



DECISION of the JUDICIAL COMMITTEE of the FEI

dated 18 April 2006

Positive Medication Case: 2004/57

Horse: Mr Springfield

FEI Passport No.: IRL02160

Person Responsible: Mr Robert Smith, GBR

Event: CSIO5* Hickstead (GBR), 21-25.07.2004

Prohibited Substances: Betamethasone

1. COMPOSITION OF PANEL

Mr Ken E. Lalo
Mr Leonidas C. Georgopoulos
Dr Jens Adolphsen

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: by Legal Department.

2.2 Summary information provided by Person Responsible (PR): The Judicial Committee took into consideration all documents presented in the case file, witness statements and exhibits, the testimony of the PR and of the PR's veterinarian as well as the arguments made by the parties' respective legal representatives.

2.3 Oral hearing: By means of a conference call with the PR, the PR's legal counsel, the PR's witness (Dr. Sue Dyson) and the FEI legal representative, held on 20 January 2006.

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/General Regulations/Veterinary Regulations which are applicable:

Statutes ("Statutes"), 21st edition, effective 21 April 2004, Arts. 001.6, 057 and 058.

General Regulations (“**GR**”), 20th Edition, revision April 2001, Arts. 142, 146.2 and 174.

Veterinary Regulations (“**VR**”), 9th edition, effective 1st January 2002, Art. 1013 and Annex IV.

FEI Code of Conduct for the Welfare of the Horse, 2004.

3.2 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 as the result of a Medication Test is automatically disqualified, together with the competitor [...], from all competitions at that event, [...] unless the Judicial Committee decides based on the evidence provided to terminate the proceedings of the case.”

4. DECISION:

A. The Relevant Facts

- 1) Mr Springfield took part at the CSIO5* in Hickstead (GBR), from the 21st to the 25th of July 2004 (the “**Event**”). Mr Springfield was ridden by Mr Robert Smith who is the Person Responsible in accordance with GR Article 142 (the “**PR**”).
- 2) Mr Springfield was selected for sampling on 23 July 2004. Analysis of the urine sample no. FEI-5826 taken from Mr Springfield performed by the FEI approved central laboratory, the Laboratoire des Courses Hippiques (“**LCH**”), was found to contain betamethasone.
- 3) On 5 November 2004, a confirmatory analysis was requested by the British Equestrian Federation on behalf of the PR. The confirmatory analysis was performed by the HFL laboratory (“**HFL**”). Analysis of the B-sample confirmed the presence of betamethasone.
- 4) Betamethasone is an anti-inflammatory corticosteroid acting, *inter alia*, on the locomotor system. The detected substance is graded “3” by the Medication Sub-Committee of the FEI.
- 5) At the request of the PR, arguing certain similarities with the circumstances of the case involving Mr. Ludger Beerbaum and his horse Goldfever 3 at the 2004 Athens Olympic Games, the then Secretary General of the FEI agreed not to present the case before the Judicial Committee until after receipt of the CAS decision in the Beerbaum appeal. Following the CAS decision in the Beerbaum appeal, the present case was presented to the panel of the Judicial Committee and a hearing in this case was held, by means of a conference call, on January 20, 2006.

B. Jurisdiction

- 6) The Judicial Committee has jurisdiction over this matter pursuant to Articles 057 and 058 of the FEI Statutes.

C. Test Results

- 7) The Judicial Committee is satisfied that the laboratory reports reflect that the tests were accurately performed in an acceptable method and that the findings of LCH and HFL are accurate. The Judicial Committee is satisfied that the test results show the presence of the prohibited substance, betamethasone. The PR did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence.
- 8) The establishment of the objective elements of a doping offence creates the presumption of guilt of the PR. 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 rebut this presumption.

D. Person Responsible's Submissions

- 9) In his written statement of 3 September 2005 as well as in his testimony provided during the hearing, the PR provided a possible explanation to the positive results. The PR alleged that a small dose of betamethasone was given to the horse by Dr. Sue Dyson, his veterinarian, on 23 June 2004. The PR states that no other veterinarian or other person whatsoever treated the horse prior or after Dr Dyson treated him.
- 10) In her letters of 24 November 2004 and 7 March 2005 as well as in her testimony provided during the hearing, Dr. Dyson confirmed that she treated Mr Springfield on 23 June 2004 administering 2mL (33.4 mg) of betamethasone intraarticularly. In her letter of 24 November 2004, Dr. Dyson stated that "[a]s the treating veterinary surgeon for Mr. Springfield I must take responsibility, because I decide when & with what the horse is treated. I acknowledge that the horse had been treated with a small dose of betamethasone 4 weeks and 3 days prior to sampling. However, I cannot believe that a **therapeutic level** of this non-performance enhancing drug was detectable at the time of sampling."
- 11) Both the PR and Dr. Dyson referred to the Comparison of Detection Times published by the FEI which indicate that it takes 24 hours for 8 mg of betamethasone to become undetectable, while in the present case 33.4 mg were allegedly administered 31 days before testing. The PR acknowledged that he has been advised that the Comparison of Detection Times is no longer current and that the FEI has not published and does not propose to release an updated version of this document.
- 12) PR's counsel argued that the PR's veterinarian, being aware of the upcoming competition schedule, administered a small dose of a therapeutic drug a long time before the event, that such level should not have been detectable 31 days after administration, that the PR had alternative mounts and that his horse received no competitive advantage from such treatment. PR's counsel further argued that betamethasone, currently graded "3", is to become, under the recommendations of the FEI Task Force, part of the medicine box which is to include permissible drugs to be used for therapeutic treatments and that, in the future, its detection would not require an automatic disqualification. The PR's counsel argued that the Judicial Committee has the discretion to terminate the proceedings pursuant to GR 146.2 and stated that in light of the expected changes to the rules the Judicial Committee ought to use such discretion and to terminate the proceedings. PR's counsel distinguished the Judicial Committee's and CAS' decisions in the Beerbaum case,

stating that Mr Beerbaum's horse was treated at the event itself without seeking authorisation, while, in the present case, the PR's veterinarian treated the horse 31 days before the event and that, therefore, an authorization should not have been sought.

E. Analysis

- 13) The Judicial Committee determines that the PR has succeeded in rebutting the presumption that the administration of the medication constituted a deliberate attempt to affect the performance of the horse. The Judicial Committee is satisfied that the evidence presented indicates that:
- (i) Mr Springfield received no specific competitive advantage as a result of the administration of the prohibited substance; and
 - (ii) the administration of the prohibited substance was connected to a legitimate medical treatment.

In this case the Judicial Committee has found no evidence that the PR had either risked the horse's welfare or gained any unfair advantage during the event.

- 14) Nevertheless, the PR has failed to ensure that Mr Springfield has no prohibited substances in its systems during an international event. Since this is a strict liability offence that does not require intent or even specific knowledge, the PR did not comply with GR 146 and Mr Springfield must be disqualified pursuant to GR 174.7.2.
- 15) The FEI has a strict liability policy in regard to competing with prohibited substances present in the horse's systems at international events, pursuant to GR 146. This strict liability or no-fault system means that no intention is required in order to establish a doping offence. The mere presence of a prohibited substance in the horse's systems is sufficient. Additionally, the FEI is not required to demonstrate any competitive advantage to the PR resulting from the presence of the drug. The intent and competitive advantage issues are only taken into consideration in the determination of the sanctions to be imposed. This system of strict liability has been reconfirmed time and again and it must prevail when sporting fairness to all competitors is at stake. The Court of Arbitration for Sport ("CAS") had expressed its view that disqualification is the conventional consequence of breach, irrespective of whether or not the amount in question affected, could have affected or was intended to affect the performance (CAS 94/126, *N v/ FEI*, Digest of CAS Awards II 1998-2000, p.137; CAS 2000/A/313, *B v/ FEI*, at para. 61; CAS 2002/A/432, *D v/ FINA*, Digest of CAS Awards III 2001-2003, p.424; CAS 2005/A/829 *Ludger Beerbaum v/ FEI* at para. 12.17 – 12.19)..
- 16) The Judicial Committee wishes to address the question of the application of the proviso in GR 146.2 which allows the Judicial Committee to terminate a case in certain instances. The Judicial Committee is aware of the very long time which has past between the Event and this decision. This is contributable in part to the time it took the FEI to process the case and in part to the FEI's administrative decision to grant the PR's request to submit the case to the Judicial Committee only following the CAS decision in the Beerbaum appeal. However, it now allows the Judicial Committee to benefit from the ruling of the CAS concerning the application of GR 146.2.

- 17) In order to decide whether or not the proviso in GR 146.2 should apply, the CAS took into account a number of principles. Firstly and perhaps most importantly, the panel considered the importance of the strict liability rule in the war against doping in sport, observing that it is a legal fact that disqualification is a usual consequence of its breach and that due weight should be given to rules permitting competitors to seek prior authorisation for medical treatment where they exist, emphasizing once again that the existence of an intent to enhance performance is irrelevant. It then went on to apply the common principle, valid under Swiss law, that exceptions to a general rule should be construed narrowly. It identified, in our view correctly, that the proviso is intended to be applied when there is no case to answer “[...] at a stage earlier than the overall merits of the case. [...]” (*L. Beerbaum v/ FEI* at para. 12.21). All of the above, in combination with other considerations, led the panel to conclude that a narrow interpretation should be given to the proviso, and that it was therefore inapplicable in the case before them.
- 18) While noting the arguments made by the PR with respect to time of treatment, the Judicial Committee does not believe that whether the treatment occurred prior to or at the competition is relevant in a strict liability context. As a result, the general principles referred to above must apply *mutatis mutandis* in this matter.
- 19) Upon information, the Judicial Committee finds that the PR’s contention that the unreported use of betamethasone would not lead in the future to an automatic disqualification is unfounded. Regardless, this is immaterial. Providing judgment based on expected rule changes or on the recommendations of the FEI Task Force would diminish from the clarity of the FEI legal system, would be grossly unfair to riders who assumed that they had performed under an existing set of rules and would have meant that a judgement is passed based on a partial set of expected rules not yet enacted. In the recent case CAS 2005/A/895, *Lissarague & FFE & World Championship 05 v/ FEI & Hazza Bin Zayed*, the CAS had expressed its view that the fact that a right might be incorporated into future rules is of no help as long as the General Assembly has not approved it (at para. 98).
- 20) The Judicial Committee concludes that in order to ensure a fair playing field and fairness to all competitors it is required to apply the rules and regulations as they were at the time of the Event and which are still applicable at the present time. Any other decision would have jeopardized the legitimate rights of other competitors at the Event and would have caused gross injustice and lack of legal clarity in the running of international events.

F. Decision

As a consequence of the foregoing, the Judicial Committee decides as follows:

- 1) To disqualify the horse, Mr Springfield, and the PR from the Event and require that they forfeit all prizes and prize money won at the Event.
- 2) Not to impose any sanctions (suspension and/or fine), taking into account, *inter alia*, the following matters: (i) there was no evidence that the PR has obtained any competitive advantage, (ii) the drug is graded “3”, (iii) the PR has an excellent record as a sportsman, and (iv) this is not to be considered a repeat offence since the only prior medication case involving the PR relates to a May 1998 event, being over six years prior to the Event.

- 3) That the PR shall contribute CHF 750.- towards the legal costs of the judicial procedure.

[For the Judicial Committee]