

DECISION of the FEI TRIBUNAL

dated 19 October 2020

(FEI Case number: FEI 2019/BS16-TRA DUNCAN)

FEI Tribunal Hearing Panel:

Mr Cesar Torrente

FEI Tribunal Reference: C20-0048

Horse/Passport: TRA DUNCAN /104CE66/KSA

Person Responsible/ID/NF: Mohamed AL JABERI /10063829/KSA

Trainer/ID/NF: Mohamed AL JABERI /10063829/KSA

Event/ID: CEI1* 110 - Al Qaseem (KSA) 2019_CI_0188_E_S_01_01

Date of Event: 09/03/2019

Prohibited Substance: Diisopropylamine

Bar Code Nos.: 5581227

I. Factual background

- 1.** Mr Mohamed Al Jaber (FEI ID 10063829), the Person Responsible (hereinafter called "**the PR**"), is a rider for Saudi Arabia.
- 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 TRA DUNCAN at the event CEI1* 110 - Al Qaseem (KSA) on March 9, 2019.
- 4.** In accordance with the file, the registered Trainer of the Horse in the FEI database at the time of the Event was also Mr. Mohamed AL JABERI, FEI ID: 10063829.
- 5.** Blood samples were collected from the horse on March 9, 2019 and sent to the FEI approved Laboratory, the Hong Kong Racing Laboratory ("**HKJC**") in Sha Tin, Hong Kong, CHN, for analysis. The samples were divided into an A Sample and B Sample.
- 6.** The laboratory analysis of the Horse's A sample reported an adverse analytical finding of Diisopropylamine. Diisopropylamine is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the 2019 FEI Equine Prohibited Substances List (hereinafter called "**the FEI List**").
- 7.** On April 11, 2019, the FEI Legal Department officially notified the PR through the National Federation of Saudi Arabia ("**KSA-NF**"), of the presence of a prohibited substance, the apparent rule violation, and the potential consequences (the "**Notification Letter**"). The Notification Letter included notice that the PR was provisionally suspended and afforded him the right to be heard at a Preliminary Hearing before the Tribunal. However, no Hearing has been requested to date.
- 8.** The Horse was also provisionally suspended for two months from April 11, 2019 to June 10, 2019. This suspension was not challenged, and the Horse served the entire period of the provisional suspension.
- 9.** In the Notification Letter the PR was also informed of his right to request an analysis of the Horse's B sample but did not request any further analysis.

II. Procedural background in front of the FEI Tribunal

- 10.** By email dated August 31, 2020, the FEI submitted their response to the FEI Tribunal for the appointment of a Hearing Panel to issue a decision in respect of this case.
- 11.** On September 9, 2020, the Parties were informed of the composition of the Hearing Panel which was appointed to address this case. 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.
- 12.** On September 9, 2020, the FEI informed the FEI Tribunal that they had no objections regarding the composition of the Hearing Panel.
- 13.** On September 10, 2020, the Saudi Arabian Equestrian Federation advised the FEI Tribunal via email communication that the PR had no objections to the composition of the Hearing Panel. We note however that no written communication was received from the PR directly to the FEI Tribunal nor evidence that the Saudi Arabian Equestrian Federation had a Power of Attorney to act on his behalf.
- 14.** Despite the fact that the PR did not communicate with the FEI directly in relation to these proceedings, the FEI Tribunal understands that failure by the PR to respond to the Nomination Letter issued on September 9, 2020 within the procedural timeframes is considered as acceptance of the Proceedings in this instance.
- 15.** Neither Party requested for oral statements to be heard.

III. Considering

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

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

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

Internal Regulations of the FEI Tribunal, 3rd Edition, March 2nd. 2018

("IRs").

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

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

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

FEI Code of Conduct for the Welfare of the Horse.

B. Person Responsible: Mr. Mohamed AL JABERI.

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. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reductio or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

A Fine of up to CHF 15,000 shall also be imposed and appropriate legal costs".

IV. The Parties' Submissions

A. The Submissions of the PR

- 16.** On May 8, 2019, the PR submitted a statement to the FEI alleging that the adverse analytical finding in the Horse's Sample was due to an error made by his physician. He also stated that he only discovered this error after the administration of the treatment when he contacted the physician to discover that a treatment for liver enzymes and digestive system problems (heptenal) had been administered. According to the PR, the physician was unaware that the Horse would participate in international competitions around the time of the treatment.
- 17.** The PR also asserted that in his 14-year sporting career this was his first mistake and that he appreciated the FEI's concern on the integrity of competition and safety of all participant horses.

B. The Response of the FEI

- 18.** On August 31, 2020, the FEI submitted their response to the Tribunal stating that:
 - a. Under Article 3.1 of the EAD Rules the FEI shall have the burden of establishing all the elements of the EAD Rule violation charged, to the comfortable satisfaction of the FEI Tribunal.
 - b. The elements of an Article 2.1 violation are straightforward. *'It is not necessary that intent, fault, negligence or knowing Use be demonstrated to establish an EAD Rule violation under Article 2.1'*. Instead it is a *'strict liability'* offence, established simply by proof that a Banned Substance was present in the Horse's Sample.
 - c. The results of the A sample analysis taken from the Horse at the Event confirming the presence of Diisopropylamine constitutes sufficient proof of the violation of Article 2.1 of the EAD Rules.
 - d. In any event, the PR does not deny the presence of Diisopropylamine in the Horse's Sample. To the contrary, the PR claims that the positive finding of Diisopropylamine in the Horse's Sample is due to the medical treatment administered by the physician. Therefore, the FEI submits that it has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
 - e. When a Prohibited Substance is found in a horse's sample, there is a clear and unequivocal presumption of fault under the EAD Rules.

Article 10.2 of the EAD Rules provides that a PR with no previous doping offences who violates Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two years, unless he can rebut the presumption of fault. To do this, the PR (in accordance with these EAD rules) must establish to the satisfaction of the FEI Tribunal (it being his burden of proof, on the balance of probability):

- i. How the Prohibited Substances (Diisopropylamine) entered the horse's system; and
 - ii. That he bears No Fault or Negligence for that occurrence, i.e., 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 (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EAD Rules); or
 - iii. That he bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced by up to 50%, depending on his degree of fault, pursuant to Article 10.5 of the EAD Rules).
- f. If the PR fails to discharge this burden, the presumption of fault stands, and therefore the two-year ban under Article 10.2 applies.
 - g. In addition, EAD Rules stipulate, and the jurisprudence of the FEI Tribunal and the CAS is very clear: it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proves how the substance (Diisopropylamine) entered into the Horse's system.
 - h. The latter requirement must be strictly applied because without such proof it would be impossible to assess the PR's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substance in the Horse.
 - i. The FEI submitted in this context that the PR must provide clear and convincing evidence that proves how the Diisopropylamine entered the Horse's system.
 - j. In this case, the PR submitted a short statement where he alleged that the positive finding was a result of the physician's mistake and

a medical treatment provided to the Horse (without the PR's knowledge).

- k. In accordance with the FEI, such a simple statement *"...is not corroborated by any reliable evidence (such as for example medical record of the Horse as well as medical log book which would include the date of the medical treatment, place at which it was conducted, route of administration of medication, exact purpose/diagnosis for which medication was used, etc.) that would prove that indeed a medical treatment had taken place and a medication containing the Prohibited Substance was given to the Horse. If one were to accept such a simple statement as a proof, it would undermine the whole anti-doping system and efforts to achieve a level playing field in sport."*
- l. Consequently, given the lack of any factual evidence supporting the reason being offered by the PR for the positive finding, the FEI maintains that the PR has not established how the Prohibited Substance entered the Horse's system and the "threshold requirement" has not been fulfilled in this case.
- m. In terms of the degree of Fault and Negligence by the PR for the rule violation, the starting point of any evaluation is the "personal duty" of the PR following from Article 2.1.1 of the EAD Rules, i.e. his personal duty to ensure that "no Banned Substance is present in the Horse's body".
- n. Further, it is necessary to look at the definitions of *Fault*, as defined in Appendix 1 of the EADCM Regulations.

"Fault is any breach of duty or any lack of care appropriate to a particular situation ...the degree of risk that should have been perceived by the Person Responsible 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 degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's departure from the expected standard of behaviour." (Emphasis added)

"No fault - The Person Responsible 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."

"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... the Athlete must also establish how the Prohibited Substance entered the Horse's system."

- o. Finally, the FEI states: "As indicated in the previous paragraphs of these submissions, the PR has failed to establish how the Prohibited Substance entered the Horse's body and therefore it is not possible to evaluate the degree of the PR's level of Fault or Negligence based on the applicable rules. Therefore, the presumption of fault as stipulated in the Article 10.2 of the EAD Rules shall stand."*
- p. "Even if one was to accept the explanations of the PR regarding the medical treatment provided to the Horse as a source of the Prohibited Substance, it would not constitute an excuse or serve as a mitigating circumstance for its presence in the Horse's system. It is the PR's personal duty to ensure that no Banned Substance is present in the Horse."*
- q. In the current case, "the PR was not only the rider but also the registered Trainer of the Horse". Bearing this in mind for Endurance Riding "the "Trainer" is defined as the person who oversees the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice.' (Art. 800 of the Endurance Rules, updated 9th Edition, effective 1 February 2019)".*
- r. We must also take note of previous "FEI Tribunal decisions¹ that due to the specificity of the Endurance discipline, Trainers indeed make relevant and concrete decisions about their horses such as which feed and supplements (if any) is being fed to the horse; shoeing type and cycle; choice of the veterinarian; veterinarian treatments including any administration of medications; training regime and exercise program; competition schedule".*
- s. It is therefore difficult to believe that the PR (even from a duty of care perspective) would not have been aware of the exact medical treatment the Horse underwent and medications administered to*

¹ See for example the FEI Tribunal Decision dated 25 June 2020 in the case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI

the Horse in the course of such treatment, as this would have a crucial impact not only on the competitions schedule but also training activities.

- t. The FEI concludes that, since *“the PR has not established how the Banned Substance Diisopropylamine entered the body of the Horse, no reduction of the standard sanction as provided in Article 10.2 of the EAD Rules shall apply and consequently the PR shall be sanctioned with two (2) years Ineligibility period. The Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EAD Rules”*.
- u. In Conclusion, *“the FEI respectfully requested that the FEI Tribunal issue a decision:*
- *upholding the charge that the PR has violated Article 2.1 of the EAD Rules;*
 - *imposing a period of Ineligibility of two (2) years on the PR, commencing on the day of the decision (the Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period);*
 - *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Articles 9 and 10.1.2 of the EAD Rules;*
 - *fining the PR in the amount of seven thousand five hundred (7500) CHF; and*
 - *ordering the PR to pay the legal costs of two thousand (2000) CHF that the FEI has incurred in these proceedings”*.

V. Jurisdiction

- 19.** 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. The PR is a member of the Saudi Arabian Federation, the latter being a member of the FEI therefore he is bound by the EAD Rules.

VI. The Decision

- 20.** Pursuant to Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse A sample. The Tribunal is satisfied that the laboratory tests and reports are accurate for the adverse analytical finding of

Diisopropylamine. The Tribunal takes note that the PR did not challenge the accuracy of the test results and the substance therein. Diisopropylamine is classified as a Banned Substance under FEI Equine Prohibited Substances List and the presence of Diisopropylamine in a Horse's system is always prohibited under Article 2.1 of the EAD Rules.

- 21.** Accordingly, the FEI has established the occurrence of an anti-doping rule violation in line with the burdens and standards of proof under Article 3 of the EAD Rules.
- 22.** Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, i.e. the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 23.** However, the Tribunal takes note that whilst the Trainer has submitted a short explanation as to how the substance entered the Horse's system (an apparent mistake made by the physician), no corroborating evidence has been supplied i.e. in terms of medical paperwork or otherwise. Therefore, the Tribunal finds such an explanation implausible and cannot consider the PR's explanation as one that meets the legal requirements necessary in order to establish, on a balance of probabilities, how the Banned Substance entered the Horse's system.
- 24.** In the absence of establishing on a balance of probabilities how Diisopropylamine entered the Horse's system, the Tribunal cannot evaluate the degree of fault of the PR for the Rule Violation. In addition even if the source of the Diisopropylamine was proved, the Tribunal would find that No (Significant) Fault or Negligence does not apply in this case because under Article 2.1.1 of the EAD Rules as it is the PR's personal duty of care to ensure that no banned substances are present in the horse.
- 25.** In line with previous FEI decisions and CAS case law, the Tribunal finds that the PR is responsible for the Horse's status when riding at an Event and this includes all aspects of preparation both mentally and physically for the Horse.
- 26.** Consequently, the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, i.e., two (2) years pursuant to Article 10.2 of the EAD Rules is possible.

27. The Tribunal takes note that the PR was provisionally suspended from 11 April 2019 and the Tribunal understands that he did not compete during the period of the Provisional Suspension.

VII. Disqualification

28. Pursuant to Articles 9 and 10.1.2 of the EAD Rules, the results of the PR and Horse combination obtained in the Event with all consequences, including forfeiture of any related medals, points and prizes are disqualified.

VIII. Sanctions

29. The Tribunal imposes a two (2) years period of Ineligibility on the PR for the said rule violation, pursuant to Article 10.2 of the EAD Rules;

30. In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- a. upholds the charge that the PR has violated Article 2.1 of the EAD Rules;
- b. imposes a period of Ineligibility of two (2) years on the PR, the period of the Provisional Suspension, effective from April 11, 2019 shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until the April 10, 2021;
- c. the PR is fined in the amount of seven thousand five hundred (7500) CHF; and
- d. the PR is ordered to pay the legal costs of two thousand (2000) CHF that the FEI has incurred in these proceedings.

31. No PR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).

32. Where a PR who has been declared Ineligible, violates against participation or attendance during Ineligibility, the results of any such participation shall be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.13 of the EAD Rules).

- 33.** According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the parties concerned.
- 34.** In accordance with Article 12 of the EAD 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.

FOR THE FEI TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', is centered on the page. The signature is stylized with a large loop at the top and a horizontal line across the middle.

Mr. Cesar Torrente, One-Member Panel