

**DECISION of the FEI TRIBUNAL
dated 10 September 2020**

in the matter of

Mr Ludovic SAROUL
(FEI Case number: FEI 2019/BS09 – LESLIE O'NIL)

FEI Tribunal Hearing Panel:

Cesar Torrente

FEI Tribunal reference: C19-0012

Horse/Passport: LESLIE O'NIL /105PA88 /FRA

Person Responsible/ID/NF: Ludovic SAROUL /10014413/FRA

Trainer/ID/NF: Ludovic SAROUL /10014413/FRA

Event/ID: CEI2* 120 - Al Ula (KSA), 2019_CI_0094_E_S_01_01

Date of Event: 02.02.2019

Prohibited Substance(s): Mephentermine, Oxetacaine

Bar Code No.: 5578266

I. Factual background

- 1.1 Mr Ludovic SAROUL (FEI ID 10014413), the Person Responsible (hereinafter: "**the PR**"), is a rider for France.
- 1.2 The Fédération Equestre Internationale (hereinafter "**the FEI**" and, together with the APR, "**the Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
- 1.3 The PR participated, with the horse LESLIE O'NIL, in the event CEI2* 120 in Al Ula, Saudi Arabia, on 2 February 2019.
- 1.4 Blood samples were collected from the Horse and sent to the FEI approved Laboratory, the Hong Kong Racing Laboratory, in Sha Tin, Hong Kong, for analysis.
- 1.5 Analysis of the blood samples revealed the presence of Mephentermine and Oxetacaine, two prohibited substances.
- 1.6 Following the abovementioned positive finding of the two Prohibited Substances, the PR was notified, on 11 March 2019, of the result of the sample collection.
- 1.7 Mephentermine is a stimulant used as cardiac stimulant with psychoactive properties. Oxetacaine is an anaesthetic used in the treatment of humans with heartburn, duodenal and gastric ulceration. Both substances are classified as Banned Substances under the FEI Equine Prohibited Substances List (hereinafter: "**the FEI List**"). The positive finding of Mephentermine and Oxetacaine in the Horse's sample constitutes an Anti-Doping Rule Violation.
- 1.8 Following the abovementioned rule violation(s), the PR was provisionally suspended by the FEI, as of 11 March 2019, and was further informed that he had the opportunity to request for a Preliminary Hearing.
- 1.9 The PR subsequently requested for the provisional suspension to be lifted, request which was rejected by the FEI Tribunal by decision dated 19 June 2019.
- 1.10 On 18 August 2020, the parties reached an agreement, pursuant to art. 7.6.1 of the Equine Anti-Doping Rules (hereinafter: "**the EAD Rules**").

- 1.11 The additional factual elements of the case will be referred to under par. IV below, describing the agreement reached between the parties.

II. Procedural background in front of the FEI Tribunal

- 2.1 By email dated 18 August 2020, the FEI submitted to the FEI Tribunal the Settlement Agreement signed by both parties on 17 and 18 August 2020, respectively. The PR was copied, via his legal representative, to the FEI's correspondence.
- 2.2 On 4 September 2020, the Parties were informed of the composition of the Hearing Panel which was appointed to address the present matter. Furthermore, the PR was granted with the opportunity to respond to the FEI's request. The PR was informed that, should he fail to comply with the deadline provided, the FEI Tribunal would decide the case using the file in its possession. Finally, the Parties were informed that they had the right to request for oral statements to be heard.
- 2.3 On 7 September 2020, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.
- 2.4 On 9 September 2020, the PR, via his legal representative, also indicated having no objections with respect to the composition of the Hearing Panel. The PR further requested the FEI Tribunal to issue its decision before the 11 September 2020, which would be the first day when the PR would be able to compete again.
- 2.5 Neither party requested for oral statements to be heard.

III. Considering

1. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

Statutes 24th edition, effective 19 November 2019 ("**Statutes**"), Arts. 1.5, 38 and 39.

General Regulations, 24th edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, changes effective 1 January 2020.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2020.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January 2020, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Ludovic SAROUL.

3. Justification for sanction:

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."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

EAD Rules Art. 7.6.1: "[...] At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision

for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”

IV. The Decision

1. Agreement between Parties

4.1 On 18 August 2020, the Parties reached the following Agreement:

*** Quote***

3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

3.1 “In the matter of the Adverse Analytical Finding related to the Samples, which were collected from the PR’s Horse LESLIE O’NIL at the CEI2* 120 in Al Ula, Saudi Arabia, on 2 February 2019, the PR and the FEI agree in accordance with the Article 7.6.1 of the EAD Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the EAD Rules (Presence of a Banned Substance and/or its Metabolites or Markers in a Horse’s Sample);
- (b) The PR established on a balance of probabilities how the Banned Substances (Mephentermine and Oxetacaine) entered the Horse’s system;
- (c) The PR bears No Significant Fault or Negligence (in accordance with Article 10.5.2 of the EAD Rules) for the Rule Violation and the applicable period of Ineligibility shall be eighteen (18) months, commencing as of the date of the final FEI Tribunal decision. The period of the effectively served Provisional Suspension shall be credited against the imposed Ineligibility Period (for the clarity purposes and without prejudice to any evidence to the contrary, the PR will be able to compete and train horses again as of 11 September 2020);
- (d) All results achieved by the PR at the Event CEI2* 120 - Al Ula (KSA) shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes pursuant to Articles 9.1 and 10.1.2,

- (e) The PR shall pay a fine of one thousand five hundreds Swiss Francs (1500 CHF);
 - (f) Each party will bear its own legal and other costs incurred in connection with these proceedings;
 - (g) No other Sanctions will apply in this case;
 - (h) This violation of the EAD Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the EAD Rules;
- 3.2 This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.
- 3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.”

End Quote

4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

*** Quote***

- 2.1 "Mr. Ludovic SAROUL (FEI ID 10014413), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a rider for France.
- 2.2 The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).
- 2.3 The PR participated with the horse LESLIE O'NIL (FEI ID: 105PA88) (the "Horse") in CEI2* 120 in Al Ula, Saudi Arabia, on 2 February 2019 (the "Event"). (EXHIBIT 1) As a member of the French Equestrian Federation (the "French NF"), the latter being a member of the FEI, the PR was bound by the FEI EADCM Regulations.
- 2.4 The PR was the registered Trainer of the Horse at the time of the Event. (EXHIBIT 2)
- 2.5 The Horse was selected for testing on 2 February 2019. Blood samples were collected from the Horse and sent to the FEI approved Laboratory, the Hong Kong Racing Laboratory ("HKJC") in Sha Tin, Hong Kong, CHN, (the "Laboratory") for analysis. (EXHIBIT 3)
- 2.6 Analysis of the blood samples revealed the presence of Mephentermine and Oxetacaine. (EXHIBIT 4 and EXHIBIT 5)
- 2.7 Mephentermine is a stimulant used as cardiac stimulant with psychoactive properties. Oxetacaine is an anaesthetic used in the treatment of humans with heartburn, duodenal and gastric ulceration. Both substances are classified as a Banned Substances under the 2019 FEI Prohibited List. (EXHIBIT 6)
- 2.8 The positive finding of Mephentermine and Oxetacaine in the Horse's sample gives rise to an Anti-Doping Rule Violation.

- 2.9 By notification letter dated 11 March 2019, the FEI informed the PR, in his capacity as the Person Responsible and the registered Trainer, along with the French NF of a violation of Article 2.1 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample) of the FEI Equine Anti-Doping Rules (the "EADRs") based on the Laboratory's adverse analytical finding of Mephentermine and Oxetacaine in the Horse's Sample collected at the Event. (EXHIBIT 7)
- 2.10 In accordance with Art. 7.4.1 of the EADRs the PR was Provisionally Suspended as of the date of the notification letter (EXHIBIT 7). Subsequently, the PR requested that the Provisional Suspension imposed on him be lifted and that a Preliminary Decision in this respect be issued based on written submissions. Through a Preliminary Decision made on 19 June 2019, the FEI Tribunal decided to maintain the Provisional Suspension imposed on the PR. (EXHIBIT 8)
- 2.11 The PR was provided with the right to request a B Sample analysis of the positive sample. On 4 April 2019, the PR informed the FEI that the source of the Prohibited Substance had been identified, and that the PR therefore waived his right to have the B-sample analysed. (EXHIBIT 9)
- 2.12 The PR provided three (3) rounds of written submission to the FEI (the third submission being the most complete version) wherein he explained how the Prohibited Substances entered the body of the Horse (EXHIBIT 10):
- LESLIE O'NIL, together with other horses, was scheduled to participate in the CEI2* 120 in Al Ula, Saudi Arabia, on 2 February 2019, as her owner was one of the members of the organising team of this Event;
 - Consequently the horses flew to Saudi Arabia and arrived to Al Ula, on the premises of the competition, on 29 January 2019;
 - After a long transportation period, all the horses were examined by local veterinarians;
 - The Horse was groomed by the usual groom (the "Groom") who was familiar with the Horse and who had already groomed it on previous FEI events;
 - The Groom noticed the usual signs of discomfort of the Horse generated by gastric ulcers and asked the local veterinarians for a GASTROGARD equivalent treatment (usual medication of the Horse);
 - The local veterinarians recommended MUCOGEL;

- The Groom consulted the PR by phone on the recommended treatment with MUCOGEL and the PR gave his approval on this treatment since it had been already prescribed to the Horse during a competition in the United Kingdom in 2017;
- Consequently, the Groom asked the local veterinarians to provide her with the MUCOGEL and administered it every morning orally to the Horse (one syringe directly in the mouth), as recommended by the veterinarians;
- Upon his arrival to Al Ula, the PR checked the behaviour, training and treatment given to the Horse since its arrival to Saudi Arabia. At that time, it was mentioned again that the Horse was receiving MUCOGEL every day as per the recommendations of the local veterinarians. This did not raise any suspicion on the part of the PR as he was informed about it before his arrival and he knew the product from the previous use in 2017;
- On the morning of the race, the Horse was administered with one dose of MUCOGEL by the Groom;
- The Horse participated in the Event and was selected for doping control test following the Event;
- After the receipt of the notification letter from the FEI, the PR undertook research to find out the source of the Prohibited Substances in the Horse at the time of the Event;
- Knowing that MUCOGEL was the only substance, other than food, administered to the Horse at the time of the Event, the PR consulted the Expert in order to know whether the Prohibited Substances found in the Horse's Sample could have come from the administered medication;
- It was then revealed that the local form of MUCOGEL sold in Saudi Arabia contains Oxetacain (contrary to the UK sold medication with the same name). In fact, Oxetacain was mentioned on the ingredients list, however the whole package was in Arabic language.
- It was further established that Mephentermine is a metabolite of Oxetacaine and that Mephentermine had already been found in athlete's samples who had been taking MUCOGEL;
- Consequently, the PR has established by a balance of probability how the Prohibited Substances entered the Horse's body.

2.13 Furthermore, the PR noted the following in his written submissions to the FEI (EXHIBIT 10):

- Mr Saroul accepted being the PR in accordance with the Article 118 of the GRs and the FEI Tribunal took note in the Preliminary Decision that the PR accepted the rule violation on 4 April 2019;
- The PR has never intended to rely on any other person, including the Groom, to perform his duty of care. Indeed, the PR requested to be informed of any medicine administered during his absence to the Horse;
- While competing in the United Kingdom in 2017, the Horse had received a medication MUCOGEL after seeking local veterinarian advice. The compatibility of the medication with the FEI Rules had been carefully examined at that time, and the conclusion had been made that it was a GASTROGARD equivalent that the Horse could take (as the UK version of the MUCOGEL does not contain any local anaesthetic as Oxetacaine or any other Banned Substance);
- According to the rules received from the Al Ula organising committee, it was totally forbidden to transport to the competition venue any veterinary or medicinal product under any circumstances, including with a veterinary prescription. The PR could therefore only rely on the medication available at the competition site;
- The Horse is well known for being subject to gastric ulcers when stabled indoors and receives special treatments during competitions. Consequently, when the Groom noticed the usual signs of discomfort of the Horse generated by gastric ulcers, she asked the local veterinarians for a GASTROGARD equivalent treatment (usual medication of the Horse);
- When recommended the medication MUCOGEL in Saudi Arabia for the Horse, the PR did not suspect that this medication could contain any Banned Substances as the medication with the same name was already used by the same Horse in the past and appropriate checks were made at that time;
- The leaflet and the packaging of the MUCOGEL medicine were only written in Arabic and the PR relied on the recommendation by the local veterinarians;
- The Horse had only taken part in the race because its owner was a part of the organising committee in 2019 and wanted to show interest and support for the Event. No specific performance of the Horse was expected.

- 2.14 The FEI is satisfied that the PR established, on a balance of probabilities, how Mephentermine and Oxetacaine entered the Horse's system, namely through a medication MUCOGEL which was administered to the Horse at the arrival to Saudi Arabia.
- 2.15 In evaluating the PR's fault or negligence, the FEI took into account in particular the following considerations:
- (a) The PR, himself or through his Groom, could have easily found out that the product MUCOGEL sold in Saudi Arabia contained the Banned Substance simply by checking the ingredients listed on the package or making the appropriate search on-line. Furthermore, the PR could have made further inquiries to the local treating veterinarians regarding the composition of the medication to be given to the Horse.
 - (b) It is clear from the case file, that at no point (before or after his arrival to Al Ula) the PR checked the composition of the medication administered to the Horse in Saudi Arabia. The PR simply relied on the fact that a medication with the same name had been already used by the Horse in 2017 in the United Kingdom and the appropriate checks were made at that time.
 - (c) It is well known, and it has been further confirmed in the FEI Tribunal Preliminary Decision, that medications with the same name or even from the same producer may contain different ingredients in different countries for various reasons. Persons Responsible therefore cannot be freed from their duty of care to check every product administered or ingested by their horses. The fact that the PR might have checked a product with the same name in the past, while considered in the evaluation of the PR's degree of fault, cannot result in No Fault or Negligence on the PR's side, as the PR did not fulfil his expected duty of care.
 - (d) The PR cannot claim that he did not know or suspect and could not reasonably have known or suspected even with the exercise of utmost caution, that he had administered to the Horse a Banned Substance. On the contrary, the PR (through his Support Personnel) administered a Banned Substance to the Horse, which was listed on the product MUCOGEL used on the Horse at the time of the Event. Even if the PR was normally very careful and checked everything administered to his horses, on this very day he failed to do so. By failing to check the ingredients of the product, he had been at fault for the violation. This fact cannot be ignored.

- (e) On the other hand, it shall be noted that the PR has never intended to rely on any other person, including the Groom, to perform his duty of care. Indeed, the PR requested to be informed of any medication administered to the Horse, including in his absence.
- (f) Furthermore, once the source of the prohibited substance was known, the PR admitted the violation and decided not to proceed with the B Sample analysis.
- (g) In addition, even though the Horse was well known to suffer gastric ulcers when stabled indoors and needed to receive special treatments during competitions, the PR and his Support Personnel could not have taken with them the usual medication of the Horse due to strict travel restrictions in this respect. Indeed, the PR needed to rely on the medication available at the competition site.
- (h) Moreover, the product MUCOGEL was used with the aim to treat the Horse's medical condition after consultation with local veterinarians.
- (i) Last but not least, the fact that a medication with the same name was used and checked in the past, although it cannot completely exclude the PR's fault or negligence, it definitively constitutes a mitigating factor in PR's favour as it dulled PR's vigilance in performance of his duty of care.

2.16 Taking into account the totality of circumstances of the case in question, the FEI is of the opinion that the PR has on a balance of probabilities established that he bears no significant fault or negligence for the Rule Violation. His level of fault or negligence situates somewhere in the middle of the available range of the corresponding sanction for the present anti-doping rule violation. Having considered all the facts as presented in the previous paragraphs of the present Agreement, the FEI is satisfied that the sanction of eighteen (18) months of Ineligibility will be proportionate for this anti-doping rule violation."

End Quote

5. Jurisdiction

- 5.1 The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 5.2 As a member of the French National Federation, the latter being a member of the FEI, the PR was – and still is – bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements to be reached between parties.
- 5.4 As a result, the Tribunal considers that it has jurisdiction to rule in the present matter, and to issue this Decision.

6. Approval of Agreement

- 6.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal has, among others, taken note that the FEI accepts – on a balance of probability – that the source of the two prohibited substances in the Horse's sample – Mephentermine and Oxetacaine – was the administration of the product MUCOGEL, with the aim to treat the Horse's medical condition, after consultation with local veterinarians in Saudi Arabia.
- 6.2 Furthermore, the Tribunal takes note that, according to the FEI, the PR did not fulfil his duty of care in the present case and can therefore not be considered bearing No Fault or Negligence for the rule violation. In accordance with the FEI reasoning, the overall circumstances, including the fact that the medication with the same name had already been used and checked in the past by the PR, do however weight in favour of the PR as mitigating factors.
- 6.3 Consequently, the parties agreed that the PR admitted a violation of Article 2.1 of the EAD Rules (Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample), but that the PR bears No Significant Fault or Negligence.
- 6.4 In accordance with Article 10.5.2 of the EAD Rules, if a PR establishes in an individual case that he bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility and other sanctions (apart from Article 9) may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. Furthermore, and also pursuant to Article 10.5.2

of the EAD Rules, when a Banned Substance and/or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 of the EAD Rules, the PR must also establish how the Banned Substance or its Metabolites or Markers entered the Horse's system in order to have the period of Ineligibility reduced.

- 6.5 The FEI Tribunal notes that, according to the agreement reached by the parties, the level of the PR's fault or negligence is somewhere in the middle of the available range of the corresponding sanction, and that the eighteen (18) months period of Ineligibility would be considered an appropriate and proportionate sanction for the present anti-doping violation.
- 6.6 The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof with regard to the source of the Prohibited Substances, nor his degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not take into account previous case law.
- 6.7 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS09 LESLIE O'NIL.

7. Decision

- 1) The Tribunal rules that the Agreement reached between the FEI and the PR, Mr. Ludovic Saroul, concerning the case 2019/BS09 LESLIE O'NIL is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article 4 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be notified to the PR, to the President of the NF of the PR, and to the FEI.
- 4) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

FOR THE FEI TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', is written over a light blue circular stamp. The signature is stylized and cursive.

Mr. Cesar Torrente, One-Member Panel