



DECISION of the FEI TRIBUNAL
dated 5 July 2019

Positive Controlled Medication Case No.: 2018/CM16

Horse: VAKSAYD

FEI Passport No: 104TK04/BLR

Person Responsible/NF/ID: Ala NIKANORAVA/BLR/10067104

Event/ID: CDI-W – Moscow, 'New Century' (RUS)/2018_CI_1425_D_S_01

Date: 27 – 30 September 2018

Prohibited Substance(s): Phenylbutazone, Oxyphenbutazone and Dexamethasone

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

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.

3. Oral hearing: 3 July 2019 – via telephone conference call.

Present:

The FEI Tribunal Panel
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Ms. Ala Nikanorava, PR
Ms. Natallia Rubashko, interpreter

For the FEI:

Ms. Ana Kricej, FEI Junior Legal Counsel
Ms. Anna Thorstenson, FEI Legal Counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Rules and Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 2nd edition, effective 1 January 2018.

FEI Controlled Medication Regulations ("ECM Rules"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("VRs"), 14th edition 2018, effective 1 January 2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Ala NIKANORAVA.

3. Relevant provisions:

GRs Art. 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)."

GRs Art. 118.3: "The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. In vaulting, the lunger shall be an additional Person Responsible."

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support

Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1.”

EADCMRs APPENDIX 1 – Definitions:

Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel’s degree of Fault include, for example, the Person Responsible’s and/or member of the Support Personnel’s experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible’s and/or member of the Support Personnel’s degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible’s and/or member of the Support Personnel’s departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered the Horse’s system.”

No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case

of a Minor, for any violation of Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered the Horse's system."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments 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 fully 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 VAKSAYD (the "**Horse**") participated at the CDI-W in Moscow, 'New Century', Russia, from 27 to 30 September 2018 (the "**Event**"), in the discipline of Dressage. The Horse was ridden by Ms. Ala Nikanorava who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 A blood sample was taken from the Horse during the Event, on 29 September 2018.
- 1.3 Analysis of the blood sample number 5572156 were performed at the FEI-approved Laboratory, LGC, Newmarket Road, Fordham, United Kingdom (the "**Laboratory**"). The analysis of the blood sample revealed the presence of Phenylbutazone, Oxyphenbutazone and Dexamethasone.
- 1.4 The Prohibited Substances detected are Phenylbutazone, Oxyphenbutazone and Dexamethasone. Phenylbutazone is an anti-inflammatory drug with analgesic effects. Oxyphenbutazone is a metabolite of Phenylbutazone. Dexamethasone is a corticosteroid with anti-inflammatory effect. These substances are classified as a Controlled Medication Substances under the FEI Equine Prohibited Substances List (the "**FEI List**"). Furthermore, no valid Veterinary Form exists for the substances. Therefore, the positive finding for Phenylbutazone, Oxyphenbutazone and Dexamethasone in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Further Proceedings

- 2.1 On 30 October 2018, the FEI Legal Department officially notified the PR through the National Federation of Belarus ("BLR-NF"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences.
- 2.2 The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 30 October 2018, the PR and the owner of the Horse (the "Owner") were also informed that they were entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 Neither the PR nor the Owner did request for the B-Sample analysis. Hence, they accepted the results of the A-Sample analysis.

4. Written submission by and on behalf of the PR

- 4.1 On 3 December 2018, the PR, submitted in essence that:
 - a) The Horse belonged to the Mogilev Region Olympic Riding and Pentathlon Center, state-owned stables. She has been training and competing with the Horse since February 2018, and further knew that the Horse had some respiratory problems, such as strong sudden coughing, which was normally cured with some inhalation treatment consisting of several herbs.
 - b) Prior to the Event the Horse was in good condition. However, after the long journey from Minsk to Moscow, and after passing the Vet Inspection, the Horse started having respiratory problems during the warm up on 29 September 2019. For welfare of the Horse reasons she decided to withdraw the Horse from the competition and informed the Steward at the Warm Up Arena in this respect.
 - c) In the following, she walked the Horse for about 10 to 15 minutes at the Venue, and went back to the box where she measured the Horse's temperature which had risen to 39.3 Celsius. Given that, and the Horse's strong cough, she decided to inject the Horse with

Dexamethasone and Phenylbutazone to relieve the cough attack. She did not inform neither the Treating Veterinarian nor the chef d'équipe of her team of the injections.

- d) Thereafter, she was informed that the Horse was selected for testing. She did not inform the Testing officers regarding the injections, and the Tribunal notes that the section for remarks on the FEI Medication Control Form is empty, and no Controlled Medication substances have been recorded on that form.
 - e) Only after the testing she realized that she had violated treatment procedures of the Horse. She apologized and regretted for not having informed the Treating Veterinarian of the Event that the Horse needed treatment.
 - f) Further, she requested to take into account that she withdrew from the Competition and that her actions did not harm any other competitors.
- 4.2 In addition, she requested the Tribunal not to impose any fine and costs on her, as Belarus was a country with low income, and her salary was about 250 Euros per months.

5. Preliminary Decision

- 5.1 On 8 May 2019, following the request by the FEI, the Preliminary Hearing Panel decided to lift the Provisional Suspension of the PR, as of 8 May 2019, midnight CET.
- 5.2 The Preliminary Hearing Panel agreed with the FEI's submission that there might be possibility that the Provisional Suspension, if maintained, could result in a longer duration than the Final Suspension imposed by the Tribunal. Therefore, the Preliminary Hearing Panel decided to lift the Provisional Suspension at that point in time in the proceedings.

6. Written Response by the FEI

- 6.1 On 21 June 2019, the FEI provided its Response to the explanations provided by the PR.
- 6.2 In essence the FEI submitted that:
 - a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence*

or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1". Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Phenylbutazone, Oxyphenbutazone and Dexamethasone, and constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence of the Phenylbutazone, Oxyphenbutazone and Dexamethasone in the Horse's sample. Accordingly, the FEI respectfully submitted that it has discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the ECM Rules that it was administered to the horse deliberately in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping offence, but who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless she was able to rebut the presumption of fault. To do this, the rules specified that she must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability): (i) how the Prohibited Substance entered the Horse's system; and (ii) that she bore No Fault or Negligence for that occurrence, i.e., that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the Horse (or the Horse's system otherwise contained) a Controlled Medication Substance; or, alternatively (iii) that she bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulate and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("CAS") are very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance(s) entered into the Horse's system. The FEI submitted that the PR has an obligation to provide clear and convincing evidence that proved how the Phenylbutazone, Oxyphenbutazone and Dexamethasone entered the Horse's system. The PR has explained that she injected the Horse with Phenylbutazone and Dexamethasone at the Event on 29 September 2018 due to the Horse's increased temperature and extremely strong cough. The PR has however not provided any evidence that would attest the administration of the two Controlled Medication substances at the Event. Despite the lack of such evidence the FEI was satisfied that the

PR has established on a balance of probability that the positive finding of Oxyphenbutazone, Phenylbutazone and Dexamethasone was caused by the administration of the two Controlled Medication substances at the Event shortly before the Horse was sampled. The FEI believed that the explanation was scientifically plausible since, if injected intravenously, the two Controlled Medication substances would only need a few minutes to be detectable in the blood of the Horse.

- d) In terms of the degree of Fault or Negligence by the PR for the rule violation, the starting point of any evaluation was the "*personal duty*" of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, her personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*".
- e) The FEI argued that, through the FEI Clean Sport programme and in particular the "*Athletes Guide*"¹, it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It had to be noted in this context that, in the *Glenmorgan decision*², CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" and described the Athlete's Guide as "*required reading*".
- f) The VRs stipulated that the administration of treatments with Controlled Medication Substances during Events must be authorised by the Veterinary Commission/Veterinary Delegate (the "**VC/VD**") and the Ground Jury (the "**GJ**") before administration, using the appropriate Veterinary Form. In emergency situations, where the Horse's welfare is at risk, such as a colic episode, emergency therapeutic treatments may be administered. Following such administration, a Veterinary Form A must be presented for retrospective authorisation and for determination, where appropriate, of whether the Horse can continue competing at the Event. In the present case, no Veterinary Form was submitted for the Horse at the time of the Event nor after. The Phenylbutazone, Oxyphenbutazone and the Dexamethasone was therefore present in the Horse's body without a valid Veterinary Form.
- g) The PR failed in her duty in obtaining the appropriate Veterinary Form, and furthermore due to the PR's omission the Horse's condition and subsequently the Horse's welfare was not assessed at any time by the VC/VD. The PR should have known, since it was her personal duty, that she must obtain a Veterinary Form A prior to treating a horse.

¹ Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

² CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

- h) In addition, in the case at hand the treatment was not performed in the treatment box by a Permitted Treating Veterinarian (the “**PTV**”), both of which are required under the rules. Further, the FEI found that the act of injecting a horse without a veterinarian or similar degree to be a serious aggravating circumstance. The PR had put the Horse’s health in great risk by performing a treatment on the Horse without being officially certified to be able to do that correctly. Further, the FEI found a training session of 1 hour and a half despite the Horse having a slight increase in temperature and a cough as additional aggravating circumstances for horse welfare reasons in this case.
- i) The FEI was therefore of the opinion that no elimination or reduction of the period of Ineligibility in this case was possible under Article 10.4 or 10.5 of the ECM Rules. In the totality of the circumstances of the case the FEI finds that the PR was highly at Fault with several aggravating factors to be taken into account. However, the FEI appreciated the PR’s sincerity and acknowledged the PR’s prompt admission of her Fault for the rule violation, and therefore respectfully submitted that the applicable period of Ineligibility should be six (6) months and ten (10) days, the length of the Provisional Suspension already served by the PR.
- j) The FEI also submitted that since the PR and the Horse withdrew their participation in the Event, no results are to be disqualified in the present case.
- k) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. However, the FEI requested that the Tribunal considered the PR’s request for a reduction/elimination of the costs and fine of the procedure due to her low monthly income and her participation in mostly 2* level Events.

7. Further explanations by the PR

- 7.1 On 1 July 2019, the PR submitted further explanations, and clarified her warm up procedure prior to the withdrawal. In addition, she also provided further information regarding her financial situation.
- 7.2 Moreover, the PR provided a statement from the training centre confirming in essence that the PR was a responsible person with regard to her work in the Equestrian sport.

8. Hearing

- 8.1 During the hearing the Parties confirmed that they have no objections to the constitution of the panel. Further, that they had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its Decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 8.2 The PR further explained that at the time of the sampling in the case at hand she has not been aware of the relevant FEI Rules and Regulations; however, she was now familiar with those rules, and would not make the same mistake again in the future. Her only concern at the time was the Horse's health, and she was not aware that she was breaching any rules with her actions.
- 8.3 Furthermore, the PR confirmed that she had not been competing, either internationally or nationally for eight (8) months.
- 8.4 The FEI – in essence – did not oppose to the PR's application to eliminate/lower the fine and costs in the present case.

9. Jurisdiction

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

10. The Person Responsible

- 10.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she was the rider of the Horse at the Event.

11. The Decision

- 11.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the Laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, Oxyphenbutazone and Dexamethasone 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; in fact, the PR accepted the rule violation. The presence of Phenylbutazone, Oxyphenbutazone and Dexamethasone during an event without a valid Veterinary Form – which is the case in the present case - is prohibited under Article 2.1 of the ECM Rules.

- 11.2 The FEI has, therefore, established an Adverse Analytical Finding and has sufficiently proven the objective elements of an offence by the PR, in accordance with Articles 3.1 of the ECM Rules.
- 11.3 To start with, the Tribunal wishes to clarify that no Controlled Medication substances are allowed to be present or administered to a horse, such as the Horse in the present case, during an event, such as the Event, unless a Veterinary Form has been granted which would allow for such an administration. Furthermore, as outlined by the FEI, and as also accepted by the PR throughout the proceedings, the VRs foresee who, under which conditions, and where such administrations are allowed, *i.e.*, only by PTVs in a treatment box etc. It remains undisputed that the VRs for the potential administration of Controlled Medication substances have not been followed in the case at hand, and as previously outlined no Veterinary Form has been granted for the Prohibited Substances. Therefore, the ECM Rule violation stands.
- 11.4 In cases brought under Article 2.1 of the ECM Rules, a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that she bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 11.5 However, to benefit from any elimination or reduction of the applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system.
- 11.6 The Tribunal takes note of the PR's explanations on how the Phenylbutazone, Oxyphenbutazone and Dexamethasone entered the Horse's system, namely that she had administered them to the Horse after withdrawing from the Competition, and prior to being notified of the Sampling for health reasons of the Horse, *i.e.*, a cough attack. The FEI is satisfied – and so is the Tribunal - that the PR has established on a balance of probability that the positive finding of Oxyphenbutazone, Phenylbutazone and Dexamethasone was caused by the administration of the two Controlled Medication substances at the Event shortly before the Horse was sampled.

- 11.7 In a second step, the Tribunal has to evaluate the PR's fault for the ECM Rule violation.
- 11.8 In evaluating the PR's fault for the ECM Rule violation, the Tribunal finds aggravating that the PR was not familiar with the rules and regulations which forbid riders to treat Horses themselves during an event, as well as the prohibition of the presence of syringes and needles in the stables at events.
- 11.9 On the other hand, the Tribunal finds mitigating that the PR acted based on her concern for the health and wellbeing of the Horse, as well as that the PR had already decided to withdraw the Horse from the Competition and informed her chef d'équipe, as well as the officials at the Event about the withdrawal prior to treating her Horse with the Controlled Medication substances in question.
- 11.10 The Tribunal finds that the PR committed an ECM Rule violation, but that she did so in a distressed situation being concerned about the health of her Horse and after having withdrawn from the Competition. The sanction for this rule violation could have been determined to be less than 6 months together with a fine if proceedings had been brought to a final hearing at an earlier stage, but as the PR has been provisionally suspended for 6 months and 10 days, the Panel instead determines the sanction to be 6 months, and in fairness and having also heard the position of the FEI, that the PR shall not pay any fine or legal costs. In this regard the Tribunal also takes into consideration the PR's financial situation and the supporting evidence submitted.
- 11.11 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal finds that they were not decisive to the outcome of this decision.

12. Disqualification

- 12.1 The Tribunal notes that the PR and the Horse withdrew their participation in the Event. As a result, no results of the PR and Horse combination exist for the Event, and therefore none are to be disqualified in consequence.

13. Sanctions

- 13.1 As a result of the foregoing, and pursuant to Articles 10.2 of the ECM Rules, the period of Ineligibility imposed on the PR shall be six (6) months.

13.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

- 1) The PR shall be suspended for a period of **six (6) months**. The period of Provisional Suspension, effective from 30 October 2018 to 8 May 2019 shall be credited against the period of Ineligibility imposed in this decision. Therefore, no further period of Ineligibility shall be imposed on the PR.
 - 2) No fine shall be imposed on the PR.
 - 3) No costs shall be imposed on the PR.
- 13.3 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 13.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision 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. **The President of the Organising Committee of the Event through his NF: Yes**
- d. **Any other: No**

FOR THE PANEL



Mr. Henrik Arle, one member panel