



## **DECISION of the FEI TRIBUNAL**

**dated 1 December 2010**

**Positive Doping Case No.:** 2010/04

**Horse:** AS URUTI

**FEI Passport No:** URU 102MU91

**Person Responsible:** Diego Herberto Carrasco Rivero

**Event:** CEI2\* 120km – Terengganu, MAS

**Prohibited Substances:** Dexamethasone; Ibuprofen; Oxyphenbutazone;  
Phenylbutazone

### **1. COMPOSITION OF PANEL**

Mr. Pierre Ketterer  
Mr. Philip O'Connor  
Mr. Erik Elstad

### **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 duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR, as well as evidence and testimony presented at the oral hearing.

**2.3 Oral hearing:** none

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

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

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updated 1 January 2010, Arts. 118, 143.1 and 169 ("**GRs**").

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

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1<sup>st</sup> edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 11<sup>th</sup> edition, effective 1 January 2009, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

### **3.2 Person Responsible:** Diego Herberto Carrasco Rivero

### **3.3 Justification for sanction:**

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules."

EADMCRs Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples."

## **4. DECISION**

### **4.1 Factual Background**

1. AS URUTI (the "**Horse**") participated at the CEI2\* 120km, in Terengganu, Malaysia, from 6-8 November 2009 (the "**Event**") in the discipline of Endurance. The Horse was ridden by Diego Herberto Carrasco Rivero, who is the Person Responsible in accordance with GRs Art. 118 (the "**PR**").
2. The Horse was selected for sampling on 8 November 2009.
3. Analysis of the blood and urine sample no. FEI-0101236 taken from the Horse at the Event was performed at the FEI approved laboratory, the Hong Kong Jockey Club Racing Laboratory ("HKJC"), by Colton Ho Fai WONG, Chemist, under the supervision of Terence See Ming WAN, Chief Racing Chemist (Head of Racing Laboratory). The analyses revealed the presence of Dexamethasone, Ibuprofen, Oxyphenbutazone and Phenylbutazone (Test Reports dated 6 January 2010).

4. The Prohibited Substances detected are Dexamethasone, Ibuprofen, Oxyphenbutazone and Phenylbutazone. **Dexamethasone** is a corticosteroid with steroidal and anti-inflammatory properties. **Ibuprofen** is a non-steroidal anti-inflammatory with anti-inflammatory effects. **Oxyphenbutazone** and **Phenylbutazone** are non-steroidal anti-inflammatory drugs with anti-inflammatory and analgesic effects. Oxyphenbutazone is a metabolite of Phenylbutazone. Oxyphenbutazone, Ibuprofen, Oxyphenbutazone and Phenylbutazone are classified as *Medication A* Prohibited Substances. These four substances, when present together in a Horse's body, are classified as a *Doping* Prohibited Substance. Therefore, the rule violation in this case is a *Doping* rule violation.
5. No request was made to administer Dexamethasone, Ibuprofen, Oxyphenbutazone or Phenylbutazone to the Horse, and no medication form was submitted for these substances.

#### **4.2 The Proceedings**

6. The presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the consequences implicated, were officially notified to the PR by the FEI Legal Department on 2 March 2010.
7. The Notification Letter included notice that the PR was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
8. The PR did not request a Preliminary Hearing.

#### **4.3 The B-Sample Analysis**

9. Together with the Notification Letter of 2 March 2010, the PR also received notice that he was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of his right to attend or be represented at the identification and opening of the B-Sample.
10. The PR declined to exercise his right to have the B-Sample confirmatory analysis performed.

#### **4.4 The Further Proceedings**

11. In his explanation of 22 March 2010, submitted through the URU NF, the PR stated that he had been invited to take part in the competition by the Royal Stable of Malaysia ("the Stable"). In the submission, the PR contested the sampling procedure, explaining that the Horse, owned by the Stable, had been under the custody and control of a veterinarian of the Stable, both before and after the competition. That he had been with the Horse for more than

an hour after the competition, but that he had not been informed of any medication control test, and that no such test had been performed on the Horse. At the same time, the PR stated that the "action protocol" *"gives faith that the blood or urine samples belongs reliably to the equine that has done the test"*. Further, that *"...it gives faith that that samples are the ones that are processed in the lab to determine the existence or not of not allowed substances"*. Lastly, the PR alleged that the testing documents provided to him contained the signature of a person unknown to him, supposedly a representative of the Stable.

12. In a nutshell, the PR alleged that the Horse ridden by him was never actually tested, but alternatively, if it had in fact been tested, it had been without his knowledge and therefore not in accordance with the FEI Veterinary Regulations.
13. Together with its submission of 28 May 2010, the FEI submitted the results report of the competition. Referring to the results report, the FEI argued that the PR had competed with the Horse, on 7 November 2009, and was ranked seventh at the completion of the Competition. Further, that according to the FEI Medication Control Form (No. 026277), the Horse had undergone a medication control test on 8 November 2010, at 06:38am, about half an hour after the arrival of the Horse after the fourth loop at 06:11:38. The FEI contended as a result that the evidence was clear that the Horse was sampled following the competition. Referring to Article 3.2.2 of the FEI EADCMRs, the FEI further argued that any departure from the testing procedures in the FEI Veterinary Regulations as alleged by the PR would not have "caused the Adverse Analytical Finding", and that therefore, the test results shall not be invalidated. Lastly, the FEI pointed out that the explanations by the PR did not contain any details establishing how the Prohibited Substances had entered the Horse's system, and that therefore, no reduction of the otherwise applicable sanction under Article 10.5 of the EADMCR could be applied.
14. On 24 June 2010, the PR submitted further explanations. He claimed that if the FEI Anti-doping rules applicable as of April 2010 had been applied to his case, the responsibility for the rule violation would have been with the coach and team veterinarian of the Stable, and not with him, the Athlete.
15. By correspondence of 6 September 2010, the URU NF requested the lifting of the Provisional Suspension on behalf of the PR.

16. On 8 September 2010, the FEI responded to the request to lift the Provisional Suspension. The FEI opposed to the lifting of the Provisional Suspension, arguing primarily that the PR had not explained how the Prohibited Substances had entered the Horse's system.
17. On 13 September 2010, the URU NF, on behalf of the PR, resubmitted the formerly submitted explanations and statements by the PR, and reiterated the earlier request to lift the Provisional Suspension.
18. The Tribunal issued a Preliminary Decision on 17 September 2010. The Tribunal held that the PR had not provided any evidence for the alleged departure from the testing procedures in the FEI Veterinary Regulations, and had furthermore not contested the presence of the Prohibited Substances in the Horse's sample. Based on these arguments, the Tribunal maintained the Provisional Suspension.
19. On 11 October 2010, the FEI submitted a statement by Testing Veterinarian Dr. Muhammad Fairuz Jamaluddin, Malaysia, and a statement by Mr. Ian Williams, FEI Director Non-Olympic Sports. Dr. Jamaluddin, in his statement confirmed that he had performed an anti-doping test on the horse AS URUTI on 8 November 2009, following the Horse's completion of the Event. Dr. Jamaluddin further stated that the PR had been informed of the testing, at the vet gate, following completion of the ride. Mr. Williams, in his statement referred to the results report of the Event. Analyzing the various times contained in the results report, Mr. Williams explained that the Horse had been presented to the veterinary check about 8 (eight) minutes after its arrival after the fourth and last loop of the competition. Further, that according to the results report, the Horse had been held for the MCP test about 6 (six) minutes after its arrival at the veterinary check. Mr. Williams explained that it was possible to perform the final veterinary check in six minutes, and to hold the Horse for MCP testing immediately afterwards.
20. On 14 October 2010, the URU NF submitted a further request for the lifting of the Provisional Suspension on behalf of the PR. Together with the request, the URU NF submitted two letters from the PR in which the latter repeated his earlier contentions.
21. On 15 October 2010, the FEI opposed to the lifting of the Provisional Suspension, arguing that the results report of the Event evidenced that the PR had competed at the Event on 7 November 2009 with the Horse AS URUTI. That furthermore, the documents provided by the FEI such as the Medication Control Form, the Statement by Dr. Jamaluddin and the Laboratory documents established that the Horse had undergone an anti-

doping test after the Event, and that the test results were positive for the Prohibited Substances Dexamethasone, Ibuprofen, Oxyphenbutazone and Phenylbutazone. The FEI underlined that under the FEI Regulations, in particular Art. 2.1 of the EADMCRs, and Article 118.3 of the FEI General Regulations, the rider is the primary "Person Responsible", and that the rider was obliged to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Lastly, the FEI pointed out that the PR had not provided any explanation in order to establish how the Prohibited Substances entered the Horse's system and that therefore, no reduction of the otherwise applicable period of Ineligibility and other sanctions under Article 10.5 of the Equine Anti-Doping and Medication Control Rules should apply.

22. The Tribunal, by means of its second Preliminary Decision dated 22 October 2010, maintained the Provisional Suspension. The Tribunal found that the PR had not submitted any new information or argument in favor of the lifting of the Provisional Suspension, and that he had not submitted any supporting evidence for the alleged departure from the Testing procedures in the FEI Veterinary Regulations. The Tribunal also held that in accordance with Article 118.3 of the FEI General Regulations, 23<sup>rd</sup> edition, the potential responsibility of any third person for the rule violation could only be considered in addition to the PR's responsibility, but would not release the PR from his or her own responsibility. This is also true with respect to the newly-enacted Equine Anti-Doping and Controlled Medication Regulations.
23. The URU NF, on 5 November 2010, submitted a third Request for the lifting of the Provisional Suspension on behalf of the PR. Together with this request, a further statement by the PR was submitted, in which the latter reiterated not knowing how the Prohibited Substances had entered the Horse's body. The present final decision renders the request moot.

#### **4.5 Jurisdiction**

24. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADMCR.

#### **4.6 The Person Responsible**

25. The PR is the Person Responsible for the Horse, in accordance with Article 118 of the GRs, as he was the rider of the Horse at the Event.
26. As mentioned in paragraph 14 above, the PR has in his letters of 21 June and 14 October 2010 argued that the FEI applies Anti-doping rules applicable as of April 2010, but the actual competition took place in November 2009. He argues that this

means that the rules are given a retroactive effect. The PR's submission on this point is based on a misunderstanding of the rules applicable in the case. As stated above under 3.1 the Tribunal applies the Equine Anti-Doping and Medication Control Rules effective 10 April 2008 which were applicable in November 2009 when the PR competed.

#### **4.7 The Decision**

27. The Tribunal is satisfied that the laboratory report relating to the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the HKJC are accurate. The Tribunal is satisfied that the test results evidence the presence of Dexamethasone, Ibuprofen, Oxyphenbutazone and Phenylbutazone, which are Prohibited Substances, in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings.
  
28. In view of the documents provided by the FEI, amongst others the Medication Control Form, the results report of the Event and the statement by Dr. Jamaluddin, the Tribunal is satisfied that the testing procedure as stipulated in the FEI Veterinary Regulations had been complied with, in particular that the PR had been notified of the anti-doping test after completion of the competition on 8 November 2009. The Tribunal further notes that the sampling process had been observed by Mohamad Rafi who, whether or not known to the PR, had also signed the Medication Control Form, and had thereby declared, in accordance with Article 1018.4 of the Veterinary Regulations, that "[...] *he accepts the validity of the material used for the sampling and has no objection to the sampling system [...].*" In light of the cumulative effect of the evidence produced by the FEI, the FEI Tribunal cannot credit the mere contentions of the PR. Accordingly, the PR not only failed to establish a departure from the Veterinary Regulations, but he also failed to meet the prerequisite of Article 3.2.2 EADMCR in not demonstrating that even if the departure could be proven, it may have potentially caused the Adverse Analytical Finding.
  
29. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 of the EADMCRs. The Prohibited Substances detected in the sample, when found together, are classified as a "Doping" Prohibited Substance.

30. In Doping and Medication cases, a strict liability principle applies as described in Article 2.1.1 of the EADMCRs. Once a positive case has been proven by the FEI, the PR has the burden of proving that he bears "No Fault or No Negligence" for the positive findings as set forth in Article 10.5.1 of the EADMCRs, or "No Significant Fault or No Significant Negligence," as set forth in Article 10.5.2 of the EADMCRs.
31. In order to benefit from any elimination or reduction of the applicable sanction under Article 10.5 of the EADMCRs, the PR must first establish by "*a balance of probability*" (Article 3.1 of the EADMCRs) how the Prohibited Substances entered the Horse's system. The Tribunal takes note that the PR himself admits that he is not in a position to explain how the Prohibited Substances entered the Horse's body. The Tribunal therefore holds that the PR has failed to meet the requirements that would allow the Tribunal to eliminate or reduce the otherwise applicable sanctions by virtue of Articles 10.5.1 and 10.5.2 of the EADMCRs.
32. The Tribunal has repeatedly expressed the view that it is the responsibility of competitors to inform themselves of all substances administered to horses which are destined for participation in international events and to ensure that such horses do not have any Prohibited Substances in their systems.
33. According to Article 9 of the EADMCRs, disqualification from the Event is automatic when a positive violation has been proven.
34. According to Article 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

#### **4.8 Disqualification**

35. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and PR combination from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with Article 9 of the EADMCRs.

#### **4.9 Sanctions**

36. The FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 169 GRS and Article 10 EADMCR:
  - 1) The PR shall be suspended for a period of **ten (10) months** to be effective immediately and without further notice from the date of the notification. The period of Provisional Suspension, effective from 2 March 2010 to 30 November 2010, shall be credited



against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through **1 January 2011**.

- 2) The PR is fined **CHF 1500.-**.
- 3) The PR shall contribute **CHF 1000.-** 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:** No

**FOR THE PANEL**



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**THE CHAIRMAN** Pierre Ketterer