

DECISION of the FEI TRIBUNAL

dated 19 October 2020

in the matter of

Ms Paula Llorens Clark

(FEI Case number: FEI 2019/BS25-S H CIRO)

FEI Tribunal Hearing Panel:

Mr Christopher Hodson QC one-member panel

FEI Tribunal Reference: C19-0013

Horse/Passport: S H CIRO /104ZN21/CHI

Person Responsible/ID/NF: Paula LLORENS CLARK/10086065/CHI

Trainer/ID/NF: Paula LLORENS CLARK/10086065 /CHI

Event/ID: CEIYJ2* 120 – Llay Llay (CHI) 2019_CI_1553_E_YJ_01

Date of Event: 30/03/2019

Prohibited Substance: O-Desmethyltramadol

Bar Code Nos.: 5571634

I. Factual background

- 1.** Ms. Paula Llorens Clark (FEI ID 10086065), is the Person Responsible (hereinafter called "**the PR**"), is an endurance rider for Chile.
- 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 S H CIRO (**the "Horse"**), at the CEIYJ2* 120 – Llay Llay, Chile (**the "Event"**) on 30 March 2019. The PR is a member of the Chilean Equestrian Federation (the "**CHI NF**"), which is a member of the FEI and therefore is bound by FEI's Equine Anti-Doping and Controlled Medication Regulations (hereinafter called "**the EADCM Regulations**").
- 4.** At the Event on 30 March 2019, the Horse was selected for an in-competition doping control test. Blood and Urine samples were collected from the horse 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 revealed the presence of O-Desmethyltramadol, an opioid with analgesic effect.
- 5.** O-Desmethyltramadol is a metabolite of Tramadol (pain medication) and is classified as a Banned Substance under the 2019 FEI Equine Prohibited Substances List (the "**FEI List**"). The estimated concentration of the O-Desmethyltramadol returned from the urine sample was in the range 33-49ng/ml.
- 6.** Following the positive findings of O-Desmethyltramadol, the FEI sent a notification letter dated 15 May 2019, informing the PR and the Chilean NF of the 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 (hereinafter called the "**EADRs**"). The PR was provisionally suspended as of this date, and a provisional suspension of two months was also imposed on the Horse from 15 May 2019 to 14 July 2019.
- 7.** The PR was entitled to request the B sample to be analysed and she requested this analysis. The B sample confirmed the findings of the A sample.

- 8.** The PR identified the source of O-Desmethyltramadol, through human to horse contamination by urination. The Horse's groom had been prescribed Tramadol by his doctor for 7 days. The groom was taking 100mg of Tramadol every 8 hours (3 times daily).
- 9.** In a declaration provided to the FEI, the groom confirmed that on the day of the Event he urinated close to the Horse and inside the trailer on several occasions where they store the grass. This grass was then given to the horse on the day of the Event. He maintains that the Horse also had access to the areas that were not disinfected and contaminated with his urine in addition to the grass.
- 10.** The Horse had therefore most likely ingested the grass that was contaminated with the groom's urine and resulted in the adverse analytical finding.
- 11.** The PR provided the FEI the following documents to support the explanation given for the positive finding of Tramadol:
 - PR's sworn witness statement;
 - Doctor's prescription for Tramadol;
 - Statement from the Doctor in respect of the Prescription;
 - Photo evidence of Tramadol;
 - Sworn Statement from the groom in respect of the circumstances;
 - The FEI was further provided with information on dosage and timing of the Tramadol intake.
- 12.** The FEI consulted with its external expert, who confirmed the plausibility of the source provided for the findings of Tramadol metabolite O-Desmethyltramadol to obtain the concentration in the range of 33-49ng/ml in the urine.
- 13.** In a preliminary decision dated 12 August 2019, the FEI Tribunal lifted the provisional suspension of the PR as of 12 August 2019.
- 14.** On the 9 September 2020, the parties reached an agreement, pursuant to art. 7.6.1 of the Equine Anti-Doping Rules (hereinafter called the "**the EAD Rules**").
- 15.** 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

- 16.** 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.
- 17.** 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.
- 18.** On the 22 September 2020, the PR, also confirmed receipt of said communication and issued no objections to the composition of the Hearing Panel.
- 19.** 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 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.

B. Person Responsible: Ms. Paula Llorens Clark.

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."

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 Parties' Submissions

A. The Submissions of the PR:

In her witness statement of the 10 September 2019, the PR provided more background to her riding experience and commitment to horse welfare, she also

submitted that in relation to the adverse analytical finding:

- 20.** She was shocked that her Horse returned an adverse analytical finding as she is aware of the risks of contamination resulting in a positive test in horses. To avoid these risks, she stated there are procedures in place to avoid contamination at her stables. The PR explained the importance of such procedures to her support personnel and made it clear to them that they should follow these procedures at the stables and when travelling at events. Such procedures include that all hay, feed, and supplements were purchased from a reputable supplier and stored carefully, away from other equipment/products and in closed containers.
- 21.** Additionally, the PR recorded all feed, supplements and treatment administered to her horse. The PR had well-trained, experienced, and knowledgeable staff. Whilst at events, the PR said she was especially careful and only the designated personnel could be in contact with the horse. The stable at an event was always cleaned before the horse stayed there.
- 22.** The PR knows the importance of avoiding contamination and maintains she had everything reasonable in place to ensure that she and her support personnel were following sensible procedures to avoid contamination.

B. The Response of the FEI highlighted the following:

- 23.** That *"all PR and grooms should be aware of the risk of contamination from urination in a horse's stable, especially when the PR or support personnel is taking Prohibited Substances prescribed to them by a doctor. Such behaviour should always be avoided and can be prevented through the PR's management of procedures to avoid a positive test. The FEI has warned about the risk of contamination (via FEI Clean Sports notice on reducing risks of contamination) through urination and any PR, groom or other support personnel should inform themselves about such risks"*.

V. The Decision

24. 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 *The Person Responsible and the FEI agree in accordance with 7.6.1 EAD Rules on the following:*
- 3.2 *The Person Responsible:*
- (i) admits the violation of Article 2.1 of the EAD Rules;*
 - (ii) waives her right to a final hearing; and*
 - (iii) cooperates with the FEI fully with respect to her case.*
- 3.3 *The FEI is satisfied that the Person Responsible has established:*
- (i) on a balance of probabilities how the O-Desmethyltramadol entered the Horse's system; and*
 - (ii) that she bore No Fault or Negligence for the rule violation.*
- 3.4 *The Parties agree that:*
- (i) the Person Responsible bears no fault or negligence for the rule violation. The Person Responsible shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated;*
 - (ii) in accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules;*
 - (iii) in accordance with EAD Rules 9.1 and 10.1.2, the results achieved by the Person Responsible and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;*
 - (iv) the Person Responsible shall not incur any fines or legal costs; and*
 - (v) the PR shall bear the cost of the B sample.*

- 3.5 *No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Article 9 and Article 10.1.2 and of the EAD Rules) should apply. Each party will bear its own legal and other costs incurred in connection with these proceedings.*
- 3.6 *The parties hereby request that the FEI Tribunal issue a Decision incorporating the terms of this agreement. 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. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.*
- 3.7 *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.*
- 3.8 *This agreement will constitute the Decision for this case. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.*
- 3.9 *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

25.

- (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 Chilean Equestrian Federation, and as such is subject to the EAD 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

- 26.** 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 – *O-Desmethyltramadol* was the result of human to horse contamination from the groom’s urine and the external expert of the FEI also confirms the plausibility of this explanation.
- 27.** The Tribunal also takes note that the Parties agree that pursuant to 7.6.1 EAD that the PR bears no fault or negligence for an anti-doping rule violation. Thus, the presumption of fault has been rebutted by the PR and the Parties agree that the PR shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated.
- 28.** Furthermore, the Tribunal takes note that in accordance with Article 10.8.3 of the EAD Rules, this violation shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules.
- 29.** 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. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
- 30.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EAD Rules.
- 31.** 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/BS25 S H CIRO.

VIII. Decision

1. The Tribunal rules that the Agreement reached between the FEI and

the PR, Ms Paula Llorens Clark, concerning the case 2019/BS25 SH CIRO 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 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 black ink, appearing to read "Chodson", is centered on the page. The signature is written in a cursive, flowing style.

Mr Christopher Hodson QC, One-Member Panel