

DECISION of the FEI TRIBUNAL

dated 2 October 2020

(FEI Case number: FEI 2019/CM22-ESMAK YARISHA)

FEI Tribunal Hearing Panel:

Mr Martin Gibbs

FEI Tribunal Reference: C20-0040

Horse/Passport: ESMAC YARISHA /106QE23/RSA

Person Responsible/ID/NF: Carol Fourie /10047403/RSA

Trainer/ID/NF: Carol FOURIE /10047403/RSA

Event/ID: CEI1* 80 - Louwna (RSA), 2019_CI_1194_E_S_03

Date of Event: 20/09/2019

Prohibited Substances: Flunixin, Isoflupredone

Bar Code Nos.: 5583829

I. Factual background

- 1.** Ms. Carol Fourie (FEI ID 10047403), the Person Responsible (hereinafter called "**the PR**"), is an endurance rider for South Africa.
- 2.** The Fédération Equestre Internationale (hereinafter called "**the FEI**" 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-Equestrian).
- 3.** The PR participated, with the horse ESMAC YARISHA (FEI ID 106QE23), in the event CEI1* 80 – Louwna, South Africa on the 20 September 2019 ("the Event").
- 4.** Blood samples were collected from the horse on the 20 September 2019 and sent to the FEI approved Laboratory, the LGC Laboratory ("LGC"), in Cambridgeshire, UK, for analysis. The samples were divided into an A sample and B sample. The A Sample was analysed and reported an adverse analytical finding of Flunixin and Isoflupredone.
- 5.** Flunixin is an anti-inflammatory medication with analgesic effect. Isoflupredone is a corticosteroid used as an anti-inflammatory and to treat certain skin diseases. The substances are classified as Controlled Medication Substances under the 2019 FEI Equine Prohibited Substances List (hereinafter called "the FEI List").
- 6.** Following the positive findings of Flunixin and Isoflupredone (prohibited substances under the FEI list), the PR was notified of potential controlled medication violation and a provisional suspension was imposed on the 9 December 2019 via email communication.
- 7.** The PR was entitled to request the B sample to be analysed but did not exercise this right nor challenge the results of the A sample.
- 8.** At the request of the FEI, the provisional suspension that was imposed on the 9 December 2019 was lifted by the FEI Tribunal in a Preliminary Decision Hearing conducted on the 8 June 2020.
- 9.** On the 9 September 2020, the parties reached an agreement, pursuant to art. 7.6.1 of the Equine Controlled Medication Rules (hereinafter: "**the ECM Rules**").
- 10.** The additional facts of the case will be referred to under section V below wherein the Settlement Agreement between the parties is detailed.

II. Procedural background in front of the FEI Tribunal

- 11.** By email dated 9 September 2020, the FEI submitted to the FEI Tribunal the Settlement Agreement signed by both parties dated the 9 September 2020.
- 12.** On the 22 September 2020, the Parties were informed of the nominated Hearing Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel by 25 September 2020.
- 13.** On the 22 September 2020, the PR, also confirmed receipt of said communication and issued no objections to the composition of the Hearing Panel.
- 14.** On the 23 September 2020, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.

III. Considering

A. 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 Controlled Medication Rules ("**ECM 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.

B. Person Responsible: Ms. Carol Fourie.

C. 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."

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's 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."

ECM Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Controlled Medication violation.

IV. The Parties' Submissions

A. The Submissions of the PR

- 15.** On the 18 December 2019, the PR submitted a written statement which included the following:
- (a) that on the 16 September 2019, ESMAC YARISHA came out of the field with a bite mark on her neck from another horse. The bite area was slightly swollen and to prevent inflammation the PR administered 20 cc of Predef 2X (Isoflupredone acetate 2mg/ml). A second dose was given to the Horse on 17 September 2019;

- (b) that the withdrawal period for Predef 2X is 48 hours, the PR therefore took a safety margin of 72 hours and did not administer anything after Tuesday, 17 September 2019 (evidence of invoice for Predef was forwarded to the FEI);
- (c) that she has participated in Endurance riding for 15 years and has never violated any rules or had a positive finding. She furthered that she looks after her horses and they are her first priority;
- (d) that the Horse is still a young horse and there was no reason for her to violate any rules or harm the Horse in any way. The only feed the horse received was barnyard pellets, lucern, and teff (grass);
- (e) that she checked everything that the Horse was given, however nothing with Flunixin was found. In addition, the PR's husband said that he would never use any medication with Flunixin, because it is dangerous to administer it to a horse in training and because it is bad for their kidneys;
- (f) that she has lived on a farm from a young age (far from the town) and despite no medical training, it is learnt from a young age to administer medication to cattle, horses, and sheep. They would only call veterinarians for emergencies;
- (g) that there were a lot of people at the Event Venue and people could enter at any time. The area that was allocated for the FEI horses had ERASA horses there as well, because some of them could not ride in the FEI Events due to problem on their logbooks or riders not qualifying to ride FEI;
- (h) that she does not believe that anybody would sabotage her horse but she did not administer any medication with Flunixin. Flunixin should be administered into the veins. The PR has no knowledge how to administrate any medication in the veins.

B. The Response of the FEI

16. The FEI's main submissions are the following:

- (a) that the PR has provided an explanation for the finding of Isoflupredone in the Horse's system i.e. through the administration of the medication Predef 2x, which contains the active ingredient Isoflupredone Acetate. In relation to the finding of Flunixin in the sample, the PR has failed to provide an explanation;
- (b) that by virtue of the lack of explanation for the finding of Flunixin in

the Horses's sample, the FEI cannot evaluate the PR's level of Fault or Negligence and no elimination or reduction of the period of Ineligibility in this case is possible under Article 10.4 or 10.5 of the ECMR Rules. Accordingly, the applicable period of Ineligibility shall be six (6) months;

- (c) that the PR has made an application to the FEI to lower the otherwise applicable fine. The PR explained that their family's company has been liquidated and the company's only asset – the farm –was sold on auction. The PR provided the court order with regards to the liquidation of the company.
- (d) that the PR does not receive a salary and occasionally bakes to provide some income for the family, which has been greatly stalled with the lockdown and related restrictions due to the Corona Pandemic. Finally, the PR has only competed on a handful of low-level 1-2* International Events which can as well be taken into consideration for the lowering of the otherwise applicable fine as per the FEI Guidelines for Fines and Contributions Towards Legal Costs.

V. The Decision

17. Agreement between the Parties:

*** 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 ESMAK YARISHA at the CEI1* 80 in Louwna, South Africa on 20 September 2019, the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:
 - (a)The PR admits the violation of Article 2.1 of the ECM Rules (*The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*);
 - (b)The PR has not discharged her burden of proving how both the Flunixin and Isoflupredone entered the Horse's system;
 - (c)The presumption of fault has therefore not been rebutted by the PR and the applicable period of Ineligibility shall be six

(6) months, commencing as of the date of the final FEI Tribunal decision, taking into account the already served period of provisional suspension;

(d) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

(e) The PR shall pay a fine of 75 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 ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the ECM Rules.

3.2 This agreement is made in accordance with Article 7.6.1 of the ECM 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 ECM Rules.

3.3 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM 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

VI. Jurisdiction

18.

(a) 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.

(b) The PR is a member of the South African National Federation, and as such is subject to the ECM rules.

- (c) Article 7.6.1 of the EADCMRs provides for agreements to be reached between parties.
- (d) As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VII. Approval of Agreement

- 19.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probability – that the source of one of the prohibited substances in the Horse’s sample –Isoflupredone– was the administration of the medication “Predef”. Predef was administered to treat a bite injury sustained by ESMAK YARISHA from another horse when out in the field.
- 20.** The Tribunal also takes note that the Parties agree that pursuant to 7.6.1 ECM the PR has failed to discharge the burden of proving how flunixin entered the horses’s system. Thus, the presumption of fault has not been rebutted by the PR and the Parties agree that the applicable period of Ineligibility shall be six months, commencing as of the date of the final FEI Tribunal decision. Taking into account the period of provisional suspension already served by the PR from 9 December 2019 to 8 June 2020 the Parties further agree that this six-month suspension has been fully served.
- 21.** Furthermore, the Tribunal takes note that the parties agree that the PR admits a violation of Article 2.1 of the ECM Rules (Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse’s Sample).
- 22.** The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding 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 consider previous case law.
- 23.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the ECM Rules.
- 24.** 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/CM22 ESMAC YARISHA.

VIII. Decision

- 1) The Tribunal rules that the Agreement reached between the FEI and the PR, Mr. Carol Fourie, concerning the case 2019/CM22 ESMAC YARISHA is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article 5 above are incorporated into this Decision.
- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM 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 ECM Rules.

FOR THE FEI TRIBUNAL

A handwritten signature in black ink, appearing to read 'Martin Gibbs', is centered on a white rectangular background.

Mr. Martin Gibbs, One-Member Panel