

DECISION of the FEI TRIBUNAL
dated 23 December 2020
(Reference No. FEI Tribunal: A20-0011)

In the matter of

Ms. Laura Arkle (“Ms. Arkle” or “the Appellant”)
Represented by Mr Howard Jacobs

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

together “the Parties”

I. COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr José A. Rodriguez Alvarez (Chair)
Ms Diane Pitts
Mr Cesar Torrente

II. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 24th edition, effective 19 November 2019 (“Statutes”).

General Regulations, effective 24th edition, 1 January 2020, (“GRs”).

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

2. The relevant Legal Provisions

GRs Article 162.1:

"1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

(...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.

(...)

5. Appeals to the FEI Tribunal must be dispatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within thirty (30) days of the date on which the Secretary General's notification of the earlier Decision was sent."

GRs Article 162.6:

"A deposit to the FEI of the equivalent of CHF 500 must be paid in order for the Appeal to be admissible".

IRs Article 18.1:

"In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 162 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations. (...)

III. DECISION

1. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written positions. The Tribunal duly took into consideration all the Parties' written submissions and communications received up to date, details of which are outlined below. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, the Tribunal only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

Factual background

2. Laura Arkle is an UAE registered rider and the manager of Team Z7, a professional Jumping Team registered in the UAE.

Procedural background

3. On 16 October 2020, the Legal Representatives for the Appellant, lodged an appeal against a decision issued by the FEI on the 24 September 2020 suspending the National Federation of the United Arab Emirates (UAE) from all equestrian activities across all FEI disciplines until 31 December 2020 and activities relating to the discipline of Endurance until 31 March 2021. The Appellant requested that the full suspension be immediately lifted, such that the UAE may resume activities across all disciplines other than Endurance. The Appeal brief did not request for the hosting of an oral hearing.
4. On 28 October 2020, the FEI Tribunal Chairman nominated a three-member panel in accordance with Article 19.1 of the IR's and in accordance with Article 19.3 of the IR's the Parties were invited to submit objections to the constitution of the nominated panel by 2 November 2020. The FEI was provided the opportunity to submit their answer to the Appeal within 20 days, by 9 November 2020 at the latest.
5. On 28 October 2020, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
6. On 28 October 2020, the FEI submitted a letter to the FEI Tribunal, outlining issues relating to the present appeal and requesting for a stay of this appeal pending the outcome of the CAS proceedings that were ongoing (CAS 2020/A/7448 UAE Equestrian and Racing Federation, Dubai Equestrian Club and Emirates International Endurance Village v. Fédération Equestre Internationale) which preceded the matter at hand.
7. On 3 November 2020, the Appellants submitted a letter to the FEI Tribunal objecting to such a request to stay the appeal on the basis that Appellants were not party to the FEI Board proceedings or subject to any sanctions under the FEI Board Decision, but instead are indirectly affected by the decision because of their right to participate in equestrian sport.

8. On 11 November 2020, the FEI Tribunal communicated to all the Parties that due to the impending decision on the Appeal currently with CAS, the principal nature of said appeal vis-à-vis the matter at hand, bearing in mind that the accessory right does not lead but follows its principal, and finally considering the balance of interest between the parties, the FEI Tribunal confirmed a stay on the present Appeal (Bowring et al. v FEI) was reasonable and therefore granted.
9. The FEI Tribunal also requested in their letter of the 11 November 2020 (considering the fast-tracked timelines of the proceedings in front of CAS) that by 18 November 2020, the FEI must produce the CAS award to all Parties; and by 27 November 2020, the FEI must submit its answer to this Appeal (assuming the CAS Proceedings were concluded).
10. On the 18 November 2020, the FEI submitted the operative part of the CAS Award in CAS 2020/A/7448 (UAE Equestrian and Racing Federation, Dubai Equestrian Club and Emirates International Endurance Village v. Fédération Equestre Internationale) to the FEI Tribunal.
11. On the 19 of November 2020, the FEI submitted a letter to the FEI Tribunal, referring to the operative part of the CAS Award in CAS 2020/A/7448 where it was confirmed by CAS that “FEI membership of the UAE Equestrian and Racing Federation is suspended with respect to all FEI disciplines from 24 September 2020 until 31 December 2020”.

In the above-referenced letter the FEI submitted that the CAS Award renders the Appellants’ appeals moot and the Appeals (outstanding at that stage) should be dismissed on that basis. They also submitted that the FEI Tribunal does not have jurisdiction to rule on these satellite appeals by the Appellants against the FEI Board Decision of 24 September 2020, or indeed the scope of that decision, in circumstances where the Court of Arbitration for Sport has issued a final ruling on the matter and has set aside the Board Decision and issued a replacement decision. In this respect they asked FEI Tribunal to first rule on its jurisdiction to consider the Appeals and/or the admissibility of the Appeals in light of the CAS Award before the FEI is required to submit its Answer.

12. On the 27 November 2020, the FEI Tribunal wrote to all Parties enclosing a copy of the CAS award (CAS 2020/A/7448 UAE Equestrian and Racing Federation, Dubai Equestrian Club and Emirates International Endurance Village v. Fédération Equestre Internationale) and confirming that the outstanding Appeals filed against the FEI Board Decision (dated 24 September 2020) with regard to the suspension of the UAE Equestrian & Racing Federation (UAE NF)

will not be consolidated and the FEI Tribunal will proceed to review each case separately. The FEI Tribunal also highlighted that one of the cases under similar circumstances had since been withdrawn and now requested that the Appellants present their position in relation to documentation now provided by no later than the 1 December 2020.

13. On 1 December 2020, the Appellants issued a reply to the FEI Tribunal confirming the withdrawal of three of their Appeals in light of the CAS Decision. However, the FEI Tribunal was informed to proceed with the Appeal of Ms Arkle stating that her circumstances were distinct from the other Appellants. Ms Arkle's Legal Representative further requested that the FEI Tribunal refuse to bifurcate the proceedings and that a final decision be rendered as soon as possible to provide any meaningful relief. The relevant reply did not request for an oral hearing to be hosted.
14. On 9 December 2020, the FEI Tribunal issued a letter to the Appellants in response to their letter of the 1 December 2020. The FEI Tribunal confirmed that they would render a final decision based on the information to date in relation to these proceedings whilst respecting the deadlines already in place pertaining to these matters.
15. On 10 December 2020, the Appellants replied to the FEI Tribunal and requested that a videoconference hearing be scheduled in order for the Appellant to be able to fully present her case.
16. On 14 December 2020, the FEI Tribunal issued a letter to the Appellants to confirm that in order to ensure the issuance of a decision before the expiration of the pending sanction, the FEI Tribunal will render a final decision based on the written submissions provided by the Parties to date, whilst respecting the deadlines already in place.
17. On the 21 December 2020, the Appellants issued a further letter to the FEI Tribunal stating that Ms. Arkle has the right to request an oral hearing, and if the FEI Tribunal refuses to hold an oral hearing as per Ms. Arkle's request, she will reserve her right, under Article 162.1 of the FEI General Regulations to appeal to the Court of Arbitration for Sport.

VII. Submission by the Appellant

18. The Appellant submitted as follows with regard to admissibility and jurisdiction of the Appeal.

19. The Appellant confirmed that she is the manager of Team Z7, a professional Jumping team registered in the UAE but with riders registered with British Equestrian and Horse Sport Ireland. As the horses are UAE-owned, they cannot compete, nor can they be sold. Therefore, their business is profoundly affected by the current suspension of the UAE NF.
20. The Appellant submitted that she has the right to appeal the decision under Article 162 of the FEI General Regulations and that there is nothing in the FEI Rules to render this appeal inadmissible.
21. The Appellant also confirmed the filing fee was paid pursuant to the GRs Article 162.6.
22. In terms of consequences for the Appellant, the following were submitted in the witness statement of Ms Arkle:
 - a) On a personal level the full suspension has caused significant stress for the Appellant who has spent her time during the suspension trying to work out alternative options to ensure that Team Z7's horses can keep travelling and participating within short time-frames. In addition, her role as Team Manager has been reduced with the lack of competitions.
 - b) The Appellant further explained in her witness statement that the immediate impact of the full suspension for her Team came as a significant shock as the riders for this team were due to compete in Portugal and were unable to. The immediacy of such a suspension caused financial loss to the Team and reduced commercial and sporting opportunities for the Team. The Appellant furthered claimed that the suspension also prevented the Team from buying and selling horses, because the UAE ownership cannot be transferred while the full suspension is in place. This has suppressed the ability of the team's owner to earn a living.
 - c) In relation to horse welfare concerns, the Appellant expressed a "real worry" about the welfare of Team Z7's horses as there has been insufficient preparation for the international season beginning in January 2021.
 - d) The Appellant argued that by the principle of *lex sportiva* whereby a sanction must be proportionate to the breach, this does not equate to her circumstances, as the sanction in place is impacting directly and indirectly on those that did not cause it, nor benefitted from the breach. She furthered

that her connection to the breach is remote as she is a Jumping not an Endurance rider and also registered with the British Equestrian Federation thus the impact of the sanction on her circumstances is wholly disproportionate.

- e) Finally, the Appellant requested for the full suspension to be immediately lifted and that the UAE NF may resume activities across all disciplines other than Endurance.

VIII. Submission by the FEI

- 23. The FEI responded to the Appeals filed by the Legal Representative of Ms Arkle and confirmed these were all appeals against the FEI Board decision dated 24 September 2020 (FEI Board Decision) suspending the UAE Equestrian & Racing Federation (UAE NF) and imposing certain financial sanctions against the UAE NF and the Organising Committees of the 2020 Sheikh Mohammed bin Rashid Al Maktoum Endurance Cup and the 2020 President's Cup, for breaches of FEI Rules and Regulations.
- 24. The FEI submitted that the Appellants were not party to the FEI Board proceedings or subject to any sanctions under the FEI Board Decision, but instead are indirectly affected by the decision because their right to participate in equestrian sport and/or in competitions organised in the UAE depends on the UAE NF being a member in good standing with the FEI. They furthered that the UAE NF and the two Organising Committees have filed an appeal against the FEI Board Decision and have agreed with the FEI that the appeal be heard directly by the Court of Arbitration for Sport (CAS), thereby bypassing the need for the appeal to be heard first by the FEI Tribunal. In that regard, the FEI confirmed that CAS is the proper forum to definitively address the issues raised in the present appeal, including whether or not to uphold the FEI Board Decision, and it will do so within a very short time frame. Consequently, the FEI asked that the FEI Tribunal stay the appeal pending the outcome of the CAS proceedings.
- 25. The view of the FEI was that it was not appropriate for the FEI Tribunal to hear satellite challenges to the FEI Board Decision when that decision is under review by the CAS. In addition, they claimed that the appellants did not have standing to bring the appeal before the FEI Tribunal, given that the FEI Board Decision was not directed against them.
- 26. In line with the procedural calendar issued by the FEI Tribunal, the FEI submitted

the operative part of the CAS Award (CAS 2020/A/7448 (UAE Equestrian and Racing Federation, Dubai Equestrian Club and Emirates International Endurance Village v. Fédération Equestre Internationale) on the 18 November 2020. The CAS Award confirmed 'the FEI membership of the UAE Equestrian and Racing Federation is suspended with respect to all FEI disciplines from 24 September 2020 until 31 December 2020'.

IX. Legal Discussion

27. Having considered all the applicable rules and regulations as well as submissions and evidence provided by the Parties, the Tribunal has to decide on their jurisdiction to consider the Appeal and/or the admissibility of the Appeals in light of the CAS Award.
28. The Tribunal acknowledges that pursuant to Article 162 of the GRs, the appeal is admissible. In particular, note is taken that the Appellant has fulfilled the relevant formal requirements (cf. art. 162.4 of the GRs), that it does not fall under the list of possible inadmissible appeals (cf. art. 162.2 of the GRs) and that it has been demonstrated a legitimate interest against a Decision made by an FEI body. As to the latter, it is worth noting that said legitimate interest is directly related to the close relationship between the Appellant with the UAE Equestrian and Racing Federation and the effects of the abovementioned Decision on the rights/benefits of the relevant Federation.
29. Furthermore, the Tribunal acknowledges the following extracts from the FEI Statutes and CAS Code as outlined by the FEI in their letter dated 19 November 2020:
 - (i) Article 39.2 of the FEI Statutes¹ wherein it states that "Any dispute between National Federations or between any National Federation and the FEI, which falls outside the jurisdiction of the FEI Tribunal shall be settled definitively by the CAS in accordance with the CAS Code of Sports-related Arbitration";
 - (ii) Article 39.3 of the FEI Statutes: "Provided both the FEI and the other party or parties agree, any dispute (excluding violations of the FEI Equine Anti-Doping and Controlled Medication Regulations) may bypass the FEI Tribunal and be submitted directly to CAS and settled definitively by the CAS in accordance with the CAS Code of Sports-related Arbitration";

¹ 24th edition, effective 19 November 2019

- (iii) Article 41.2 of the FEI Statutes: “All penalties imposed by a competent body of the FEI or the CAS shall be accepted by all National Federations and enforced by the FEI and all National Federations concerned”;
- (iv) Code of Sports-related Arbitration and Mediation Rules (the CAS Code)², Article R.59 wherein it states that the Panel may decide to communicate the operative part of the award to the parties, prior to delivery of the reasons. The award shall be enforceable from such notification of the operative part by courier, facsimile and/or electronic mail. The award, notified by the CAS Court Office, shall be final and binding upon the parties subject to recourse available in certain circumstances pursuant to Swiss Law within 30 days from the notification of the award by mail or courier. It may not be challenged by way of an action for setting aside to the extent that the parties have no domicile, habitual residence, or business establishment in Switzerland and that they have expressly excluded all setting aside proceedings in the arbitration agreement or in a subsequent agreement, in particular at the outset of the arbitration.

30. The above provisions of the FEI Statutes and the CAS Code make it clear to all Parties that (i) the CAS Award is the final and conclusive ruling on the FEI Board’s decision; and (ii) that the CAS Award of 17 November 2020 must be enforced by the FEI.

31. Bearing in mind the above and despite the admissibility of the matters under consideration in this Appeal, Ms Arkle v FEI, the FEI Tribunal must have regard to the principal Appeal filed by UAE NF and the two Organising Committees against the FEI Board Decision (CAS 2020/A/7448 UAE Equestrian and Racing Federation, Dubai Equestrian Club and Emirates International Endurance Village v. Fédération Equestre Internationale) which preceded the matter at hand. In this regard, the Tribunal takes notice that the CAS award clearly confirms that the UAE NF is suspended from all FEI disciplines until 31 December 2020.

32. In this sense, similar to the initial decision issued by the FEI Board, the CAS award encompasses a set of effects to those directly part of the appeal and other close third parties. Thus, the FEI Tribunal finds that although it has jurisdiction to consider the Appeal, it does not have the authority to overturn a decision that has already been passed by a higher authority and is therefore unable to continue with the Appellants’ appeal.

² In Force from 1 July 2020

33. The FEI Tribunal therefore cannot make any further conclusions outside of the terms of the CAS Award and therefore renders the Appeal of Ms Arkle moot. A decision on this Appeal has already been made therefore these proceedings cannot continue.
34. Finally, the Tribunal acknowledges letter dated 21 December 2020 received from the Legal Representatives for the Appellant, reiterating their request from 10 December 2020, that the FEI Tribunal hold an oral hearing in relation to the present case. Upon review of the request and in reference to the prior letters from 9 December and 14 December 2020, the FEI Tribunal confirm that an oral hearing was considered and determined as unfeasible under the particulars of such proceedings.

In this regard, the FEI Tribunal confirm they have taken note of the concerns of Ms Arkle remitted only since 10 December and emphasizes that both parties have been granted ample opportunities to present their position and remit evidence in support of their claims. The FEI Tribunal also noted that the request only came after the parties were informed that the FEI Tribunal was going to proceed on the issuance of a decision.

Furthermore, the FEI Tribunal is aware that if such an oral hearing were to be scheduled, this would be at the earliest in the first week of January, nevertheless the parties should note that by January 2021 the relevant decision issued by the Board - and amended by the CAS award - would have already accomplished its effects and no possible relief could be sought for the Appellant. Bearing in mind the above, and upon having heard extensively from both parties the FEI Tribunal considered the latent mootness of such an Appeal, the practical complexities of timelines in relation to hosting an oral hearing and as such it was decided to issue a written decision without delay to guarantee the purpose of the decision.

X. Decision

35. As a result, the Tribunal therefore decides as follows:
- 1) The Appeal is admissible.
 - 2) The Appeal is dismissed.
 - 3) All other requests are dismissed.
 - 4) No deposit shall be returned to the Appellant. Each party shall pay their own costs in these proceedings.

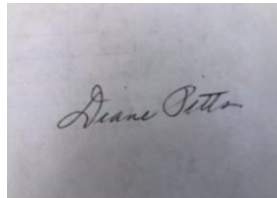
36. According to Article 168 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.

37. According to Articles 165.1.3 and 165.6 of the GRs, this decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE FEI TRIBUNAL(three-panel member):



Mr. José A. Rodríguez Álvarez (MEX), Chairman;
Ms. Diane Pitts (USA);
Mr. Cesar Torrente (COL)