hit him and his family very hard emotionally, socially and economically. Finally, that he considered the notification of the alleged violation by the FEI at this point in time only, and just prior to the end of the period of ineligibility as unfair. That this delay in notifying him of the alleged violation had not allowed him to react accordingly; for example towards a potential change in career in order to be able to support his family.
- 2.9 No party objected against (i) the composition of the panel, (ii) that they were not granted equal treatment, or (ii) that their right to be heard had been violated.

### **3. Jurisdiction**

- 3.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EAD Rules.

### **4. The Person Responsible**

- 4.1 Since by Final Tribunal Decision of 21 March 2012, a period of Ineligibility of four (4) years had been imposed on the PR as Person Responsible in the case of KARABIL KAIYA HAI, the PR is the Person Responsible for the present case in the meaning of Article 10.10.2 of the EAD Rules.

### **5. The Decision**

- 5.1 In order to establish a violation of Article 10.10.1 of the EAD Rules the FEI has to establish that in a given case, the prerequisites of Article 10.10.1 of the EAD Rules have been fulfilled. In the case at hand the Tribunal is satisfied that the prerequisites of Article 10.10.1 of the EAD Rules have been established by the entirety of the Parties' submissions for the first event in question, i.e. the Event. Furthermore the PR has accepted the alleged first violation of Prohibition of Participation during Ineligibility for the Event. The PR has however argued that in his capacity as Racing Manager for a member of the Ruling Family of Dubai he had to be present on the field of play at the Event.
- 5.2 The Tribunal finds that in accordance with Article 10.10.1 of the EAD

Rules, during his period of Ineligibility ("suspension") the PR was not allowed to participate in any capacity or be present at any Event – other than as a spectator – that is authorised or organised by the FEI, i.e. therefore also during the Event. As a result, by being present on the field of play during the Event, i.e. attending this event in a capacity other than as spectator, the PR violated the Prohibition of Participation During Ineligibility.

- 5.3 The FEI has thus established the (first) violation of Article 10.10.1 of the EAD Rules, and has thereby sufficiently proven the objective and subjective elements of the offences in accordance with Article 3 of the EAD Rules.
- 5.4 Regarding the alleged second violation, the Tribunal has taken note that, whereas the PR has not contested the alleged second violation, he has neither accepted it. The Tribunal, taking into consideration the entirety of the circumstances in the case at hand regarding the alleged second violation, and bearing in mind the seriousness of the allegation made, is not comfortably satisfied that the (second) violation has been established.
- 5.5 According to the EAD Rules in force at the time of the violation, where a Person Responsible who has been declared Ineligible violated the prohibition against participation or attendance during Ineligibility, the period of Ineligibility which was originally imposed shall start over so that the entire period of Ineligibility must be served again from the beginning with the first date of Ineligibility served fixed as the date of the later violation of the prohibition against participation and attendance. The new period of Ineligibility may be reduced under Article 10.5.2 of the EAD Rules if the PR establishes that he bears No (Significant) Fault or Negligence for the violation.
- 5.6 According to the 2016 EAD Rules a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. The 2016 EAD Rules allow for an adjustment of the new period of Ineligibility based on the PR's degree of fault or other circumstances of the case. The Tribunal finds that the 2016 EAD Rules are more adequate and fair given the circumstances in the case at hand. The Tribunal therefore finds that, pursuant to Article 16.1.2 of the 2016 EAD Rules, it is appropriate to apply the principle of "lex mitior"; therefore Article 10.11.3 of the 2016 EAD Rules shall apply in the case at hand.
- 5.7 Taking into consideration that the first violation occurred in 2012, and given the delay in the proceedings, as well as the fact that no more alleged violations of the PR have been reported for the remaining of the period of Ineligibility over the past three (3) years, the Tribunal finds that a new period of Ineligibility of one (1) month is appropriate in the case at hand. Further the Tribunal holds that no fine shall be imposed on the PR.

## 6. Sanctions

- 6.1 The FEI Tribunal imposes the following sanctions on the PR, in accordance with Articles 161.2.5 and 169 of the GRs and Article 10.11.3 of the 2016 EAD Rules:
- 1) The new period of Ineligibility imposed on the PR is **one (1) month**. The new period of Ineligibility shall be added to the end of the original period of Ineligibility, i.e. 21 March 2016. Therefore, the PR shall be ineligible through **21 April 2016**.
  - 2) The PR shall contribute **five hundred Swiss Francs (CHF 500,-)** towards the costs of this procedure.
- 6.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the 2016 EAD Rules). Under Article 10.11.3 of the 2016 EAD Rules, specific consequences are foreseen for a violation of the period of Ineligibility.
- 6.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written Notification to the persons and bodies concerned.
- 6.4 In accordance with Article 12 of the 2016 EAD Rules, this Decision may be appealed by lodging an appeal with the Court of Arbitration for Sport ("CAS") within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read "Erik Elstad", is centered on the page. The signature is written in a cursive style with a large initial "E".

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**THE CHAIR, Mr. Erik Elstad**