

DECISION of the FEI TRIBUNAL

dated 11 February 2021

in the matter of

Mr David Soukup

(FEI Case number: FEI 2019/BS32 – ESA-35)

FEI Tribunal Hearing Panel:

Mr Mohammed Al-Saberi (UAE), one-member panel

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FEI Tribunal Reference: C21-0004

Person Responsible/ID/NF: David SOUKUP/10170026/CZE

Event/ID: CAI3\*-H2 - Kladruby nad Labem (CZE), 2019\_CI\_0432\_A\_H2\_01

Date of Event: 25-28.04.2019

Prohibited Substance: Oripavine, Morphine

Bar Code Nos.: 5579949

I. **Factual background**

1. Mr David Soukup (FEI ID 10170026), the Person Responsible ("**the PR**") and rider for Czech Republic, competed with the Horse ESA-35 ("**the Horse**") at the CAI3\*-H2 in Kladruby and Labem, in Czech Republic, between 25 to 28 April 2019 ("**the Event**").
2. The Fédération Equestre Internationale ("**the FEI**" together with the PR, "**the Parties**"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
3. At the occasion of the Event, the Horse was tested, and returned a positive result for Morphine and Oripavine. Morphine is a Controlled Medication Substance under the FEI's Equine Prohibited Substances List, whereas Oripavine is a Banned Substance under the FEI's Equine Prohibited Substances List. Morphine and Oripavine are both opioids with analgesic effects and are also designated as "Specified Substances" under the FEI's Equine Prohibited Substances List.
4. Since 2016, the FEI has amended the FEI Equine Anti-Doping and Controlled Medication Regulations ("**the EADCMR**"), in order to introduce the concept of "Specified Substances". This amendment was meant to recognize that it is possible, for certain substances, to enter a horse's system inadvertently, due to a credible non-doping explanation.
5. The PR was informed of the positive result by notification letter dated 5 June 2019 from the FEI. In said letter, the FEI informed the PR of the provisional suspension of the Horse for 2 months, based on a possible violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the FEI Equine Anti-Doping Rules ("**the EAD Rules**"). The PR was, however, not provisionally suspended, until the FEI would receive the indication of the source of the positive finding.

## II. Initial Proceedings

6. On 5 June 2019, the FEI Legal Department officially notified the PR, the Owner and the Czech Equestrian Federation ("**CZE-NF**"), of a possible violation of Article 2.1 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample) of the EAD Rules, based on the Laboratory's Adverse Analytical Finding of Morphine and Oripavine in the Horse's Sample collected at the Event and the potential consequences (the "**Notification Letter**").
7. Upon request from the FEI, the PR and the Owner submitted their position on 2 July 2019, which will be addressed *infra*, under V.

## III. Further Proceedings

8. By email dated 25 January 2021, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel for the adjudication and approval of a Settlement Agreement.
9. On 2 February 2021, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel.
10. On 2 February 2021, the FEI informed the FEI Tribunal that they did not have any objections to the constitution of the hearing panel.
11. On 2 February 2021, the CZE-NF informed the FEI Tribunal that the PR did not have any objections to the constitution of the hearing panel.
12. Neither party requested an oral hearing.

## IV. Considering

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

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

General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165

and 167 (“GRs”).

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

FEI’s Equine Anti-Doping and Controlled Medication Rules, Based upon the 2015 WADA Code, effective 1 January 2015 (“EADCM Rules”).

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

**B. Person Responsible:** Mr David Soukup

**C. Justification for sanction:**

**GRs Art. 143.1:** “Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations).”

**GRs Art. 118.3:** “The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel, including but not limited to, grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse.”

**EAD Rules Art. 2.1.1:** “It is each *Person Responsible’s* personal duty to ensure that no *Banned Substance* is present in the *Horse’s* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse’s Samples*, even though their *Support Personnel* may be considered additionally responsible under this Article and Articles 2.2 - 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish an *EAD Rule* violation under Article 2.1.”

**EAD Rules Art. 7.6.1:** “In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI.

The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

**EAD Rules Art. 10.4:** "If the *Person Responsible* and/or member of the *Support Personnel* (where applicable) establishes in an individual case that he/she bears *No Fault or Negligence* for the *EAD Rule* violation, the otherwise applicable period of *Ineligibility* and other *Sanctions* (apart from Article 9) shall be eliminated in regard to such *Person*. When a *Banned Substance* and/or its *Metabolites* or *Markers* is detected in a *Horse's Sample* in violation of Article 2.1 (presence of a *Banned Substance*), the *Person Responsible* and/or member of the *Support Personnel* (where applicable) must also establish how the *Banned Substance* entered the *Horse's* system in order to have the period of *Ineligibility* and other *Sanctions* eliminated. In the event this Article is applied and the period of *Ineligibility* otherwise applicable is eliminated, the *EAD Rule* violation shall not be considered a violation for the limited purpose of determining the period of *Ineligibility* for multiple violations under Article 10.8 below.

Article 10.4 can apply in cases involving Specified Substances. Otherwise Article 10.4 only applies in exceptional circumstances. *No Fault or Negligence* does not apply in the following circumstances:

- (a) where the presence of the *Banned Substance* in a *Sample* came from a mislabeled or contaminated supplement. *Persons Responsible* are responsible for what their *Horses* ingest and have been warned about the possibility of supplement contamination.
- (b) the *Administration* of a *Banned Substance* by the *Person Responsible's* veterinary personnel or member of the *Support Personnel* without disclosure to the *Person Responsible*. *Persons Responsible* are responsible for their choice of veterinary personnel and *Support Personnel* and for advising veterinary personnel and *Support Personnel* that *Horses* cannot be given any *Banned Substance* at any time.

## V. The Parties' Submissions

### A. The Submission of the PR and the Owner:

13. The PR and the Owner submitted a joint position in the context of the present FEI proceedings, on 2 July 2019.
14. While the PR is not much experienced in international competition, the Owner has been involved in such for more than 25 years. For about 15 years, the Soukup Family (Owner of the Horse), has been using the feed Energys for their horses, and never encountered any problems in this respect.
15. Upon receiving the information about the positive result, the PR and the Owner investigated to find out how the Specified Substances entered the Horse's system.
16. The Manufacturer, and Producer of the feed Energys Relax, De Heus a.s. in Bucovice, Czech Republic, stated that they detected undesirable occurrences of alkaloids which occurred in their poppy seeds. A formal statement was issued by the Manufacturer on their website, on 11 June 2019.
17. The detection of the contaminated feed occurred only after the Event had taken place between 25 and 28 April 2019, i.e. in May/June 2019.
18. The PR and the Owner submitted, in the course of these proceedings, various documents and evidence in support of their position, i.e.:
  - A copy of the invoice certifying the purchase of the Feed by the Owner on 8 April 2019, i.e. around two weeks before the positive test;
  - A statement from the Manufacturer, explaining the problem of the contamination of the Feed with alkaloids, which was discovered in May/June 2019;
  - A copy of the Certificate of Analysis issued in May 2019 by the GIE LCH Laboratory in Paris, certifying that a sample of the feed sent by the Manufacturer contained alkaloids that occur in poppy seed, including Morphine and Thebaine – this latter being one of the principal metabolites of Oripavine;
  - A written statement from the treating veterinarian of the Horse, where he enumerated all the treatments provided to the Horse in the year previous to the positive test, evidencing that none of the treatments provided included Morphine or Oripavine;

19. The various information and elements provided came in support to the explanations of the PR and the Owner as to how the Specified Substances entered the Horse's system.
20. The PR and the Owner allege that Morphine and Oripavine entered the Horse's system by way of the contaminated feed. Since they have known about the positive result, the PR and the Owner have decided to change the feed, but with the same Manufacturer: they now use a premium product, Energys Herbic, which would appear to be produced outside of Czech Republic, and which would not present the same problem of feed contamination.

#### B. The Submission of the FEI:

21. On 25 January 2021, the FEI provided the FEI Tribunal with the Settlement Agreement reached between the Parties, which contains accordingly the FEI's position. In particular, the FEI is of the opinion that:
  - (i) The PR established, on a balance of probabilities, that the Prohibited Substances (Morphine and Oripavine) entered the Horse's system most probably through the contaminated Feed.
  - (ii) It has been confirmed, in previous FEI cases, that a presence of Oripavine together with Morphine in a horse's sample can indicate that the ingestion of poppy seed and/or feed contaminated with poppy seed could be the source of this positive finding.
  - (iii) In order for art. 10.4 of the EAD Rules to apply, the PR must establish (a) how the Banned Substance entered the Horse's system and that (b) he did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he administered to the horse, or the horse's system otherwise contained, a Banned or Controlled Medication Substance or he had used on the horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule.
  - (iv) As per the first condition, the PR has established, on a balance of probabilities, and based also on the various documents and evidence provided (cf. *supra*, par. 18), how Morphine and Oripavine entered the Horse's system.
  - (v) With respect to the second condition, the FEI is of the opinion that the PR

could not have reasonably known or suspected that he administered to the Horse the Prohibited Substances: (a) the relevant Feed did not list Morphine or Oripavine as possible ingredients; (b) the possibility of contamination of the Feed was not known by the PR or the Owner at the time of the competition in April 2019, since the producer itself did not know by then, and only informed the public via its website in May/June 2019; (c) the PR and the Owner have been using the same feed for 15 years without any problem, and do regular checks of the feeds given to their horses; and finally (d) since having been made aware of the positive result, the PR and the Owner decided to change their Horse's feed, moving to a premium product from the producer, which would not present any problem of feed contamination.

- (vi) Based on the elements and evidence produced and considering the totality of the circumstances *in casu*, as well as previous similar cases involving the same Prohibited Substances, the FEI is satisfied that the PR bears No Fault or Negligence for the rule violation. Accordingly, in application of Art. 10.4 the EAD Rules, the otherwise applicable period of Ineligibility and other Sanctions (apart from automatic disqualification of individual results) shall be eliminated regarding the PR.

## VI. The Decision

### 22. Agreement between the Parties:

\*\*\*Quote\*\*\*

#### 2. NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

- 2.1 In the matter of the Adverse Analytical Finding related to the Samples, which were collected from the PR's horse ESA-35 at the CAI3\*-H2 - Kladruby nad Labem in Czech Republic, from 25 to 28 April 2019, the PR and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the EADCMRs (*The presence of Banned and Controlled Medication Substances and/or its Metabolites or Markers in a Horse's Sample*);

- (b) The PR established on a balance of probabilities how the Morphine and Oripavine entered the Horse's system;
- (c) The PR bears No Fault or Negligence for the Rule Violation and therefore he shall not serve any period of Ineligibility in accordance with Article 10.4 of the EAD Rules;
- (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules;
- (e) In accordance with Articles 9.1 and 10.1.2 of the EAD Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (f) The Provisional Suspension served by the Horse from 5 June 2019 until 4 August 2019 is hereby confirmed;
- (g) The PR shall not incur any fines;
- (h) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules as well as the Provisional Suspension served by the Horse from 5 June 2019 until 4 August 2019) will apply in this case;

2.2 Each party will bear its own legal and other costs incurred in connection with these proceedings.

2.3 This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

2.4 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

\*\*\* End Quote\*\*\*

## VII. Jurisdiction

23. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EAD Rules, as well as Article 18 of the IRs. The PR is a member of the Czech Equestrian Federation, and as such is bound by the EAD Rules. Article 7.6.1 of the EAD Rules provides for agreements to be reached between parties; subject to approval by the FEI Tribunal. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

## VIII. Approval of Agreement

24. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probabilities – that the PR bears No Fault or Negligence in the context of the present matter.
25. Furthermore, the Tribunal also takes note that the FEI is satisfied that the PR has demonstrated that the cumulative conditions for art. 10.4 EAD Rules to apply are met in the present matter and that accordingly, there shall be no Ineligibility Period imposed on the PR. Additionally and in accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules. Finally, the suspension of the Horse, as well as the disqualification of the results at the Event, are hereby confirmed.
26. The Tribunal wishes to emphasise that it did not evaluate whether the PR has met the burden of proof regarding the level of (no) Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
27. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADCM Rules.
28. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS32 ESA-35.

## IX. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the PR, Mr David Soukup concerning the case 2019/BS32 ESA-35 (C21-0004 David Soukup) is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph VI above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 12.2 of the EAD 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.
3. This Decision shall be notified to the PR, to the NF of the PR, and to the FEI.
4. This Decision shall be published in accordance with Article 13.3 of the EAD Rules.

FOR THE FEI TRIBUNAL



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Mr Mohammed Al-Saberi, One-Member Panel