



DECISION of the FEI TRIBUNAL

dated 11 September 2009

Positive Medication Case No.: 2009/06

Horse: DANJERA KADHIR

FEI Passport No: UAE40398

Person Responsible: Rashed Mohd Al Sayegh

Event: CEI JY* 119km, Bou Thieb, Abu Dhabi, UAE

Prohibited Substance: Testosterone

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen
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 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.

2.3 Oral hearing: None: by correspondence.

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, revision effective 15 April 2007, updated 21 November 2008 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations, 23rd edition, effective 1 January 2009, 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**"), 1st 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**"), 11th 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: Rashed Mohd Al Sayegh

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. DANJERA KADHIR (the "**Horse**") participated at the CEI JY* 119km in Bou Thieb, Abu Dhabi, United Arab Emirates, on 7 February 2009 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Rashed Mohd Al Sayegh, who is the Person Responsible in accordance with Article 118 GR (the "**PR**").
2. The Horse was selected for sampling on 7 February 2009.
3. Analysis of the urine sample no. FEI-0093000 taken from the Horse was performed at the FEI approved laboratory, Hong Kong Jockey Club Laboratory, ("**HKJC**"), in Hong Kong, by Nola Hua Yu, Chemist, under the supervision of Mr. Terence See Ming Wan, Head of the Racing Laboratory. The analysis revealed the presence of Testosterone (Test Report No 09-0238 dated 24 February 2009).
4. Therefore, the Prohibited Substance detected is Testosterone. Testosterone is an anabolic and androgenic hormone as well as a potent anabolic agent. The concentration of Testosterone in the Horse's urine was determined to be 0.030 microgram per millilitre. This exceeds the international threshold for Testosterone in geldings,

which is 0.020 microgram free and conjugated testosterone per millilitre in urine. This substance, when present in a Horse's body, is classified as "Prohibited Substance" under the Equine Prohibited List (VR Annex II, the "Equine Prohibited List"), in the class of "*Doping*".

5. No request had been made to administer Testosterone to the Horse, and no medication form had been submitted for the Prohibited Substance.

4.2 The Proceedings

6. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the consequences involved were officially notified to the PR by the FEI Legal Department on 16 March 2009.
7. The Notification Letter of 16 March 2009 included notice that the Person Responsible 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 16 March 2009, 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 B-Sample Analysis was performed on urine on 3 April 2009 at the HKJC by Colton Ho Fai Wong, Chemist, under the supervision of David Kwan Kon Leung, Racing Chemist.
11. The PR sent Dr. Peter Howell Ward, Assistant Veterinarian at Seeh Al Salam Stable, Dubai (the "Stable"), as his representative. Dr. Ward witnessed the opening and identification of the B-Sample.
12. In his witness statement, Dr. Ward certified that the sealed "B" Sample container "*shows no signs of tampering*" and "*that the identifying number appearing on the sample to be tested by the Racing Laboratory of the KHJC corresponds to that appearing on the collection documentation accompanying the sample*" (Witness Statement dated 3 April 2009).
13. The B-Sample Analysis of the urine confirmed the presence of Testosterone (Test Report N° 09-0405 dated 08 April 2009).

14. The results of the B-Sample Analysis were notified to the PR on 20 April 2009 through the United Arab Emirates Equestrian & Racing Federation.

4.4 The further proceedings

15. On 3 May 2009, the PR, through Russel Malton, Senior Veterinarian at the Stable, submitted his written explanations to the FEI. Together with his written explanations, the PR also submitted a list of the medications received by the Horse during the period commencing 18 September 2008 through 7 February 2009.
16. In his submission, the PR claims that he is 19 years-old and that he was not aware of the requirement for the rider to assume responsibility to ensure his horse competes free of prohibited medications and that he had no contact with the Horse prior to the competition. The Stable further submits that despite extensive investigation, they could not determine where and when the Horse was administered the Prohibited Substance, and that it had not been knowingly administered by any person at the stable. The Stable further requested that the Horse's regular rider and groom be regarded as an Additional Person Responsible.
17. Upon questioning by the FEI, and following two extensions of deadlines, the PR, on 18 June 2009, submitted further explanations and information. Together with this further explanation, the PR submitted a statement by Mr. Ali Mohammed Al Muhairi, Trainer and Stable Manager for the Stable, dated 18 June 2009, a statement by Dr. Russell Malton dated 18 June 2009, and a statement by Dr. Ward dated 18 June 2009.
18. In his submission, the PR states that, as is the practice in the United Arab Emirates, as an amateur rider, he had relied on the reputation, skill and care of the trainer and in the Stable itself that his Horse was competing free of Prohibited Substances. That, when he was presented with the Horse, he inquired about its condition, and was assured that it was fit to compete. That his enquiries about the medication and history of the Horse had not revealed the administration of Testosterone, and that therefore, at the time of the competition, he could not have possibly known that the Horse had a Prohibited Substance in its system. Finally, he highlighted that the Stable where the Horse was kept was a first class stable. Further that, in order to avoid a lengthy and expensive debate with the FEI, he had not raised questions as to the policy of the FEI to perform A- and B-Sample analysis in the same laboratory, nor as to the accuracy of the testing procedures, the test methods, and the seniority of the veterinarians. The PR however asks "the Hearing body not to dismiss entirely the possibility that the results of the tests may not be accurate, and might not be confirmed if performed in a different laboratory.

19. With respect to the alleged Additional Person Responsible, the PR alleges that, with the growth of the sport of endurance racing, competition between trainers and riders has become more and more prevalent. That, whereas "trained and licenced professionals" in the sport of endurance racing "observe the basic elements of fair play and the welfare of the horse", there "are other people in the industry who also compete amongst each themselves as to the performance of horses for whom they care, such as foremen and grooms", and that "it may well be that they fall below the professional standards of riders, trainers and vets". Moreover, that "he must consider it highly likely" that the groom, who was in charge of the Horse, but who had been dismissed by the Stables and had left Dubai permanently at the end of March 2009, "administered the Testosterone", and that this is the view shared by the trainer.
20. To conclude, the PR requests that in the context of the question of elimination of the sanctions under Article 10.5.1 EADMCR, "good notice of his best efforts to demonstrate how the substance entered the horse's system" will be taken, and, in the alternative, and "given the likely identification of the source and administration of the substance", a reduction of the sanctions under Article 10.5.2 EADMCR should apply.
21. In his Statement, Mr. Muhairi states that he could not explain the presence of the Prohibited Substance. That prior to and after the competition, the Horse was with its groom, who, most of the period before his dismissal, had also been the groom for the Horse. That he did not discuss the Horse's medical history and the current medication programme with the PR, on the one hand because there was nothing to discuss, and on the other hand, because it is not practise for riders to become involved in "technical" matters which are the responsibility of trainers and veterinarians. That in practice, riders rely on trainers and veterinarians as to a horse's fitness, and trainers rely on veterinarians.
22. Mr Malton, in his statement, does not provide any explanation for the presence of the Prohibited Substance. He states that the world of endurance racing is becoming increasingly competitive, both at trainer and veterinarian level, but also at the level of foremen and grooms.
23. Dr. Ward does not present any explanation for the positive test result either. He states that food contamination is an unlikely explanation for the presence of the Prohibited Substance, and that an administration by mistake would be highly unlikely.

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 GR Art. 118, as he was the rider of the Horse at the Event.

4.7 The Decision

26. The FEI Tribunal is satisfied that the Laboratory reports relating to the A-Sample and B-Sample reflect that the analytical tests were performed in an acceptable method and that the findings of the HKJCL are accurate. The FEI is also satisfied that the test results evidence the presence of Testosterone, which is a Prohibited Substance, in the sample taken from the Horse at the Event. The Tribunal notes that the PR's reservation as to the accuracy of the laboratory procedure, without formally contesting the accuracy of the test results or the positive finding, are insufficient to rebut the presumption of Article 3.2.1 EADMCR, according to which FEI-listed laboratories are presumed to have conducted Sample analysis and custodial procedures in accordance with the FEI Standard for Laboratories. As the Tribunal made clear above, and in accordance with Article 3.2.1 EADMCR, the PR has to establish that a departure from the FEI Standard for Laboratories occurred in order to effectively challenge the Sample results.
27. The Tribunal is also of the opinion that the fact that both the A-sample and the B-sample were analysed in the same laboratory does not have any impact on the fairness of the handling of this case. The Tribunal has highlighted in earlier cases that for reasons of equal treatment of all Anti-Doping and Medication Control cases, the decision to have the B-Sample performed in the same laboratory as the A-sample was the appropriate decision. Furthermore, the same Laboratory rule is consistent with the international standard set forth in the 2009 WADA Code.
28. The FEI has thus sufficiently proven the objective elements of an offence in accordance with Article 3 EADMCR. The Prohibited Substance in this case, when present in a sample, is classified as a "Doping" Prohibited Substance.
29. In doping and medication cases, the doctrine of strict liability as described in Article 2.1.1 EADMCR is applied. When a positive case has been proven by the FEI, the PR has the burden of proof to show that he bears No Fault or No Negligence for the positive findings, Article 10.5.1 EADMCR, or No Significant Fault or No

Significant Negligence, Article 10.5.2 EADMCR. Significantly, in order to avail himself of the defences set forth in Articles 10.5.1 and 10.5.2 EADMCR, the PR must also establish how the Prohibited Substance entered into the Horse's system.

30. Since the PR, the trainer of the Horse, the Senior and the Assistant veterinarian for the Horse are unable to provide the Tribunal with an explanation for the presence of the Prohibited Substance in the Horse's system, the PR remains entirely personally responsible for the presence of the Prohibited Substance in his Horse according to the strict liability principle incorporated within the EADMC Rules.
31. Further, the PR in every case has an absolute responsibility to ensure that all precautions are taken to be certain that his Horse participates in international competitions without Prohibited Substances in its system.
32. Significantly, the statements of the PR, the trainer and the two veterinarians establish that none of them administered the Prohibited Substance to the Horse. Consequently, it is notable that the PR references potentially suspicious activity of

"other people in the industry who also compete amongst themselves as to the performance of horses for whom they care, such as foremen and grooms".

This is notable because there is no evidence in the record that the PR, while being aware of this possibility, took any action whatsoever to prevent possible EADMCR violations by such other people, or at least to report such suspicion to the Stable management or other competent authorities.

33. Against this backdrop, the Tribunal questions why the PR did not provide any further explanation or evidence regarding his allegations of EADMCR violations by any other persons.
34. 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.
35. Further, the Tribunal would expect evidence of the alleged excellent stable management to be submitted so that the Tribunal can be comforted that the stables where the Horse is kept are being properly and effectively supervised so as to ensure a high likelihood of compliance with FEI Rules. No such evidence was submitted in this case.
36. Accordingly, the Tribunal finds that the PR has acted negligently in performing his duties as competitor and Person Responsible given

that he was aware that there is increasing competition amongst people in the industry, which might lead to those taking part in the "competition" administering, without possessing the necessary knowledge and skills, Prohibited Substances in order for the respective Horse to be successful in endurance racing.

37. Lack of knowledge of the presence of the Prohibited Substance in the Horse's body does not render Articles 10.5.1 or 10.5.2 EADMCR applicable in this case. In fact, it is quite the opposite as for Articles 10.5.1 and 10.5.2 EADMCR to apply, the PR must demonstrate how the Prohibited Substance entered into the Horse's system, which he failed to do in this case. The mere lack of knowledge of the presence of the Prohibited Substances in the Horse's body falls short of fulfilling these requirements. Furthermore, and as explained above under paragraph 32, the fact that the PR had some doubts as to the correctness of the behaviour of some staff members, but did not at all intervene, shows that he acted negligently.
38. Accordingly, the PR remains responsible for the presence of the Prohibited Substance in his Horse, in accordance with the strict liability principle incorporated within the EADMC Rules. This strict liability of the PR is necessary in the fight against doping and to protect the principles of fair play and promotion of equal conditions in the conduct of international events, as well as with regard to Horse welfare.
39. In deciding the sanctions, the FEI Tribunal considered, on the one hand, the doping violation and type of substance involved, and, on the other hand, and in mitigation, the PR's "amateur status" and basic cooperation.
40. According to Article 9 EADMCR, disqualification from the event is automatic when there is a positive finding.
41. 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 Sanctions

42. As a consequence of the foregoing, the FEI Tribunal has decided to impose the following sanctions on the PR, in accordance with Article 10 EADMCR:
 - 1) The PR shall be suspended for a period of **10 months** to commence immediately and without further notice from the date of the notification. The period of Provisional Suspension, beginning on 16 March 2009, shall be credited against the period of ineligibility imposed in this decision.

2) The PR is fined **CHF 1500, -**.

3) The PR shall contribute **CHF 1500, -** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

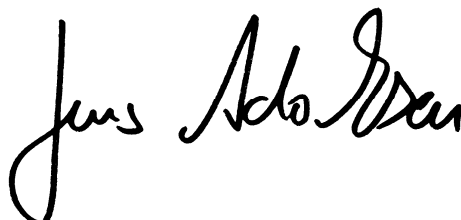
5.1 The person sanctioned: Yes

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

A handwritten signature in black ink, appearing to read 'Jens Adolphsen', written in a cursive style.

THE CHAIRMAN Prof. Dr. Jens Adolphsen