

DECISION of the FEI TRIBUNAL

dated 29 July 2021

(FEI Case number: FEI 2020/BS14-CHAMPULLI ZAHIR)

FEI Tribunal Hearing Panel:

Mr Martin Gibbs

FEI Tribunal Reference: C21-0036

Horse/Passport: CHAMPULLI ZAHIR/106KS88/CHI

Person Responsible/ID/NF: Felipe SAT YABER/10067266/CHI

Additional Person Responsible/ID/NF: Alfredo SAT YABER/10032360/CHI

Event/ID: CEI3* 160 - Llay Llay (CHI), 2020_CI_2040_E_S_03

Date of Event: 14/11/2020 - 15/11/2020

Prohibited Substances: Morphine, Oripavine

Bar Code Nos.: 5588392

I. Factual background

- 1.** Mr Felipe SAT YABER (FEI ID 10067266) the Person Responsible (**the PR**), is a rider for Saudi Arabia.
- 2.** Mr Alfredo SAT YABER (FEI ID 10032360) was the registered Trainer of the Horse in the FEI database at the time of the Event and is the Additional Person Responsible (**the APR**).
- 3.** The Fédération Equestre Internationale (**the FEI**) together with the PR and 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).
- 4.** The PR participated with the horse CHAMPULLI ZAHIR (**the Horse**), at CEI3* 160 - Llay (CHI), 2020_CI_2040_E_S_03 (**the Event**) between 14 and 15 November 2020. The APR was the Trainer of the Horse at the time of the Event. As members of the Chilean Equestrian Federation (**the CHI-NF**), which in turn is a member of the FEI the PR and APR were bound by FEI's Equine Anti-Doping Rules (**the EADRs**).
- 5.** On 15 November 2020, 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, LGC Newmarket Road Laboratory in Cambridgeshire, UK for analysis. The samples were divided into an "A sample" and "B sample".
- 6.** The urine analysis of the A Sample revealed the presence of Morphine and Oripavine. Morphine is an opioid with analgesic effect and is classified as a Controlled Medication Substance. Similarly, Oripavine is an opioid with analgesic effect and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (**the FEI List**). The positive finding of Morphine and Oripavine in the Horse's sample gives rise to an equine anti-doping rule violation under the EADRs.
- 7.** Morphine and Oripavine are Prohibited Substances identified as Specified Substances. Specified Substances may enter a Horse's system inadvertently and this category allows the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision. The presence of Morphine in combination with Oripavine in a Horse's sample indicates a potential ingestion of poppy seed and/or feed contaminated with poppy seed.
- 8.** Opium poppy, *Papaver Somniferum*, contains more than 40 different alkaloids. The five main alkaloids of *P. somniferum* are Morphine, Codeine, Thebaine, Papaverine and Noscapine (DINGERMANN et al.,

2004). Morphine is the dominant alkaloid and a strong naturally occurring pain reliever. Codeine and noscapine are used as cough suppressant and papaverine is a smooth muscle relaxant. Thebaine is not directly used therapeutically but is converted into other pain relievers. Oripavine is one of the major metabolites of Thebaine. Oripavine is not used clinically as it has a very narrow therapeutic margin and high toxicity.

II. Initial Proceedings

- 9.** On 16 December 2020, the FEI Legal Department officially notified the PR, the APR and the CHI-NF of the presence of the Prohibited Substances in the A sample, the rule violation and the potential consequences **(the Notification Letter)**. The Notification Letter informed the PR and APR 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 EADRs based on the Laboratory's adverse analytical finding of Morphine and Oripavine in the Horse's Sample collected at the Event in accordance with Art. 10.8.6 of the EADRs.
- 10.** The Notification Letter also included notice that the Horse was provisionally suspended for a period of two months, from the date of the Notification Letter, i.e., from 16 December 2020 until 15 February 2021.
- 11.** The PR, the APR and the Owner of the Horse were also informed in the Notification Letter of their right to request an analysis of the B sample. On 22 December 2020, the APR requested the B Sample be analysed. On 1 February 2020, the FEI informed the PR, the APR and the CHI-NF of the results of this analysis which confirmed the presence of the Prohibited Substances i.e., Morphine and Oripavine.

III. Procedural background in front of the FEI Tribunal

- 12.** By email dated 1 June 2021, the FEI submitted to the FEI Tribunal the Settlement Agreement signed by the PR and the APR on 30 May 2021 and the FEI on 1 June 2021.
- 13.** On 25 June 2021, 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 30 June 2021.
- 14.** On 25 June 2021, the PR and the APR confirmed they had no objections to the composition of the Hearing Panel.
- 15.** On 25 June 2021, the FEI also informed the FEI Tribunal that they had no

objections regarding the composition of the Hearing Panel.

IV. 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 Rules ("**EADRs**"), 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. 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.”

EAD Rules Art. 10.8.6:“Violations involving both a Controlled Medication Substance or Method and a Banned Substance or Method. Where a Person Responsible and/or member of the Support Personnel based on the same factual circumstances is found to have committed a violation involving both (a) Controlled Medication Substance(s) or (a) Controlled Medication Method(s) under the ECM Rules and (a) Banned Substance(s) or (a) Banned Method(s) under these EAD Rules, the Person Responsible and/or member of the Support Personnel shall be considered to have committed one EAD Rule violation and the Sanction imposed shall be based on the Banned Substance or Banned Method that carries the most severe Sanction”.

V. The Parties’ Submissions

A. The Submissions of the PR and the APR:

- 16.** On 22 February 2021, the PR and the APR provided a written submission dated 21 February 2021 to the FEI including various exhibits. The main points submitted by the PR and APR can be summarised as follows:
- After investigation, it was discovered that the Alfaalfa which the Horse was fed with in November, before and during the Event, had been contaminated with Poppy, *Papaver Somniferum L*;
 - On 28 October 2020, 138 bales of Alfaalfa were purchased from a local producer by the Rinconada Equestrian Club, where the Horse was stabled. The producer harvested the Alfaalfa from his property in the Los Andes Province. The producer submitted a written statement that after inspection it was established that the neighbouring property grew

- poppy flowers for ornamental purposes;
- On 5 February 2021, the remaining bales of the Alfaalfa were inspected by a three-member commission consisting of an agricultural engineer, an FEI Veterinarian and the President of the Chilean Association of Equestrian Endurance. All three members of the commission concluded that poppy flowers were indeed present in the Alfaalfa. All three members of the commission provided written statements confirming this and accompanying certificates attesting to their qualifications;
 - On 8 February 2021, a Notary Public reviewed the bales and concluded that they contained stems and flowers buds, which appeared to be poppies. The Notary Public took photographs of the Alfaalfa and provided a notarised certificate confirming this;
 - A sample of the remaining Alfaalfa bales were sent for analysis to the Weed Taxonomy Laboratory of the Chilean Agricultural and Livestock Service (the "SAG Laboratory"). The results of the analysis confirmed that in the sample the most prevalent species, apart from the Alfaalfa, was Opium Poppy. The SAG Laboratory issued a Phytosanitary Report and a Complementary Technical Report on the findings of the analysis with photographs of the Opium Poppy;
 - The PR and the APR submitted the Technical Data File of the National Inventory of Species of Chile to the FEI compiled by the Ministry of Environment. The Technical Data file confirmed the presence of Opium Poppies in Chile, in particular in the Los Andes Province;
 - The file clarified that Opium Poppy was not a well-known species, and therefore its presence in the Alfaalfa would likely not be detected by someone who was not a specialist in flora;
 - The PR and the APR concluded that they could not have foreseen that the Alfaalfa was contaminated with the Opium Poppy and that no one without specialist knowledge could reasonably be expected to identify it. Therefore, the PR and APR considered they had established they could not have been reasonably aware of the contamination of the Horse's feed;
 - The PR and the APR requested a declaration of no fault or negligent action or omission.

B. The Response of the FEI highlighted the following:

- The FEI noted that taking into account the results of the analysis of the sample of Alfaalfa conducted by the SAG Laboratory, the conclusions of the three-member review group, the statement from the Notary Public, including photographs where Opium Poppy flower buds were visible, the governmental Technical Data file confirming the presence of the Opium Poppy in the Los Andes Province, the FEI was satisfied that the PR and the APR had established, on a balance of probabilities, that the Alfaalfa, the Horse was fed with was contaminated with Opium

- Poppy;
- The FEI also clarified that Anti-Doping Rule Violations involving poppy flowers were a factor in the introduction of the FEI category of "Specified Substances";
 - Therefore, the FEI was satisfied that the PR and the APR established, on a balance of probabilities, that Morphine and Oripavine entered the Horse's system due to inadvertent exposure of the Horse to the contaminated Alfaalfa containing Opium Poppy;
 - Furthermore, the FEI agreed that taking into account all the circumstances the PR and the APR could not reasonably have known or suspected even with the exercise of utmost caution, that the Alfaalfa was contaminated;
 - The FEI considered that this conclusion is in line with previous case law of the FEI Tribunal. Therefore, the FEI was satisfied that the PR and the APR bore no fault or negligence for the Rule Violation.

VI. The Decision

17. Agreement between the Parties:

Quote

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:

"In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse CHAMPULLI ZAHIR ("the Horse") at in the CE13 160 in Llay Llay (CHI), taking place from 14 to 15 November 2020 (the "Event"), the PR, the APR and the FEI agree in accordance with 7.6.1 EADRs on the following:*

- (a) The PR and the APR admit the violation of Article 2.1 of the EADRs (The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample); and*
- (b) The PR and the APR established on a balance of probabilities how Morphine and Oripavine entered the Horse's system; and*
- (c) The PR and the APR bear no fault or negligence for the Rule Violation and therefore the PR and the APR shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e., two years) shall be eliminated; and*

- (d) *In accordance with Article 10.8.3 of the EADRs, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EADRs; and*
- (e) *In accordance with Articles 9.1 and 10.1.2 of the EADRs 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; and*
- (f) *The PR and the APR shall not incur any fines; and*
- (g) *No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EADRs) will apply in this case; and*
- (h) *The APR bears the costs of the B Sample analysis as per the B Sample Analysis Request in the amount of 1'000 CHF; and*
- (i) *Each party will bear its own legal and other costs incurred in connection with these proceedings.*

This agreement is made in accordance with Article 7.6.1 of the EADRs 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 EADRs.

The parties acknowledge and agree that pursuant to Article 13.3 of the EADRs, the Final Decision shall 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*****

VII. Jurisdiction

18.

- (a) The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADRs, as well as Article 18 of the IRs.
- (b) The PR and the APR are members of the Chilean Equestrian Federation, and as such are subject to the EADRs.

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

VIII. 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 Parties agree the PRs and APRs have established on a balance of probability – how Morphine and Oripavine were present in the sample of the Horse.
- 20.** The Tribunal acknowledges that the PRs, APRs and the FEI have agreed on terms for the closure of proceedings in accordance with 7.6.1 EADRs as detailed at paragraph 17 of this Decision.
- 21.** 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.
- 22.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADRs.
- 23.** 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 2020/BS14 CHAMPULLI ZAHIR.

IX. Decision

- 24.** The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Felipe Sat Yaber and the APR, Mr Alfredo Sat Yaber concerning the case 2020/BS14 CHAMPULLI ZAHIR is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article VI above are incorporated into this Decision.
- 25.** This Decision is subject to appeal in accordance with Article 12.2 of the EADRs. 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.

26. This Decision shall be notified to the PR, APR, to the President of the NF of the PR and the APR, and to the FEI.

27. This Decision shall be published in accordance with Article 13.3 of the EADRs.

X. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. The Secretary General of the NF of the person sanctioned: Yes

c. The President of the Organising Committee of the Event through his NF: No

d. Any other: No

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