

DECISION of the FEI TRIBUNAL
dated 19 January 2021.
(Reference No. FEI Tribunal: A20-0012)

In the matter of

Ms. Argento Campello ("Ms. Campello" or "the Appellant") and
Dr Mariano Salvatore ("Ms. Salvatore" or "the Appellant")
together ("the Appellants").

Represented by Mr Vincenzo Giardino

vs.

Fédération Equestre Internationale ("FEI")

together "the Parties"

I. COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr Christopher Hodson QC, one-member panel

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, 24th edition, effective 1 January 2020, ("GRs").

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

("IRs").

Eventing Rules of the FEI, 25th Edition, effective 1 January 2020 ("ERs").

Dressage Rules of the FEI, 25th Edition, effective 1 January 2014 Including updates of 1 January 2020 ("DRs").

2. The Relevant Legal Provisions:

GRs Article 158.1:

"The Ground Jury deals with all Protests within the meaning of Article 161 provided that they relate to matters occurring during or in direct connection with an Event and that they are presented within the Period of the Event".

GRs Article 161.7:

"Protests to the Ground Jury shall be presented within the applicable time limit to the President of the Ground Jury or to any member of the Ground Jury if the President is not available together with the necessary deposit".

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. (...)

DR's Article 433.2.1:

“The original Judges' sheets from CDIs and CDIOs should be available to the Athletes after the Competition. No copies are required by the FEI”.

III. DECISION

1. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions. 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.

IV. FACTUAL BACKGROUND

2. Ms Argenta Campello (FEI ID: 1052049) is an Italian national and is currently registered with the FEI as an Official with the following functions: Judge, Steward and Technical Delegate. Ms Campello is also the mother of Ms Evelina Bertoli and a co-owner of the Horse SEASHORE SPRING (as detailed in the submissions in due course).
3. Dr Mariano Salvatore is a legal representative of the Gruppo Sportivo Fiamme Azzurre, the former being a team of Ms Evelina Bertoli.
4. The Appeal requests that the FEI Tribunal issue a decision to:
 - a) reinstate the applicants within the terms for the complaint by modifying the General Regulations in the contested parts; or alternatively;
 - b) having assessed the validity of the appeal, in acceptance of the request, correct the classification of the aforementioned tender assigning the first

position to the athlete Ms Evelina Bertoli (FEI ID: 10004113) and the second position to the athlete Ms Arianna Schivo (FEI ID: 10012571).

V. PROCEDURAL BACKGROUND

5. The Tribunal duly took into consideration all the Parties' written submissions and communications received up to date, details of which are outlined below, and such communications were the basis upon which the written decision was prepared as no oral hearing was held in this Appeal.
6. On 6 November 2020, the Legal Representatives for the Appellant Mr Vincenzo Giardino, lodged an appeal against the final results issued by the Ground Jury in the CCI04*- NC-S- Montelibretti (ITA) held on the 22 October 2020 to 25 October 2020 (the "Event").
7. On 20 November 2020, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel in accordance with Article 19.1 of the IR's. 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 25 November 2020.
8. On 24 November 2020, both Parties informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
9. Neither party requested an oral hearing.

VII. SUBMISSION BY THE APPELLANTS

10. The Appellants submitted that due to an error in the calculation of the dressage marks in the Event, Ms Evelina Bertoli (who participated with the Horse SEASHORE SPRING (FEI ID: 103TH13) in the CCI04*-NC-S - Montelibretti (ITA) held from 22 October 2020 to 25 October 2020) was wrongly classified as finishing in second position for the Competition and should have been declared the winner. The Appellants also stated that this Event was considered both International Event and the Italian National Championships.
11. Furthermore, the Appellants alleged that Ms Bertoli spotted this error the day after the Event when the dressage score sheets were emailed to her. Unfortunately, no copy of the email attesting the error was submitted with the

Appeal albeit there is no obligation to distribute copies of the paper score sheets to the athletes under the relevant rules.

12. The Appellants further submitted letter dated 27 October 2020 from the Italian Equestrian Federation to the FEI Eventing Department wherein they informed the FEI about the error in the calculation of the Dressage Test in relation to the combination of Evelina Bertoli and SEASHORE SPRING so that the FEI *"may make the amendments it deems necessary to the classification of the competition"*. In this correspondence they stated: *"I look forward to receiving your instructions on how to proceed, please do not hesitate to contact us if you require any further information"*. On the same day, the FEI Eventing Department replied to this correspondence via email and explained that results cannot be changed 30 minutes after the final ones have been published at the event under any circumstances and this is a clearly defined concept in all sport rules and regulations.
13. Following this reply received from the Eventing Department of the FEI, the Appellants proceeded to lodge an Appeal with the FEI Tribunal on 6 November 2020.
14. The Appellant also confirmed the filing fee was paid pursuant to the GRs Article 162.6 in their email dated 6 November 2020 to the FEI Tribunal.

VIII. SUBMISSION BY THE FEI

15. The FEI issued their answer to the Appeal on the 24 November 2020 and set out its key arguments which can be summarised as follows:
 - a. "The FEI Tribunal does not have a jurisdiction/power to modify the General Regulations;
 - b. The FEI Tribunal does not have a jurisdiction to hear this Appeal as there was no protest validly filed in the current matter to the Ground Jury and hence there is no decision of the Ground Jury from which an appeal to the FEI Tribunal could have been lodged in accordance with article 162.1 of the FEI General Regulations.
 - c. The Appellant should have first filed a protest in accordance with article 161.3 and the deadline to do so was clear as it specifically states *"In order for a Protest to be validly files, the following deadlines must be complied with regardless of whether the person filing the Protest is on-site at the relevant Event or not:...if it is a protest*

concerning the results of a competition- the applicable deadline is 30 minutes after the announcement of the results of the relevant Competition”.

In addition, the FEI also cited that pursuant to article 161.7 of the GRs that *“Protests to the Ground Jury shall be presented within the applicable time limit to the President of the Ground Jury or to any member of the Ground Jury if the President is not available together with the necessary deposit”.*

16. In relation to the first key point as set out above relating to “a” jurisdiction, the FEI has disputed in their submissions that the FEI Tribunal does not have any power to modify the General Regulations and cannot *“reinstate the applicants within the terms for the complaint by modifying the General Regulations in the contested parts”* as requested by the Appellants.
17. They further explained that the approval and amendment of the General Regulations is a sole prerogative of the FEI General Assembly in accordance with article 10.xv of the FEI Statutes and that the only rules that the FEI Tribunal may issue and modify are the Internal Regulations setting forth its organisation and processes compatible with established principles of procedural fairness (article 38.5 of the FEI Statutes). The FEI Tribunal may decide on the interpretation of the Statutes, General Regulations and Sport Rules (article 38.1 of the FEI Statutes).
18. Nevertheless, they argued that the applicable rules in the current proceedings are very clear and do not need any interpretation (as will be demonstrated below) in accordance with the legal maxim *“Clara non sunt interpretanda”*. In this regard the FEI refer to Tribunal Decision dated 27 February 2019 in the matter of the UAE NF vs. FEI. In this case, the FEI Tribunal noted that if the relevant provisions are clear they shall be applied as per their wording and therefore *“if a rule does not state that exceptions are possible, no exceptions may be granted”*¹. Furthermore, the FEI Tribunal clarified that *“the rules are not only binding for members of the FEI, such as the Appellant, but also for the FEI itself. Thus, the FEI cannot – unless specific provisions allow for it – grant exceptions to the rules”*.²
19. Secondly, the FEI referred to the modification of the results of this Event in their submissions and highlighted that the FEI GRs are very straightforward regarding to whom and when a protest shall be filed if the results of competition are contested. They referenced Article 158.1 of the GRs which stipulates that *“the Ground Jury deals with all Protests within the meaning of Article 161 provided that*

¹ The FEI Tribunal Decision dated 27 February 2019 in the matter of the UAE NF vs. FEI, par. 6.8.

² The FEI Tribunal Decision dated 27 February 2019 in the matter of the UAE NF vs. FEI, par. 6.9.

they relate to matters occurring during or in direct connection with an Event (...)”.

20. They also noted article 161.2(a) of the GRs and in accordance with the long-standing jurisprudence in sport³, the decisions and situations arising from the field of play are not subject to any appeal or a protest. However, they stated that there are various sport-specific rules that may nevertheless foresee certain circumstances where some field of play decisions could be challenged within the framework provided in those rules. Such challenges may be contested pursuant to a very restricted timeframe within the GRs. In particular, Article 161.3 of the GRs specifies that *“in order for a Protest to be validly filed, the following deadlines must be complied with regardless of whether the person filing the Protest is on-site at the relevant Event or not:*

<i>Protest Concerning:</i>	<i>Applicable Deadline (i.e., no later than)</i>
<i>The results of a Competition</i>	<i>Thirty (30) minutes after the announcement of the results of the relevant Competition “</i>

21. The FEI further submitted that this strict deadline applies to all persons, regardless whether the person is present on-site at the relevant Event or not. Additionally, the FEI Rules do not foresee any possibility of the extension of this deadline by any FEI body (be it the Ground Jury, the Secretary General or the FEI Tribunal), irrespective of the circumstances. They maintained that such rules are in accordance with the principle of respecting field of play decisions as one of the major characteristics of the *lex sportiva*. Applying this principle is important and disturbing it risks an undermining of the fundamental fabric of the law of sport, opening the door to a more general review by adjudicators of matters that have long been considered as relating to the field of play.⁴

22. Additionally, the FEI referenced the following CAS jurisprudence supporting how it is the rules of the sport that define how a sport must be played and who should adjudicate upon the rules:

“The CAS should abstain from correcting the results by reliance of an admitted error

³ See for example: CAS 2015/A/4208 Horse Sport Ireland & Cian O'Connor V. FEI, Arbitral Award of 15 July 2016 (EXHIBIT 11) or CAS 2004/A/704 Yang Tae Young & Korean Olympic Committee v. FIG, Arbitral Award of 21 October 2004 (EXHIBIT 12)

⁴ CAS 2015/A/4208 Horse Sport Ireland & Cian O'Connor V. FEI, Arbitral Award of 15 July 2016, par 48.

by an official so that the “field of play” jurisprudence is not directly engaged. An error identified with the benefit of hindsight, whether admitted or not, cannot be a ground for reversing the result of a competition. Each sport may have within it a mechanism for utilising modern technology to ensure a correct decision is made in the first place or for immediately subjecting a controversial decision to a process of review, but the solution for error, either way, lies within the framework of the sport’s own rules; it does not licence judicial or arbitral interference thereafter.”⁵

23. The FEI also highlighted that this CAS jurisprudence⁶ confirmed that it is up to each governing body of the sport to define:

- whether or not there are any challenges possible to the field of play decisions/situations;
- restrictions and other conditions to file protests or appeals from the field of play decision/situations.

24. Therefore, it is further asserted by the FEI that the only possibility for the Appellants to contest the results of this competition was to file a protest to the Ground Jury within thirty minutes after the announcement of the results of the relevant competitions. In the present matter the results were signed off by the FEI Technical Delegate and the President of the Ground Jury on Saturday, 24 October 2020 at around 4:00 pm and were announced at the latest on 24 October 2020 at 4:07 pm. Consequently, the protest by the Appellants should have been filed with the Ground Jury on Saturday, 24 October 2020 by 4:37 pm the latest.

25. The FEI confirmed that the Appellants did not file a protest to the Ground Jury within the mandatory deadline and furthermore no protest whatsoever was filed in relation to the results of the Event.

26. The FEI then referred to the letter sent from the Italian Equestrian Federation to the FEI Legal Department dated 27 October 2020 and considered that such correspondence cannot be deemed as a protest given its language and that it contains a request for instructions on how to proceed. They argued that if such a document were intended as a protest, the Italian Equestrian Federation would have explicitly requested the amendment of the results and not instructions on how to proceed. They furthered that this correspondence displays the Italian Equestrian Federation’s knowledge of the rules and the mandatory deadlines for filing a protest contesting the results of competitions and the

⁵ CAS 2004/A/704 Yang Tae Young & Korean Olympic Committee v. FIG, Arbitral Award of 21 October 2004, par 25.

⁶ See for example CAS 2004/A/704 Yang Tae Young & Korean Olympic Committee v. FIG, Arbitral Award of 21 October 2004.

correspondence was sent out for (i) for the FEI's information on the incident; (ii) in case there were some other administrative measures available to the FEI which would have allowed the modification of the results beside the mandatory rules.

27. Thirdly, the FEI addressed the Appellants submissions wherein that stated circumstances existed which prevented the Appellants ability to file a protest within a mandatory deadline i.e., that the score sheets from the Dressage Test were not handed in to the athletes directly after the Event (apparently due to the Covid-19 restrictions) and were sent to them by an email the day after the Event ended. However, the FEI noted that the Appellants did not provide a copy of the email together with their Appeal to attest if such allegations in relation to circumstances are true. Irrespective of that, the FEI pointed out the following reasons why such circumstances should not have prevented their ability to file a protest:

- a) The Guidelines for the FEI Dressage Events taking place during the Covid-19 pandemic are solely for best practices recommendations (and not mandatory rules) and may not in any case override or modify the provisions of the GRs;
- b) Pursuant to Article 433.2.1 of the Dressage Rules provides: "Paper Judging - The original Judges' sheets from CDIs and CDIOs should be available to the Athletes after the Competition. No copies are required by the FEI."

This article confirms that the distribution of the score sheets to the athletes is not mandatory. If it were mandatory, the word "shall" and not "should" would be used in the rule.

Furthermore, there is no deadline stipulated in this rule as to when such score sheets should be distributed to the athletes. Therefore, in accordance with this rule the score sheets can be provided either before the end of deadline to lodge a protest against the results (meaning within 30 minutes after the results have been announced) or any time after the competition, including after the final results have been announced and after the deadline to protest has passed.

Finally, the score sheets are not automatically distributed to all the athletes taking part in competitions; rather they are delivered on demand by the respective athletes.

- c) The FEI also maintained that the Dressage Test is always the first test at Eventing Competitions and given that this event took place on 22 October

2020, Ms Bertoli should have requested the judges score sheets directly after the Dressage Test. If she had requested the score sheets directly after the Dressage Test, the OC would have plenty of time to email them to Ms Bertoli and she would be in a possession of all necessary information in order to file a protest within the mandatory deadline, which elapsed on 24 October 2020 at 4:37 pm.

- d) The FEI also highlighted that if a similar situation arose in the pre-Covid-19 time, the same right would apply to a person who had a right to file a protest but was not present on site during competitions: the judges score sheets would have to be emailed to him/her and not handed in, and the strict deadline to challenge the validity of the results would have applied to this person as it is clearly provided in the article 161.3 of the GRs: *“in order for a Protest to be validly filed, the following deadlines must be complied with regardless of whether the person filing the Protest is on-site at the relevant Event or not: [...]”*

There is no reason to treat the current case any different to this example of the pre-Covid-19 situation.

- e) Finally, the FEI stated for the avoidance of any doubt regarding the results of competition, athletes should always lodge a protest within 30 minutes deadline in order to secure it while waiting to obtain the respective documents.

28. Considering, all of the above points documented by the FEI, it is argued that such circumstances evoked by the Appellants are not truly exceptional and could have been easily avoided if Ms Bertoli requested the score sheets directly after the Dressage Test.

29. In the latter context, the FEI cited further CAS jurisprudence to demonstrate that when there is a relevant procedure in place to resolve field of play decisions, the CAS generally accepts the decision reached as final except where it can be demonstrated that there has been arbitrariness, fraud or corruption in arriving at this decision. In other words, *“Courts may interfere only if an official's field of play decision is tainted by fraud or arbitrariness or corruption; otherwise, although a Court may have jurisdiction it will abstain as a matter of policy from exercising it”*.⁷

30. Moreover, the FEI referred confirmation at CAS that participants in sport competitions *“are entitled to have referees make honest decisions, but not*

⁷ CAS 2004/A/704 Yang Tae Young & Korean Olympic Committee v. FIG, Arbitral Award of 21 October 2004, par 17.

necessarily correct ones” and the CAS Panel declined to interfere in a field of play decision, even though the judges later admitted the decision was wrong.⁸

31. They also noted that in the current matter, there are no allegations whatsoever that the error committed by the judge was in any way fraudulent, arbitrary or corrupted. To the contrary, both the correspondence from the Italian Equestrian Federation dated 27 October 2020 as well as the Appeal mentioned that it was *“a human error”* and *“these things happen”*.
32. The FEI also stated in their submissions that similarly as the CAS, it is their position that the FEI Tribunal should also be very restrictive when reviewing appeals in cases involving the field of play decisions/situations, especially those in which the correct procedure was not followed as required by the mandatory rules. In those kind of cases, they believed that the FEI Tribunal should only intervene in situations of fraud, arbitrariness or corruption. They argued that this is not the case in the present matter and therefore, they ask that FEI Tribunal refrain from intervening and dismiss the Appeal.
33. Finally, the FEI submitted that the outcome of the competition it is really unfortunate for the participant and that mistakes happen, and while the FEI has a sympathy for all athletes who are *“victims”* of such *“honest”* mistakes, the FEI, as the world governing body of the equestrian sports, is in charge of applying and respecting the sport specific rules, even if those rules are strict and do not foresee any exceptions. They maintain that the only way to ensure fairness towards all the participants of the sports competitions, including other athletes who act in good faith and rely on the results (and following from its consequences) once they have been approved and announced.
34. Finally, the FEI requested that all of the above-mentioned particulars to this Appeal are taking into consideration and respectfully requests that the FEI Tribunal:
 - a) Dismiss the Appeal in its entirety;
 - b) Determine that each Party bears their own costs of the Appeal proceedings.

IX. Legal Discussion

35. Having considered all the applicable rules and regulations as well as submissions and evidence provided by the Parties, the Tribunal accepts for the purposes of its decision in this Appeal, the account of the facts as supplied by the Appellant. This means that the decision of the FEI Tribunal proceeds on the

⁸ CAS 2015/A/4208 Horse Sport Ireland & Cian O'Connor V. FEI, Arbitral Award of 15 July 2016, par 49.

basis that the Appellant in fact won the competition in question but was deprived of her win by a clerical error which she had no way of knowing about until after any protest could have been lodged under the rules. There is clearly the effect of unfairness of which she complains. The question is whether the Tribunal can rectify the unfairness.

36. In this regard, the Tribunal refers to the Preamble of the Rules of Eventing which provide “that every eventuality cannot be provided for in these Eventing Rules. In any unforeseen or exceptional circumstances, it is the duty of the appropriate person or body to make a decision in a sporting spirit, by approaching as near as possible the intention of the Eventing Rules and of the General Regulations. Should there remain any omissions in the Eventing Rules, such omission shall be interpreted in a manner compatible to the fullest extent with the other provisions of these Eventing Rules, other rules and regulations of the FEI, and sporting spirit”. However, the Tribunal rules relating to protests and error correction for all disciplines come under the General Regulations. In normal circumstances had they applied such rules the Appellant may have known of the error in time to protest and may have corrected it. But in the context of the Covid 19 pandemic the rules were modified by the FEI.
37. The Tribunal notes that these modifications included that no scoresheets should be given out at the competition. Scoresheets may be requested following the competition and sent by email. Significantly, the modification did not include any references to protests or their timing. The Appellant also asks the Tribunal to modify the General Regulations however the Tribunal has no jurisdiction to modify the general regulations and any such approval of the GRs is a sole prerogative of the FEI General Assembly in accordance with article 10.xv of the FEI Statutes.
38. The second request of the Appellant is that the Tribunal correct the classification of the competition and amend the results of the competition, assigning the first position to Ms Evelina Bertoli. In this respect the FEI Tribunal stress that in the circumstances of this case the Tribunal cannot do that by any application of the rules of the sport. Moreover, the Tribunal acknowledges, as it must, the authority of the CAS in the Yang Tae Young⁹ decision already cited by the FEI. The facts in that case have some similarity to the present circumstances. The modification only went so far and did not include extended timing to consider protest issues.

⁹ CAS 2004/A/704 Yang Tae Young & Korean Olympic Committee v. FIG, Arbitral Award of 21 October 2004, par 17.

39. Consequently, the appeal must be dismissed. The FEI Tribunal has sympathy for the Appellant and regrets that it cannot assist. It notes the FEI does not ask for costs. The deposit is to be returned to the Appellant.

X. Decision

40. As a result, the Tribunal therefore decides as follows:

- 1) The Appeal, in these circumstances which it trusts will not recur, is admissible;
- 2) The Appeal is dismissed;
- 2) All other requests are dismissed;
- 3) The deposit shall be returned to the Appellant. Each party shall pay their own costs in these proceedings.

41. 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.

42. 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

A handwritten signature in black ink, appearing to read 'Chodson', is written over a light blue rectangular background.

Mr Christopher Hodson QC, One-Member Panel