

DECISION of the FEI TRIBUNAL

dated 17 December 2021

(FEI Case Number: HUMAN CASE 2020/HD06 MOHAMED TALAAT)

FEI Tribunal Hearing Panel:

Mr. José A. Rodriguez Alvarez (MEX), one-member panel.

FEI Tribunal Reference: C21-0040

Athlete/FEI ID/NF: Mohamed TALAAT/10021782/EGY

Event/ID: African Games-S - Rabat (MAR), 2019_G-AF_0001_S_S_01

Date of Event: 20/08/2019 - 24/08/2019

Prohibited Substance: Cannabinoides/ Carboxy THC

Sample Collection: 22/08/2019

Sample Code Nos.: 4479312

I. **SUMMARY OF THE FACTS:**

1. **Claim Brief:** By FEI Legal Department.

2. **Case file:** The Tribunal duly took into consideration all the Parties' written submissions and communications received up to date, as well as oral arguments presented during the hearing on 1 October 2021.

3. **Hearing:** 1 October 2021 at 2 pm (Central European Time by videoconference (via Cisco WebEx).

4. **Present:**

The FEI Tribunal

- FEI Tribunal Panel, Mr. José A. Rodriguez Alvarez (MEX)
- Ms. Hilary Forde, FEI Tribunal Clerk

Athlete:

- Mr. Mohamed TALAAT

Counsel for the Athlete:

- Represented by Van Steenbrugge Advocaten (Legal Representation)
- Mr. Johan Heymans
- Mr. Walter VanSteenbrugge
- Ms. Yasmina El Kaddouri (Legal Assistant)

Witnesses for the Athlete:

- Mr Hassan Kamal
- Mr Ahmed Assad
- Dr. Apr. Danielle Borrey (Athlete's scientific expert)

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel

II. SUMMARY OF LEGAL AUTHORITY

1. 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 Page 3 of 24 and 167 ("**GRs**").

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

FEI Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 ("**WADA Prohibited List**").

2. THE RELEVANT LEGAL PROVISIONS

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)."

ADRHA Scope: "These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events. (...)"

ADRHA Article 2.1.1: "It is each Athlete's personal duty to ensure that no Prohibited Substance enters his or her body. Athletes are responsible for any Prohibited Substance, or its Metabolites or Markers found to be present in their Samples. Accordingly, it is not necessary that intent, Fault, negligence or knowing Use on the Athlete's part be demonstrated in order to establish an anti-doping rule violation under Article 2.1.1"

ADRHA Article 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6:

Article 10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the antidoping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance and Page 4 of 24 the FEI can establish that the anti-doping rule violation was intentional.

Article 10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

Article 10.2.3 As used in Articles 10.2 and 10.3, the term “intentional” is meant to identify those Athletes who cheat. The term therefore requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall be rebuttably presumed to be not intentional if the substance is a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition. An anti-doping rule violation resulting from an Adverse Analytical Finding for a substance which is only prohibited In-Competition shall not be considered intentional if the substance is not a Specified Substance and the Athlete can establish that the Prohibited Substance was Used Out-of-Competition in a context unrelated to sport performance.”

ADRHA Article 10.5: “Reduction of the Period of Ineligibility based on No Significant Fault or Negligence

Article 10.5.1 Reduction of Sanctions for Specified Substances or Contaminated Products for Violations of Article 2.1, 2.2 or 2.6

10.5.1.1 Specified Substances Where the anti-doping rule violation involves a Specified Substance, and the Athlete or other Person can establish No Significant Fault or Negligence, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years of Ineligibility, depending on the Athlete’s or other Person’s degree of Fault.

10.5.1.2 Contaminated Products In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

ADRHA Article 10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Article may be no less than eight years."

ADRHA Article 10.10 Financial Consequences

"Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of proportionality, elect to a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or b) fine the Athlete or other Person in an amount up to 15,000 CHF (fifteen thousand Swiss francs). The imposition of a financial sanction or the FEI's recovery of costs shall not be considered a basis for reducing the Ineligibility or other sanction which would otherwise be applicable under these Anti-Doping Rules or the Code. In addition, for any anti-doping rule violation, some or all of sport related financial support or other sport-related benefits received by such Athlete or other Person may be withheld by the FEI and/or its National Federations."

ADRHA Article 10.11 Commencement of Ineligibility Period

"Except as provided below, the period of Ineligibility shall start on the date of the final hearing decision providing for Ineligibility or, if the hearing is waived or there is no hearing, on the date Ineligibility is accepted or otherwise imposed.

ADRHA Article 10.11.1 Delays Not Attributable to the Athlete or other Person

“Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified.”

III. THE DECISION

5. Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions and documentary evidence submitted during these proceedings as well as the oral testimony given at the hearing held on 1 October 2021. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present case, the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

IV. FACTUAL AND PROCEDURAL BACKGROUND

6. Mr Mohamed TALAAT (FEI ID 10021782), the Athlete (**the “Athlete”**), is an International-Level Athlete participating in the discipline of Jumping and registered with the National Equestrian Federation of Egypt (**the “EGY-NF”**).
7. The Fédération Equestre Internationale (**“the FEI” together with the Athlete, “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).
8. As a member of the EGY-NF, which is a member of the FEI, the Athlete is bound by the FEI’s Anti-Doping Rules for Human Athletes (**the “ADRHA”**; based on the World Anti-Doping Code, **the “Code”**) which specifies the circumstances and conduct which constitute anti-doping rule violations.
9. Urine samples were taken from the Athlete on 22 August 2019 for testing under the ADRHA. The samples were divided into an A Sample and B Sample and sent to the WADA Accredited Laboratory, the Laboratoire Suisse d’Analyse du Dopage Lausanne, Switzerland (**the “Laboratory”**) for analysis. The Athlete’s samples were given reference number 4479312 (collectively, **the “Sample”**).
10. The Laboratory analysed the Athlete’s A Sample and reported an Adverse Analytical Finding (**“AAF”**) of Carboxy-THC in the urine sample. Carboxy-THC is a metabolite of

Cannabis. Cannabis is listed in class S8 - *Cannabinoids*, and considered a “Specified Substance”, under the 2019 WADA Prohibited List. Cannabis and its metabolite Carboxy-THC are prohibited in competition. The estimated concentration in the sample was 608 ng/mL, which is greater than the Decision Limit of 180 ng/mL..

11. The positive finding of Carboxy-THC in the Athlete’s sample therefore gave rise to an Anti-Doping Rule Violation under the ADRHA and its presence in an Athlete’s sample in competition constituted a violation of Article 2.1 of the ADRHA.
12. Furthermore, the FEI reviewed if the Athlete had an applicable Therapeutic Use Exemption (TUE) granted or to be granted as provided in the International Standard for Therapeutic Use Exemptions in accordance with article 7.2.2 of the ADRHA, and it was subsequently confirmed that no TUE has been granted for the use of the substance Carboxy-THC found in the Sample.
13. The FEI noted that the Event in question was the African Games 2019, and the competent results management authority was therefore the African Games 2019 organisation. The FEI explained that there were extensive delays in the process handled by the 2019 African Games Organising Committee, including the B sample procedure, the partial decision and the eventual transfer of the results management to the FEI for further follow up and to continue the proceedings. The results management process was transferred to the FEI at the beginning of 2020.
14. The 2019 African Games Organising Committee notified the Athlete on 16 September 2019¹ and confirmed that no provisional suspension was imposed. The Disciplinary Committee of the 2019 African Games also issued a partial decision on 14 February 2020, wherein the results of the Athlete at the Event were automatically disqualified, including all the resulting consequences, forfeiture of any medals, point and prizes².
15. On 28 February 2020, the FEI Legal Department officially notified the Athlete that in accordance with Article 7.1.2 of the Comité D’Organisation des Jeux Africains (“**COJAR’s**”) Anti-Doping Rules the results management of the case was transferred to the FEI Legal Department. The FEI also notified the Athlete and the EGY-NF of a Human Anti-Doping Rule violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete’s Sample) under the ADRHA based on the Laboratory’s Adverse Analytical Finding of Carboxy-THC in the Athlete’s Sample collected on 22 August 2019 and the potential consequences in the Notification Letter (**the “Notification Letter”**).

¹ Exhibit 1- FEI Response, Notice of Charge from COJAR dated 16 September 2019.

² Exhibit 2- FEI Response, Disqualification Decision from COJAR dated 14 February 2020.

16. The Notification Letter included notice that the Athlete would not be provisionally suspended in accordance with Article 7.9.2 ADRHA, since the substance found in the sample was a Specified Substance.
17. By way of background, the Athlete was notified of his right to request the analysis of the B Sample in the Notification Letter of 17 September 2019 sent by the Results Management of the 2019 African Games Committee. The Athlete had requested the analysis of the B-Sample. The B-sample analysis confirmed the result of the A-sample analysis i.e., presence of Carboxy-THC³. The FEI reported that due to the process managed by the Athlete's legal counsel at that time, considerable delays occurred in the B sample procedure, and such analysis was only performed and notified in January 2020.
18. On 17 June 2021, the FEI submitted their Response with the relevant annexes to the Tribunal with regard to the merits of the case and requested that the Tribunal appoint a hearing panel to adjudicate on these proceedings.
19. On 25 June 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 30 June 2021. The Athlete was also provided with the opportunity to reply to the FEI's Correspondence by 15 July 2021. Finally, the Parties were given a deadline until 18 July 2021 to indicate whether they requested for an oral hearing to take place.
20. On 25 June 2021, the FEI informed the Tribunal that it did not have any objection to the constitution of the hearing panel. On 27 June 2021, the EGY-NF responded on behalf of the Athlete and acknowledged receipt of the Tribunal's correspondence, provided the Athlete's contact details and requested for the Tribunal to provide information about the Tribunal's procedures concerning this case, as they were preparing for Tokyo and the quarantine arrangements for the horses, due to take place on 17 July 2021. In addition, whilst the Athlete acknowledged receipt of said correspondence he did not expressly provide any objection or confirmation to the constitution of the hearing panel, consequently as explained in opening letter dated 25 June 2021, failure to provide an objection to the named panel within the deadline, would be deemed as agreement to the constitution of the panel.
21. On 10 July 2021, the FEI replied to the EGY-NF in relation to their request for further information as to the procedures in respect of these proceedings. The Tribunal

³ Exhibit 5- FEI Response, Test Report B Sample 4479312.

advised the EGY-NF that all information and timelines to be adhered to were outlined in the opening and nomination letter that was sent to all parties on 25 June 2021.

22. On 15 July 2021, the Athlete provided his Reply (both written submissions and exhibits) to the Tribunal.
23. On 18 July 2021, the Athlete informed the Tribunal that the client wished to exercise his right to have his case heard in person, given the significant interests at stake and also submitted the names of witnesses to be called in the interests of his defence.
24. On 10 August 2021 the Tribunal acknowledged receipt of the Athlete's request for a hearing however, they confirmed that the hearing would be conducted remotely by videoconference (via Cisco WebEx) due to current covid restrictions and risks. In the same correspondence, the Tribunal also offered available hearing dates and the hearing was provisionally scheduled for 25 August 2021. However, due to organisational issues, the hearing was postponed to a later date. The Tribunal reverted to all Parties on the 9 September 2021 and provided a new hearing date of 1 October 2021, which was confirmed by all Parties.
25. The hearing took place on 1 October 2021. The Athlete attended the hearing, and all three witnesses duly appeared.

V. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

In the following, a summary of the written and oral submissions made by the Parties concerning the merits of the case is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

A. The Legal Submission by the Athlete:

26. The Athlete's submissions on the merits of the case can be summarised as follows:
 - a. The Athlete denied that he knowingly smoked, inhaled or otherwise used Cannabis during the Event;
 - b. The Athlete stated that before the Games the team manager verified with the hotel about ensuring compliance with ADRHA;

- c. The Athlete was convinced that the only plausible explanation for the AAF of Carboxy-THC and the values detected, was due to inadvertent exposure to Cannabis during the team visits to the hotel's shisha bar in Rabat;
- d. That on 20 August 2019, the Athlete stated that he and his fellow athletes visited the shisha bar of their hotel, and that other Athletes and teams were also present.;
- e. That after having some drinks, the Athlete ordered some shisha. He did not stay very long at the bar in order to prepare for the next day's competition;
- f. After the visit to the shisha bar the Athlete reported that he felt sick and believed he may have had food poisoning, as he was up all night and unable to sleep, and as a result he changed hotels the next morning;
- g. The Athlete explained that smoking shisha is very popular in Qatar, like in many Middle Eastern cultures, and is a particularly common activity for professional athletes in order to relax;
- h. The Athlete furthered that while the shisha is also very popular in Morocco, a substance named "kief", i.e., the Moroccan Cannabis, is often used instead of or in combination with the shisha tobacco, unlike in Egypt;
- i. The Athlete maintained that all precautions were taken in order to assure that only shisha tobacco would be used in the shishas smoked by him and his fellow athletes;
- j. The Athlete's expert witness Dr Borrey, confirmed in her report that his exposure to Cannabis most probably occurred unconsciously during their visits to the shisha bar of the hotel. Dr Borrey clarified that even though different values of Carboxy-THC were detected in the some of the other Athlete's samples, they could have been exposed to a similar dose of Cannabis but have a different genetic profile to create a different metabolic reaction to such a drug and result in varying levels.
- k. The Athlete stated that he is not a Cannabis user, nor is he a user of any other drugs, since it is against his religion and upbringing and furthermore that using a substance such as Cannabis which does not even enhance the performance, at such an important event, would have been simply stupid;
- l. The Athlete stated that he never heard of the substances Cannabis and THC-Carboxy, therefore he was shocked when he received the results of the adverse finding;

- m. Therefore, the Athlete considered it very implausible that he and his fellow athletes would knowingly put themselves and the Team in such a volatile situation. The Athlete noted that he had never tested positive for any prohibited substance;
- n. The Athlete, therefore, concluded that “keif” must have been deliberately added to his shisha, without his knowledge, in order to influence their performance in the competition;
- o. The Athlete also stated that in the 2019 All-African Games, Morocco was the winner both at the level of the final individual classification (three highest ranked individuals were of Moroccan nationality) and at the level of the final team classification. This Athlete believed such results allowed Morocco as a host country to exhibit exemplary results on its own territory, after having been absent from the All-African Games since 1978. However, at the time of going into this Event, the Egyptian team were considered most likely to win the jumping competition;
- p. Consequently, the Athlete deemed the stakes were high enough for the Moroccan Team to consider a strategy to gain a clear advantage and such is the reason why their shishas were tampered with a prohibited substance;
- q. The Athlete concluded that in order to find out who tampered with the shishas smoked by the Athlete and his fellow athletes, and whether this person or group of persons was/were connected to or acting on the instruction of the Moroccan team, the Athlete’s Team have hired a Moroccan lawyer to file a criminal complaint with the Moroccan authorities to find out if they did this and how they carried out such sabotage.

B. Written Response of the FEI:

- 27. The FEI submitted that pursuant to Article 3.1 of the ADRHA it is the FEI’s burden to establish all the elements of the ADRHA violation charged, to the comfortable satisfaction of the Tribunal. *In casu*, the analysis of the A Sample confirmed the presence of Carboxy-THC, which in itself constituted sufficient proof that a violation of Article 2.1 of the ADRHA occurred. The FEI noted that the elements of an Article 2.1 violation are straightforward and that *'It is not necessary that intent, fault, negligence or knowing Use on the Athlete’s part be demonstrated in order to establish an anti-doping rule violation under Article 2.1'*. Instead, it is a *'strict liability'* offence, established simply by proof that a Prohibited Substance was present in the Athlete’s Sample. In addition, the B Sample also confirmed the presence of Carboxy-THC. In any event, the presence of Carboxy-THC in his Sample is not disputed by the Athlete and therefore

the FEI submitted that it discharged its burden of establishing that the PR violated Article 2.1 of the ADRHA.

Imposition of a period of Ineligibility

- a) The presumption of intentional administration in order to enhance performance

28. In respect of the presumption of intentional administration to enhance performance, the FEI submitted that where a Prohibited Substance is found in an Athlete's Sample, a clear and unequivocal presumption arises under the ADRHA that it was used or administered deliberately, in an illicit attempt to enhance his or her performance. This mirrors the World Anti-Doping Code, under which exactly the same presumption applies. See, e.g., *Eder v Ski Austria*⁴, "Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-doping rule violations do not 'just happen' but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him- or herself"; *WADA v NSAM et al*⁵, where no mitigation of the standard two-year ban was permitted "since the Athletes did not rebut the presumption that they [had] ingested the prohibited substance to enhance their performance".

29. As a result of this presumption of fault, the FEI referred to Article 10.2 of the ADRHA which provides that:

"10.2.1 The period of Ineligibility shall be four years where:

10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.

10.2.1.2 The anti-doping rule violation involves a Specified Substance, and the FEI can establish that the anti-doping rule violation was intentional.

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years."

30. Hence, the FEI explained that an Athlete with no previous doping offences who violates Article 2.1 of the ADRHA with a Specified Substance is subject to a period of

⁴ CAS 2006/A/1102, award dated 13 November 2006 at para 52.

⁵ CAS 2007/A/1395, award dated 31 March 2008 at para 88.

Ineligibility of two years, unless the FEI can establish that the anti-doping rule violation was intentional.

31. Furthermore, the FEI stated that an Athlete can reduce the standard two years period of ineligibility for a Specified Substance by establishing to the satisfaction of the FEI Tribunal (it being his/her burden of proof, on the balance of probability⁶):

- i. How the Prohibited Substances (here, Carboxy-THC) entered into his/her system; and
- ii. That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had Used or been administered the Prohibited Substance or Prohibited Method (in which case, the period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ADRHA); or
- iii. That he/she bears No Significant Fault or Negligence for that occurrence in the totality of the circumstances, (in which case, the presumptive period of ineligibility may be reduced by up to 50%, depending on his/her degree of fault, pursuant to Article 10.5.2 of the ADRHA).

32. However, the FEI submitted that if the Athlete failed to discharge the burden how the substance entered his system i.e., the presumption of intentional use or administration to enhance performance stands, and consequently the presumptive two-year ban for Specified Substances under Article 10.2 applies.

b) The 'threshold' requirement: proving how the Carboxy-THC entered into the Athlete's system

33. In respect of the ADRHA stipulations, the jurisprudence of the FEI Tribunal and the CAS are very clear according to the FEI, i.e., that it is a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the Athlete proves how the substance entered into his/her system.

34. The FEI noted that this requirement must be strictly applied because without such proof it would be impossible to assess the Athlete's degree of Fault or Negligence (or No Significant Fault or Negligence) for the presence of the Prohibited Substances in the Athlete's sample. Moreover, the FEI submitted in this context that the Athlete must provide clear and convincing evidence which proved how the Carboxy-THC

⁶ Art 3.1 ADRHA.

entered his system. The FEI was of the opinion that the Athlete would need to provide an explanation that was plausible on a balance of probabilities and clearly established a link between the AAF and his explanations.

35. In this case, the Athlete presented a scenario of sabotage by another team at the shisha bar at the hotel. However, the Athlete did not provide any evidence for these assertions, and therefore such a scenario was deemed as mere speculation by the FEI. Notwithstanding the further requests for more information and explanations from the FEI in respect of these allegations of sabotage, the FEI confirmed that the Athlete was silent over the past year and did not respond to any of the communications from the FEI. Therefore, the FEI was of the opinion that the Athlete had not established how the Prohibited Substances Carboxy-THC entered his system on a balance of probabilities and therefore had not fulfilled this threshold requirement.

c) Fault/Negligence for the rule violation

36. The FEI submitted that although the Athlete had not established the source of the Carboxy-THC, the FEI still wished to provide a short submission on the fault and negligence for the rule violation.

37. The FEI noted that in terms of the degree of Fault and Negligence by the Athlete for the rule violation, the starting point of any evaluation is the *“personal duty”* of the Athlete following from Article 2.1.1 of the ADRHA, i.e., his personal duty to ensure that *“no prohibited substance is present in his or her body”*, and *“Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples”*. Additionally, the FEI noted it was necessary to refer to the definitions of *Fault*, as defined in Appendix 1 of the ADRHA.

“Fault: 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 Athlete and the level of care and investigation exercised by the Athlete in relation to what should have been the perceived level of risk. In assessing the Athlete’s or other Person’s degree of Fault, the circumstances considered must be specific and relevant to explain the Athlete’s or other Person’s departure from the expected standard of behaviour”.
(Emphasis added)

“No Fault or Negligence: The Athlete or other Person’s 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 Used or been administered the Prohibited Substance or Prohibited Method or otherwise violated an anti-doping rule.

Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

“No Significant Fault or Negligence: The Athlete or other Person 's establishing that his or her 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 anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

38. The FEI highlighted that Prohibited Substances classified as Specified Substances, like Cannabis, are prohibited in competition. It is therefore the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. For No Fault or Negligence to apply, pursuant to the Definition of No Fault or Negligence, the Athlete had to establish 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 used, or his body contained, a Prohibited Substance.
39. The FEI noted that these proceedings concern Cannabis and the Athlete maintained that he never knowingly consumed Cannabis neither in nor out of competition. He claimed that using a substance that did not even enhance the performance⁷, such as Cannabis, would be pointless. However, at the same time he explained that during the Event, he and his fellow athletes visited the shisha bar of their hotel on a daily basis, as such, he is convinced that the only plausible explanation for the positive testing of Carboxy-THC and the values detected, was the result of a naïve exposure to Cannabis during their visits to their hotel's shisha bar. He furthered that smoking shisha is very popular in Qatar, like in many Middle Eastern cultures, and is particularly common for professional athletes in order to relax, in particular he clarified that while the shisha is also very popular in Morocco, a substance named “kief”, i.e., Moroccan Cannabis, is often used instead of shisha or with the shisha tobacco, unlike in Qatar.
40. Despite the assertions of innocent exposure to Cannabis by the Athlete, the FEI considered that even if passive smoking shisha at the hotel bar provided a plausible explanation for the AAF of Carboxy-THC, the Athlete had unfortunately not submitted any substantiated evidence for such a scenario. Consequently, the FEI saw no causal link between the circumstances of the case and the reason for the AAF, and considered the explanation provided by the Athlete as mere speculation.
41. The FEI stated that as a prerequisite for any reduction or elimination based on fault and negligence, in accordance with Article 10.4 and 10.5 of the ADRHA, it is essential

⁷ The FEI did not agree that Cannabis has no performance enhancing effects.

to be able to prove on a balance of probabilities how the prohibited substance entered the Athlete's system. Accordingly, the FEI considered that the Athlete failed this threshold requirement and consequently, no reduction of the standard two (2) years ineligibility period for Specified Substances can be applied in the case. Nonetheless, the FEI highlighted that should the Tribunal differ in their opinion and consider that the Athlete established the source of the AAF, the FEI would also wish to submit additional points on the fault and negligence for the rule violation should a different viewpoint prevail.

42. In addition, the FEI understood that the Athlete was aware that "kief" is Cannabis and this is used instead of shisha tobacco in Morocco. The FEI is of the opinion that the Athlete could have perceived the risk of his movements which involved going to the shisha bar and smoking shisha during an Event. Notwithstanding taking such a risk by attending a shisha bar, through his actions, the Athlete demonstrated he did not exercise utmost caution in his duty of care. On the contrary, the FEI believed that he further exposed himself to a risk that he was already aware of, which potentially could result in an AAF. In the FEI's opinion therefore, the Athlete was at fault for this rule violation, since he did not exercise due caution and ensure that the necessary steps were taken to prevent any prohibited substances being ingested.
43. Taking into account the particulars noted above, the FEI confirmed that the Athlete failed to establish both how the prohibited substance entered his system, and that he bore no (significant) fault or negligence for the rule violation. Finally, the FEI concluded that without any further evidence in the case, which served to provide a causal link on how the prohibited substance Carboxy-THC entered the Athlete's system, the FEI submitted that no reduction based on Article 10.4 or 10.5 ADRHA of the standard ineligibility period for Specified Substance existed, and the period of ineligibility to be imposed on the Athlete shall be two (2) years in accordance with Article 10.2 of the ADRHA.

d) Aggravating circumstances/ Other violations

44. In addition, the FEI highlighted that the Athlete tried to avoid the sample collection. The FEI confirmed they did not charge the Athlete with a violation of Article 2.3 ADRHA, since ultimately he provided a clear sample. However, for the sake for the completeness of this case the FEI submitted the supplementary report of the incident⁸. The FEI furthered that in any event, this incident could be considered as an aggravating factor in relation to the fault and negligence evaluation of the Athlete, in

⁸ Exhibit 12- FEI Response, Supplementary Report form dated 22 August 2019.

the event that the Tribunal determines that the Athlete established the source of the AAF and evaluation of fault/negligence of the Athlete is required.

e) Delays not attributable to the Athlete, back dating of the ineligibly period and timing of the decision

45. The FEI explained that despite their recommendation to the Athlete to request a voluntary suspension, he was not provisionally suspended. Furthermore, the FEI reported that since the sample collection took place in August 2019⁹, the Athlete has competed extensively, i.e., in over 120 Competitions.

46. The FEI also noted that as explained in the FEI Response outlined at paragraph 17 of this Decision, substantial delays existed in this case not solely caused by the African Games results management, but also by the Athlete's legal counsel. Furthermore, the FEI stated that in their opinion as the delay in these proceedings was not only attributable to the Athlete, this meant that the Tribunal would also have flexibility in their decision as regards to the commencement of the ineligibility period, in accordance with Art 10.11.1 of the ADRHA. The FEI also noted that in the event that the Tribunal chose to back date the ineligibility period, all competitive results achieved during the period of ineligibility, including retroactive Ineligibility, would be disqualified.

e) Disqualification of results

47. In respect of the Disqualification of Results, the FEI referred to Article 9.1 of the ADRHA wherein it states that *"An anti-doping rule violation in Individual Sports in connection with an In-Competition test automatically leads to Disqualification of the result obtained in that Competition with all resulting Consequences, including forfeiture of any medals, points and prizes"*. In addition, the FEI also referred to Article 10.1 of the ADRHA which provides that, *"An anti-doping rule violation occurring during or in connection with an Event may, upon decision of the ruling body of the Event, lead to Disqualification of all of the Athlete's individual results obtained in that Event with all Consequences (and the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prizes, except as provided in Article 10.1.1."*

Furthermore, the FEI noted that factors to be included in assessing whether to Disqualify other results in an Event might include, for example, the seriousness of the Athlete's anti-doping rule violation and whether the Athlete tested negative in the other Competitions, and for the case of team competitions, Article 11 ADRHA will also be applied.

⁹ Athlete's competition record <https://data.fei.org/Person/Performance.aspx?p=39A3245ABE432E40E84794DE42B2C1E2>.

48. The FEI explained in their submission that since this Event was part of the African Games 2019, the applicable rules for disqualification were contained at Article 9 of the African Games Anti-Doping Rules, wherein it stated that:

“An anti-doping rule violation in individual sports in connection with an in-competition test automatically leads to disqualification of the result obtained in that competition with all resulting consequences, including forfeiture of any medals, points and prizes.”

49. Accordingly, the African Games Disciplinary Committee automatically disqualified the results of the Athlete, i.e., all the results of the day of sample collection, 22 August 2019;

“Under article 9 of the 2019 African Games Anti-doping rules, since the present violation took place in connection with an In-Competition test there is an automatic disqualification of the results of the athlete obtained in that Competition with resulting consequences namely forfeiture of any medals, points or prizes.”

50. Therefore, all the remaining individual results of the Athlete at the Event, i.e., 20-24 August 2019, were disqualified in the decision of the African Games Committee, including all resulting Consequences, and forfeiture of any medals, points and prizes, in accordance with Article 10.1 of the ADRHA.

51. In respect of the Team Results, the FEI referred to Article 11 of the ADRHA, whereby, since the African Games rules did not cover the disqualification in relation to the Team result of an individual sport, the Athlete’s results were subtracted from the Team result, and replaced with the results of the next applicable team member.

“If a member of a team is found to have committed a violation of these Anti-Doping Rules during an Event where a team ranking is based on the addition of individual results, the Athlete’s results may be Disqualified in all Competitions. Should this be the case, the Athlete’s results will be subtracted from the team result, to be replaced with the results of the next applicable team member. If by removing the Athlete’s results from the team results, the number of Athletes counting for the team is less than the required number, the team shall be eliminated from the ranking.”

52. Consequently, all the results of the Athlete at the Events were disqualified pursuant to the provisions contained at Article 11 of the ADRHA.

f) Fine and Costs

53. In respect of the issue of fines and costs the FEI referred to Article 10.10 of the ADRHA which provides that *“Where an Athlete or other Person commits an anti-doping rule violation, the FEI Tribunal may, in its discretion and subject to the principle of*

proportionality, elect to a) recover from the Athlete or other Person costs associated with the anti-doping rule violation, regardless of the period of Ineligibility imposed and/or b) fine the Athlete or other Person in an amount up to 15,000 CHF”.

54. Further to the latter provisions, the FEI submitted that for violation of Article 2.1 and/or Article 2.2 of the ADRHA it was proportionate to impose a fine and legal cost, and in this regard they requested that a fine be imposed on the Athlete, and that the Athlete be ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI also noted that certain parts of the fine if granted would contribute to education within the anti-doping program.

g) Conclusion

55. In summary and taking into account the particulars outlined at paragraphs 27 to 54 of the written submission of the FEI, the FEI respectfully requested that the FEI Tribunal issue a decision:

- i. upholding the charge that the Athlete has violated Article 2.1 of the ADRHA;
- ii. disqualifying the remaining results of the Athlete and Horse combination obtained at the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 10.1 of the ADRHA;
- iii. imposing a period of Ineligibility two (2) years on the Athlete, commencing from the date of this Decision;
- iv. fining the Athlete, a fine of 7 500 CHF; and
- v. ordering the Athlete to pay the legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

VI. SUMMARY OF THE HEARING - 1 OCTOBER 2021

FEI: OPENING SUBMISSIONS

56. At the Hearing dated 1 October 2021, the FEI commenced their opening arguments which echoed those delivered in their written submissions dated 17 June 2021, i.e., that the Athlete failed to establish how the prohibited substances entered his system. The FEI also addressed the additional scientific arguments submitted by the Athlete on 15 July 2021, which were as follows:

- a. The Expert Report of Dr. Apr. Daniëlle Borrey which stated that several studies confirmed that cannabis does not enhance performance and that on the

- contrary, the use of cannabis leads to a general decrease in responsiveness and psychomotor skills and is best avoided to maximise sports performance;
- b. The FEI disagreed with this conclusion of Dr Borrey, and highlighted that characteristics of a performance enhancing substance were not the only reasons that a substance is added to the WADA prohibited list;
 - c. The FEI also noted that substances may also be added to the WADA prohibited list, if they meet 2 of the 3 inclusion criteria; has a health risk to athletes, violates the spirit of sport and it has the potential to enhance performance;
 - d. In accordance with which, the FEI confirmed that WADA added Carboxy-THC to its prohibited list after undergoing several studies in 2011 which demonstrated that Carboxy-THC had many negative side effects when ingested such as; it led to increased risk taking, endangered themselves and others by poor reaction times and executive function, it was harmful to the health of athletes as it is an illicit drug and also as a role model it has negative connotations accordingly such statement by the athlete that it does not have any effect on performance is false;
 - e. The FEI further noted that the concentrations of Carboxy-THC found in the urine of the athlete in question, were higher than would be expected of an athlete who engaged occasionally in the use of cannabis Carboxy-THC and outside of the WADA detection parameters adopted to take into account such circumstances, thus the extremely high levels found in the athlete would suggest that Carboxy-THC is a substance the Athlete used regularly.
 - f. The FEI, therefore, concluded that the Athlete consumed the cannabis during this competition, and furthermore the Athlete may have regularly consumed cannabis before this AAF was returned.
 - g. The FEI also stated they were very curious to know the details of the steps taken by the Athlete to ensure there was no risk to his actions i.e., attending at the hotel's shisha bar on a daily basis. The FEI also queried whether he had at any point verified the actual contents and ingredients of the shisha before smoking it or talk to the bar/hotel staff on this issue? Interestingly, the FEI noted that no evidence was submitted in this respect as such the Athlete had fulfilled his personal duty of care.

COUNSEL FOR THE ATHLETE: OPENING SUBMISSIONS

57. The Athlete commenced the opening arguments and raised concerns, that the rights of defence have been flagrantly violated by not having his case heard in a timely manner and treated within due time. In this regard, they referred to Article 8 of the WADA Code and stated that these provisions required disputes to be resolved in a "reasonable time", and that the amendments which came into force in 2021 reinforced the importance of timeliness. In particular, they referenced Article 8.8(c) of

the International Standard for Results Management (“the ISRM”) which states that the “hearing process shall be conducted within a reasonable time”, specifying further in a comment that “[s]ave in complex matters, this timeframe should not exceed two (2) months.” Thus, in the present case, the Athlete maintained that the FEI also recognised the excessive delay in proceedings, as it was almost 2 years since notification of the charge. They also asserted that this delay was not in any way attributable to Athlete;

58. The Athlete also claimed opportunity costs were suffered throughout the proceedings by enduring a 2-year period of immense uncertainty. The Athlete did not know what to expect from this procedure such as whether he would be allowed to compete in the near future, whether he had to further invest in his career, the horses or whether to put everything on hold. Initially the Athlete decided voluntarily not to compete but since his case did not seem to progress, he eventually resumed riding. The major uncertainty the Athlete faced in his return to riding negatively impacted the Athlete both in his results and his mental well-being and health. They submitted that such failure to respect the reasonable delay should be reflected in the outcome of the present proceedings and a significant reduction in sentence would be the only appropriate outcome in the present case if a sanction is imposed since the Athlete had to wait 10 times longer for his case to be dealt with than what WADA considers to be “timely” (24 months versus 2 months). They stated that for the nature of an athlete’s career which is very time limited was unfair.
59. It was also submitted by the Athlete that the only plausible explanation for the AAF of carboxy-THC and the values detected, was that he was unknowingly exposed to cannabis during his visits to his hotel’s shisha bar in Rabat (the So Lounge of the Sofitel at Impasse Souissi, Rabat 10000, Morocco). They stated that the Athlete was inadvertently exposed to cannabis during his residence in Rabat and this exposure seemed to be the result of a crime.
60. In respect of this alleged crime, the Athlete explained that the most important competitor in the Event was Morocco, the host nation and that going into the Event, the Egyptian team had been considered the most likely winner in the jumping competition. Thus, the stakes were high for Morocco during the Event to win, and as such they felt that competitors from Morocco would have a clear advantage if the Egyptian Team were eliminated. The Athlete was convinced that was the reason why the shishas he smoked were tampered with.
61. Since this suspicion of tampering and the subsequent return of an AAF, the Athlete confirmed that he has hired a Moroccan lawyer and filed a criminal complaint with the Moroccan authorities to investigate this matter as there is no fault/significant fault

on behalf of the Athlete. The Athlete also stated that due to the exceptional circumstances described above which merit special caution, no decision on the merits of these proceedings should take place until a decision was taken on the criminal complaint lodged in Morocco. The felt that the only viable solution was to await the conclusion of the criminal investigation and if necessary apply a retrospective sanction depending on the outcome of the criminal investigation to assess whether sabotage had occurred;

62. They concluded that no intentional act was carried out by the Athlete, moreover, the hypothesis of illegal sabotage by the Athlete's competition in the form of tampering with the shisha tobacco, is significantly plausible. They submitted that the competitors from Morocco had a clear and strong motive to sabotage and based on the foregoing, the Athlete requested the Tribunal rule that he had neither committed a Fault nor Negligence during his stay in Rabat and that therefore, the requested period of two years of Ineligibility should be entirely eliminated.

63. Alternatively, they also noted that "For Cannabinoids, an Athlete may establish No Significant Fault or Negligence by clearly demonstrating that the context of the use was unrelated to sport performance." Based on the foregoing, the Athlete requested that should the Tribunal rule that, if any Fault or Negligence is withheld, this Fault or Negligence at best constitutes a Light Fault and the lower end of the bracket for the period of Ineligibility should be applied resulting in reprimand or, at best, an Ineligibility period of 0 to 4 months.

VII. SUMMARY OF THE WITNESSES' TESTIMONIES (HEARING DATED 16 JUNE 2021)

Athletes First witness – Mr Hassan Kamal

64. Mr. Hassan Kamal provided his testimony in English at the hearing. In summary, Mr Kamal, confirmed the following:

- a. That he is the Medical Chairman of the Egyptian Olympic Committee who is responsible for the medical supervision of most of the international equestrian athletes. He stated that he is regularly in touch with the athletes on all medical/doping matters and any issues that arise in particular during important events such as the African or Olympic games. He also confirmed that he has never reported any suspicious or abnormal samples arising from any of the medical testing and investigations in respect of the Athlete in his professional career.
- b. Mr Kamal also explained that he was Chief medical personnel of the delegation that attended the African Games Event in August 2019. He was

aware that the Athlete took ill at this Event but had recovered without any complications. He stated that in general the Athlete was always very obedient and disciplined who has never caused any trouble or misbehaved during his professional career and as such he considered it highly unlikely that the Athlete would have voluntarily taken any drugs. He explained that Egyptian athletes do not use any kind of cannabis for cultural, athletic and religious reasons.

Athlete's second witness – Mr Ahmed Assad

65. Mr Ahmed Assad provided his testimony in Arabic at the hearing and therefore he was accompanied by a translator – the President of the Egyptian Equestrian Federation Mr Hesham Hatab. In summary, Mr Assad, confirmed the following:

- a. That he is the Administrative Manager of the Egyptian Show Jumping team and he was supervising them in all their actions in the 2019 All-African Games. He confirmed that he was present at the 2019 All-African Games in Rabat as he was responsible for all the practical and administrative assistance for the athletes during important competitions such as the All-African Games. He explained that in order to prepare for this particular competition – he travelled to the Event 3 days in advance and spoke extensively with the staff at the Sofitel Rabat Hotel (Impasse Souissi, Rabat 10000) on all aspects of the athlete's day to day living arrangements while at the Event, such as the diets of the athletes and the importance of not taking any illegal, dangerous or contaminated substances. He stated that the hotel frequently received jumping athletes and were very familiar with ensuring careful management of the athletes in all their dietary and accommodation requests, so they are able to perform at their best physically, psychologically and mentally.
- b. He stated that he also discussed the shisha smoking zone (shisha place etc) at the hotel since he was aware that many athletes gathered there after the competitions in order to relax and that Mr Talaat also liked to go to such a place from time to time. He clarified that the personnel of the Shisha Bar stressed that their shisha consisted of only tobacco mixed with innocent flavourings as confirmed by the menu of the smoking place. He stated that at no point in time was it mentioned that any cannabis-related substance would or could be mixed with the shisha. He also clarified that no substances even remotely contrary to the FEI rules were discovered by him whilst attending at the event. He stated that they took all precautions necessary to make sure no contamination could take place, he also

confirmed that he remained near the athletes the entire time (both in preparation for the competition and during the competition) and that at no point noticed any use of cannabis-related substances.

- c. He wished to emphasise that on the day the sample was collected - 22 August 2019, the Athlete told him that afternoon he felt unwell, and possibly that he had eaten something wrong. He furthered that as they were concerned the Athlete might have ingested expired/out of date food they changed hotels after that day. He noted this can be evidenced in the invoices¹⁰ submitted to the FEI. Finally, he stated that he considered Mr Talaat to be a very highly talented and qualified rider who always strictly complied with all the FEI rules and that he had never any such issues with him previously.

Athlete's third witness - Dr. Apr. Daniëlle Borrey

66. At the Hearing, Dr. Apr. Daniëlle Borrey, provided her testimony, in English. In summary, Dr. Borrey indicated the following:

- a. She confirmed that the use of cannabis has no performance enhancement effect and as noted in her report, the use of cannabis leads to a general decrease in responsiveness and psychomotor skills and is best avoided to maximise sports performance (2-3 days). She noted in her report also that cannabis is an ergolytic (and not an ergogenic) drug, and its use can only have had a negative impact on the performance of this athlete.
- b. She concluded that due to the high concentrations of THC-COOH (inactive metabolite of THC) returned in the AAF, it is most likely the result of "kief" (collection of loose resin trichomes cannabis), in the Shisha pipe and indicated that the Athlete was exposed to the cannabis. She noted that no further information can be derived about the information about the ingested quantity of THC, the method of exposure (smoking or oral intake) the time of exposure or the extent to which the person was under the influence and importantly the concentrations are related to the metabolic/genetic/ethnic profiles of the person who has used the drug and as such there is a great degree of variance in the levels that can be returned.

67. The Athlete also made himself available and answered various questions at the end of the oral hearing. He noted that he had spoken to the FEI previously about why these proceedings had taken so long, and that the FEI stated that this was due to his

¹⁰ Exhibit 3, Athletes Submissions- Invoice of the Sofitel at Impasse Souissi, Rabat 10000, Morocco;

legal counsel. The Athlete disagreed with the FEI's position on the reason for the delay and claimed that his Legal Counsel were always pushing everything along on their side and that no delays took place on their side.

68. The FEI questioned the Athlete as to whether he thought sabotage existed of some sort and the Athlete deemed this was possible as he was very shocked by the positive result for cannabis and does not know how this AAF result was returned. He explained that he attended at the Shisha bar with his companions from the team while at the Event but did not smell anything that could be detected as cannabis. He also confirmed that he took ill on the first night of the Event when he stayed at the hotel, and as a result he moved to a different hotel the night after he felt unwell. He was also aware cannabis is a prohibited substance and was always very careful about what medication he takes to make sure that are in compliance with the FEI Regulations and that he would never take any medication he was uncertain about.

VIII. SUMMARY OF THE CLOSING STATEMENTS (HEARING DATED 1 OCTOBER 2021)

69. The FEI acknowledged that the proceedings have taken some time, but this is largely due to the fact that the source was not established and the various arguments that were put forward were examined and addressed in detail. They further noted that while allegations of sabotage by another team at the Event have been made by the Athlete and the witnesses, no evidence was ever provided in this respect. Unfortunately, despite the lengthy proceedings the FEI requested a 2-year suspension to be imposed in this case as detailed in their written submissions.

70. In Conclusion, the Athlete submitted to the Tribunal that:

- a. Currently the Tribunal cannot proceed to the assessment of the case on merits as it must suspend its decision until the final decision on the criminal complaint in Morocco has been rendered;
- b. In any event, it is clear that the Athlete had not acted with negligence/fault since all necessary precautions were taken by him and his team to avoid any use of Specified or Prohibited Substances. The Athlete therefore requested that no period of ineligibility is imposed and at most a reprimand would be considered, as it was likely that sabotage occurred to contaminate the Athlete's sample, and the Tribunal should look at this from balanced perspective which required for them to wait until the criminal investigation in Morocco was completed.

IX. JURISDICTION

71. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ADRHA, as well as Article 18 of the IRs. The Athlete is a member of the EGY-NF, and as such is bound by the ADRHA. The jurisdiction of the Tribunal is undisputed.

X. LEGAL DISCUSSION

Source of the Prohibited Substance – the exposure to the prohibited substance was as a result of criminal sabotage by another team.

72. The Tribunal considers the suggestion that the source of the Athlete's AAF was the result of an unknowing exposure to cannabis during his residence in Rabat through sabotage merely speculative and notes that no corroborating evidence was submitted during these proceedings notwithstanding the alleged efforts by the Athlete to attain such evidence from the hotel at Rabat, Morocco.
73. The Tribunal further notes that upon weighing the proofs and evidence remitted by the Appellant and taking into account the arguments as detailed at paragraph 26 of this Decision, that a modus operandi existed by a person or group of persons connected to (or acting on the instruction of) the Moroccan team to commit illegal sabotage in the form of tampering with the shisha tobacco, such conclusions cannot be formed.
74. As confirmed by various CAS panels as well as FEI Tribunals, the Athlete has to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the Athlete. The Athlete's scenario has to reach a 51% threshold for it to be successful¹¹. In this case, the Athlete only suggested a scenario of sabotage by another team at the hotel's shisha bar. In addition, upon further requests for more information and explanations of the case, the Athlete provided limited explanations to substantiate the allegations. As a result, the Tribunal considers that the Athlete's submission did not reach the threshold requirement on a balance of probabilities, and furthermore that the scenario of sabotage suggested would require extensive explanations, investigations and corroborating evidence to reach any consideration of such threshold by the Tribunal.
75. Moreover, the Tribunal notes that the testimonies provided by the witnesses brought forward by the Athlete, provided no clear facts or findings of sabotage other than

¹¹ See for example Viret, M., "Evidence in Anti-Doping at the Intersection of Science & Law", Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

hypothetical claims that such an interference occurred by another team. Consequently, the Tribunal accepts that without any further evidence, apart from hypothetical allegations of the witnesses, no causal link can be established that the prohibited substance Carboxy-THC entered the Athlete's system through criminal sabotage by another team. Accordingly, a reasonable explanation has not been provided and as such the Tribunal confirms that under these circumstances, the Athlete has failed to establish how the prohibited substance entered his system.

76. Consequently, and as already noted at paragraph 28 of this Decision, where a Prohibited Substance is returned in an Athlete's sample, a clear and unequivocal presumption arises under the ADRHA that it was used or administered deliberately, in an illicit attempt to enhance his or her performance. As referenced by the FEI this mirrors the World Anti-Doping Code, under which exactly the same presumption applies, e.g., Eder v Ski Austria¹², *"Athletes have a rigorous duty of care towards their competitors and the sports organization to keep their bodies free of prohibited substances. Anti-doping rule violations do not 'just happen' but are, in most cases, the result of a breach of that duty of care. This justifies (i) to presume that the athlete acted with fault or negligence and (ii) to shift the burden of proof from the sanctioning body to the athlete to exonerate him- or herself"*.
77. In this sense, the Tribunal notes that the Athlete was aware that "kief" is cannabis and that it was usually utilised instead of shisha tobacco in Morocco, yet they still frequented the shisha bar regularly with their team members during an Event. This, in itself cannot be held in line with the duty of care by exposing themselves to the potential risk of ingestion of a prohibited substance. The Tribunal considers that utmost caution was not exercised by the Athlete to avoid the ingestion of any prohibited substances.

Reduction or Elimination of the Period of Ineligibility

78. Bearing in mind the reasoning above and upon consideration of Article 10.2.2 of the ADRHA, a two-year period of ineligibility should be imposed unless the Athlete has satisfied the Tribunal that the period can be reduced. In this regard the Tribunal only deems Article 10.11.1 of the ADRHA applicable, in respect of *"Delays Not Attributable to the Athlete or other Person"* and notes that; *"Where there have been substantial delays in the hearing process or other aspects of Doping Control not attributable to the Athlete or other Person the FEI Tribunal may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another anti-doping rule violation last occurred. All competitive results achieved during the period of Ineligibility, including retroactive Ineligibility, shall be Disqualified"*.

¹² CAS 2006/A/1102, award dated 13 November 2006 at para 52

79. Additionally, the Tribunal takes in account Article 4.2 of the ISRM and the principle of “Timeliness”, wherein “In the interest of fair and effective sport justice, anti-doping rule violations should be prosecuted in a timely manner. Irrespective of the type of anti-doping rule violation involved, and save for cases involving complex issues or delays not in the control of the Anti-Doping Organization (e.g. delays attributable to the Athlete or other Person), Anti-Doping Organizations should be able to conclude Results Management (including the Hearing Process at first instance) within six (6) months from the notification...” and 8.8 c) of the ISRM which states that “the Hearing Process shall be conducted within a reasonable time[...]save in complex matters, this timeframe should not exceed two (2) months”.

80. In line with which, the Tribunal recognises the slow advancement of these proceedings. The samples were collected on 22 August 2019, results were informed on 16 September 2019 by COJAR¹³, the FEI issued the official notification of charge under the ADRHA¹⁴ to the Appellant on 28 April 2020. From that moment on and until the formal passing of the case file to the FEI Tribunal more than 14 months passed and no clear explanation has been provided as to such delay. Such tardiness cannot be simply omitted.

81. In view of the above, the Tribunal holds that Article 10.11.1 of the ADRHA should be applied and as such the period of ineligibility is to be started at an earlier date. Accordingly, the Tribunal imposes a period of Ineligibility at an earlier date in order to reduce the sanction on ineligibility. Furthermore, due to the failure of the FEI to ensure that timeliness was at the forefront of the result managements process in this particular case, the Tribunal refers to previous caselaw of the Tribunal and relies on the recent Decisions of C21-0014– AL DHAHWI W'RSAN¹⁵, C21-0027– GUADALUPE D'IBERICA¹⁶, C21-0015– FELINE X¹⁷ in order to backdate the start of the ineligibility period 6 months prior to the notification of the present Decision. Thus, in terms of ineligibility for the purposes of this present case the Tribunal imposes the period of Ineligibility of 2 years to commence on 17 June 2021.

82. The Tribunal notes that all competitive results achieved during the period of ineligibility should be Disqualified and also notes that no Athlete who has been

¹³ Exhibit 1- FEI Response, Notice of Charge from COJAR dated 16 September 2019.

¹⁴ FEI Anti-Doping Rules for Human Athletes, based upon the 2015 WADA Code, effective 1 January 2015.

¹⁵ DECISION of the FEI TRIBUNAL dated 24 August 2021 in the matter of Mr Hamad Fahad Abdalla Ibrahim ALOBEIDLI (FEI Case number: FEI 2019/BS49 – AL DHAHWI W'RSAN) and Mr Ahmed Salem Ali Bakheet AL RASHDI (FEI Case number: FEI 2019/BS49 – AL DHAHWI W'RSAN).

¹⁶ DECISION of the FEI TRIBUNAL dated 22 September 2021 in the matter of Mr Abdul-Aziz A. AL-SABRI (FEI Case number: FEI 2019/CM20 – GUADALUPE D'IBERICA).

¹⁷ DECISION of the FEI TRIBUNAL dated 22 September 2021 in the matter of Mr Abdul-Aziz A. AL-SABRI (FEI Case number: FEI 2019/CM20 – GUADALUPE D'IBERICA).

declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity (other than authorised anti-doping education or rehabilitation programs) authorised or organised by the FEI or any National Federation or a club or other member organisation of the FEI or any National Federation, or in Competitions authorised or organised by any professional league or any international or national level Event organisation or any elite or national level sporting activity founded by the governmental agency (Article 10.12.1 of the ADRHA).

83. Furthermore, pursuant to Article 10.10 of the ADRHA, where an Athlete commits an anti-doping rule violation, the Tribunal may, in its discretion and subject to the principle of proportionality, fine the Athlete in an amount up to CHF 15,000. In the present case, it was the Athlete's personal duty to ensure that no Prohibited Substance was present in his body during the Event. Moreover, considering the degree of the Athlete's fault, in terms of the lack of a reasonable duty of care taken appropriate to a particular situation and at the very least that the Athlete engaged in conduct which he knew carried a significant risk i.e., frequent attendance at a shisha bar where Moroccan Cannabis may be used instead of tobacco, is significant, thus the Tribunal rules that a fine of CHF 7,500 is appropriate. In addition, given the complexity of this case and the requirement for an oral hearing, the Tribunal orders costs against the Athlete of CHF 2,000. This amount is also in line with the FEI Guidelines for Fines and Contributions Towards Legal Costs.

Disqualification

84. Since the ADRHA have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies - in accordance with Articles 9 and 10.1 of the ADRHA - all of the Athlete's individual results at the African Games-S - Rabat (MAR), 2019_G-AF_0001_S_S_01 on 20-24 August 2019, with all Consequences (and - where applicable - where applicable - the resulting consequences to teams as provided in Article 11), including forfeiture of all medals, points and prize money.

XI. DECISION

- 1) The Tribunal rules that the FEI has established an anti-doping rule violation to the comfortable satisfaction of the Tribunal and notes that the results of the A and B Samples taken from the Athlete at the Event confirming the presence of Carboxy-THC constitutes sufficient proof of the violation of Article 2.1 of the ADRHA. Accordingly, the Tribunal upholds the charge that the Athlete violated Article 2.1 of the ADRHA.

- 2) The Athlete shall incur:
- a) a period of Ineligibility of two (2) years. The period of the Ineligibility will be effective from 17 June 2021; therefore, the Athlete will be ineligible until 16 June 2023;
 - b) A fine in the amount of **seven thousand five hundred Swiss Francs (7,500 CHF)**; and
 - c) contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- 3) This Decision is subject to appeal in accordance with Article 13.2 of the ADRHA 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.
- 4) This Decision shall be published in accordance with Article 14.3 of the ADRHA Rules.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the Athlete: Yes
- c. Any other: Yes
 - WADA
 - EGY NADO

FOR THE TRIBUNAL



Mr José A. Rodríguez Álvarez , One-Member Panel