DECISION of the FEI TRIBUNAL

dated 30 June 2021

in the matter of

Mr Abraham Gaspar OJEDA SERRANO – C21-0008

(FEI Case number: FEI 2020/HD04- Abraham Gaspar Ojeda Serrano)

FEI Tribunal Hearing Panel:

Ms Valérie Horyna one-member panel

FEI Tribunal Reference: C21-0008

Athlete/ID/NF: Abraham Gaspar OJEDA SERRANO/10012274/MEX

Event: Out-of-Competition

Prohibited Substance: Clenbuterol

Sample Code No.: 521493

I. COMPOSITION OF THE TRIBUNAL PANEL:

Ms Valérie Horyna (SUI)

II. SUMMARY OF FACTS:

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 16 June 2021.

Hearing: 16 June 2021 at 4 pm (Central European Time by videoconference (via Cisco WebEx).

Present:

- The FEI Tribunal Panel
- Mr. Gautier Aubert, FEI Tribunal Clerk

Athlete:

- Mr. Abraham Gaspar Ojeda Serrano

Counsel for the Athlete:

- Mr. Jorge Ricardo Pérez Conde

Athlete's Witnesses:

- Mr. Cuauhtémoc Fuentes Simental
- Mr. Eduardo Herrera Guzman
- Dr. Berenice Gomez Barrios

For the FEI:

- Ms. Katarzyna Jozwik, FEI Legal Counsel
- Ms. Anna Thorstenson, FEI Legal Counsel
- Ms. Ana Kricej, FEI Junior Legal Counsel

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

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

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. Athlete: Mr Abraham Gaspar Ojeda Serrano.

3. 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 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.

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."

IV. DECISION

4. 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 the 16 June 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.

V. FACTUAL AND PROCEDURAL BACKGROUND

5. Mr Abraham Gaspar OJEDA SERRANO (FEI ID 10012274), the Athlete (**"the Athlete"**), is an International-Level athlete participating in the discipline of Eventing and registered with the Mexican Equestrian Federation (the "**MEX-NF**").

6. 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).

7. As a member of the MEX-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. Furthermore, the Athlete participated in various international events, in May 2019 and February 2020, and was registered with the FEI in 2019 and 2020.

8. On 18 February 2020, the FEI was informed by the World Anti-Doping Agency ("**WADA**") that they transferred four equestrian samples to the Laboratory of Montreal, following the closure of the Mexican Laboratory. Those samples were sent for re-analysis, as per Article 6.5 of the Code. The Athlete's sample code is 521493.

9. The samples were initially collected by the Mexican Anti-Doping Agency, back on 4 June 2019, out-of-competition. WADA, however, informed the FEI that the samples were in fact never analysed in Mexico and were analysed for the first time in Montreal.

10. The Laboratory analysed all four samples and reported an Adverse Analytical Finding of Clenbuterol for one of them, the three others, while also containing Clenbuterol, were reported as Atypical Findings. The Adverse Analytical Finding is the subject of the present proceedings.

11. Clenbuterol is a "Non-Specified Substance" and is listed in Class S1.2, Other Anabolic Agents, under the 2019 WADA Prohibited List. It is prohibited at all times: in-and out of competition. The positive finding of Clenbuterol, whose concentration in the A Sample was 5 ng/mL, in the Athlete's Sample gave rise to an Anti-Doping Rule Violation under Article 2.1 of the ADRHA. Furthermore, the Athlete had not been granted a Therapeutic Use Exemption for Clenbuterol, as provided for in Article 7.2.2 of the ADRHA.

12. In accordance with Article 7.1.1 of the Code, *In circumstances where the rules of a National Anti-Doping Organization do not give the National Anti-Doping Organization authority over an Athlete or other Person who is not a national, resident, license holder, or member of a sport organization of that country, or the National Anti-Doping Organization declines to exercise such authority, results management shall be conducted by the applicable International Federation or by a third party as directed by the rules of the International Federation. Results management and the conduct of hearings for a test conducted by WADA on its own initiative, or an anti-doping rule violation discovered by WADA, will be conducted by the Anti-Doping Organization designated by WADA. Results management and the conduct of hearings for a test conducted by the International Olympic Committee, the International Paralympic Committee, or another Major Event Organization, or an anti-doping rule violation discovered by one of those organizations, shall be referred to the applicable International Federation in relation to Consequences beyond exclusion from the Event, Disqualification of Event results, forfeiture of any medals, points, or prizes from the Event, or recovery of costs applicable to the anti-doping rule violation.*

13. Thus, on 2 April 2020, the FEI Legal Department officially notified the Athlete and the MEX-NF of a violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Clenbuterol in the Athlete's Sample collected out-of-competition and the potential consequences (the "Notification Letter").

14. The Notification Letter included notice that the Athlete was provisionally suspended as of 2 April 2020. The Athlete was further informed that he was offered the opportunity of a preliminary hearing with the FEI Tribunal, where he would be able

to present all explanations necessary for the FEI Tribunal to assess whether the provisional suspension shall be lifted or maintained. Finally, the Athlete was informed of his right to request for the analysis of the B Sample, which, to date, he did not (cf. Article 7.3.1 of the ADRHA).

15. On 16 February 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel for the adjudication of the case and submitted its Response with annexes.

16. On 2 March 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 5 March 2021. The Athlete was furthermore provided with the opportunity to reply to the FEI's Correspondence by 22 March 2021. Finally, the Parties were given a deadline until 25 March 2021 to indicate whether they requested for oral hearing to take place.

17. On 2 March 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.

18. On 2 March 2021, Mr Ricardo Perez Conde, MEX-NF Eventing Chairman, informed the Tribunal that the Athlete wished to send a statement by video conference.

19. On 10 March 2021, the Tribunal acknowledged receipt of the above correspondence, and advised the Athlete that the deadline to provide his position would elapse by 22 March 2021. Upon receipt of the Athlete's written submission, the Tribunal would then determine, based on possible request from the Parties, whether a hearing should be organised.

20. On 11 March 2021, the Athlete submitted a video, where he appears and respond to the FEI's Correspondence, with an interpreter sitting next to him.

21. On 24 March 2021, the Tribunal acknowledged receipt of the Athlete's submission, and informed the Parties that, based on this video, it understood that the Athlete does ultimately not request, *in casu*, a hearing to take place. A deadline elapsing on 29 March 2021 was provided to the Athlete to confirm.

22. On 29 March 2021, the Athlete requested for a hearing to take place. In the same email correspondence, the Athlete submitted links to what appeared to be documents, which the Tribunal was not able to open.

23. On 6 April 2021, the Tribunal acknowledged receipt of the Athlete's correspondence, and gave him an additional deadline to submit the documents in an appropriate format. The FEI was also asked to indicate whether it consented to the production of said documents, and its position towards the request for a hearing from the Athlete.

24. On 8 April 2021, the FEI informed the Tribunal that it was not opposing to the additional submission of documents, as long as the Tribunal would grant the FEI the right to reply. The FEI also did not oppose to the Athlete's request for a hearing.

25. On 13 April 2021, in the absence of an additional submission by the Athlete, the latter was provided with a final deadline until 16 April 2021 to submit his documents in an appropriate format, and was informed that, should he fail to submit those documents within the deadline, the Tribunal would not allow any additional documents.

26. On 13 April 2021, the Athlete submitted his documents in an appropriate format, and reiterated his request for a hearing to take place.

27. On 19 April 2021, the Tribunal acknowledged receipt of the Athlete's correspondence, and offered the Parties two dates for the hearing, to be held via videoconference.

28. On 20 April 2021, the FEI confirmed its availability and indicated who would be attending the hearing. The Athlete did not respond within the prescribed deadline.

29. On 27 April 2021, the Tribunal noted the absence of response from the Athlete and provided him with an additional deadline to respond.

30. On 3 May 2021, in view of the Athlete continued failure to confirm his attendance, a final deadline elapsing on 5 May 2021 was provided to the Athlete to respond. The Athlete was further advised that, should he fail to respond within the prescribed deadline, the Tribunal would consider that he ultimately waived his right for a hearing and would decide the case based on the written submissions from the Parties. The FEI was further requested to indicate whether 11 May 2021 was still feasible for a hearing to take place, should the Athlete confirm his attendance.

31. On 5 May 2021, the FEI confirmed its availability for 11 May 2021, provided the Athlete responded by 6 May 2021 at the latest.

32. On 10 May 2021, in view of the Athlete's failure to respond to the Tribunal's various correspondences, the Tribunal considered that the Athlete eventually waived his

right for a hearing, and informed the Parties that a decision, based on the file, would be notified to the Parties in due course.

33. On 10 May 2021, following the Tribunal's letter, the FEI forwarded to the Tribunal an email received on 7 May 2021 from the Athlete, where he had indicated requesting respectfully for the hearing date to be rescheduled, so that he could present his evidence and his witnesses.

34. On 11 May 2021, the Athlete submitted a Power of Attorney, whereby he would be assisted and represented by Mr Ricardo Perez Conde. The Athlete further asked for a deadline extension.

35. On 12 May 2021, the Tribunal acknowledged receipt of the above correspondence, and asked the FEI to indicate whether it would agree for a hearing to take place, despite the Athlete's apparent failure to respect the deadlines offered to him by the Tribunal.

36. On 12 May 2021, the FEI agreed, exceptionally, for a hearing to be held, provided (i) such hearing is held promptly and (ii) the Tribunal issues its final reasoned decision before 1 July 2021.

37. On 12 May 2021, the Athlete reiterated his request for a deadline extension, in an email submitted in Spanish.

38. On 17 May 2021, the Tribunal offered the Parties two new dates for the hearing and reminded the Parties that the current proceedings were conducted in English, in application pf Art. 20 of the IRs.

39. The Parties provided via email their respective availabilities for 17 and 18 May 2021.

40. As the above dates did not match for the Parties, a final and last possible date was offered by the Tribunal on 25 May 2021. The Parties were informed that, should they not agree on that date, no hearing would be organised, and the Tribunal would decide the present matter based on the file. The Tribunal further took note of the three witnesses which the Athlete intended to call at the hearing and asked him to provide written statements of his witnesses, pursuant to Art. 25.2 let. d of the IRs.

41. On 25 May 2021, both Parties confirmed their availability for the hearing on the last offered date by the Tribunal to be on 16 June 2021.

42. On 1 June 2021, the Athlete submitted written summaries of his witnesses.

43. On 2 and 4 June 2021, the Tribunal provided the Parties with a tentative schedule for the hearing to take place via videoconference. The Parties were reminded of their duty to provide an independent interpreter in case they wished to rely on evidence in a language other than English.

44. The hearing took place on 16 June 2021, at 16:00 (Swiss time). The Athlete attended the hearing, with an interpreter, and all three witnesses duly appeared, also with the support of an interpreter.

VI. SUBMISSIONS BY THE PARTIES WITH THE RESPECTIVE POSITIONS

In the following, a short 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 Submissions of the Athlete:

45. The Athlete alleges that the positive finding of Clenbuterol is due to his ingestion of meat contaminated with said substance. Mexico is a well-known country facing problems of meat contamination from Clenbuterol.

46. The Athlete is a professional military, who trains every day at the High-Performance Equestrian Centre of the Ministry of National Defence in Mexico City ("the Equestrian Centre").

47. The Athlete was not the only one who returned a positive Sample of Clenbuterol, as three other Athletes, who also train and eat at the Equestrian Centre, returned positive tests with the same prohibited substance. In support of his case, the Athlete submitted written testimonies of those athletes, as well as a letter from the MEX-NF, confirming that all those athletes do indeed train and dine together at the Equestrian Centre.

48. The Athlete further submitted a letter dated 2 May 2020 from the Equestrian Centre, which confirmed the following elements:

a. After verification of the training schedule, the Equestrian Centre can confirm that the Athlete trained at the Equestrian Centre in the period before the Sample was collected, and therefore used its dining facilities.

b. The Equestrian Centre conducted a thorough investigation to inspect the

meat served at the Centre between February and May 2019. However, the supplied could not provide any information on the meat, as it discarded all the 2019 documents by January 2020.

c. The Equestrian Centre however took some action in response and terminated the contract with the meat supplied. A new meat supplied was selected, which would be able to present the inspection results of the meat sold, in order to ensure that there is no Clenbuterol in the meat, and thus to prevent similar cases to happen in the future.

d. The Equestrian Centre started to give cycle of conferences to the riders to avoid them to eat meat in establishments which would not be certified, and which cannot give them the necessary indications as to their origin.

49. The Athlete denies any wrongdoings, being intentional or by negligence. In this respect, he stressed that he has always acted with integrity, and always followed the rules of Fair Play. He has been the subject of various anti-doping controls at national and international events, and never committed any anti-doping offense prior to the one subject of the present proceedings.

50. In the Athlete's view, the only way Clenbuterol could enter his body is by way of his beef consumption during his stay in Mexico City, during the period prior to the Sample collection (i.e. between 21 May to 3 June 2019). During that time, the Athlete ate meat-based food at fast food restaurants, without imagining that this would cause any sort of problem.

51. The Athlete realised later the doping control problem faced in Mexico, with the substance Clenbuterol and its content in the beef which was found in multiple places across Mexico City.

52. Finally, the Athlete never tried to improve his sports performance or hide the use of the prohibited substance, and requests, in view of his absence of any intention or negligence, that the provisional suspension or ineligibility imposed on him is eliminated, in application of Article 10.5 of the Code.

B. Written Response of the FEI:

53. 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 Clenbuterol, which ion itself constitute sufficient proof that a violation of Article 2.1 of the ADRHA occurred. In any event, the presence of

Clenbuterol is not disputed by the Athlete.

54. The Athlete has been consistent in his explanations, and provided only one scenario explaining how Clenbuterol could have entered his body, i.e. through the ingestion of contaminated meat. The Athlete clearly rejected any alternative scenario, e.g. by way of medication or food supplement containing the prohibited substance, or intentional doping.

55. WADA has recognised a problem of meat contamination with Clenbuterol, especially in certain countries, and amended Article 7.4 of the Code, allowing the laboratories to report Atypical Findings for samples positive to Clenbuterol, but which would go below the threshold of 5 ng/mL.

56. Furthermore, WADA confirmed that a concentration of Clenbuterol at or about 5 ng/mL "*A concentration level at or about 5ng/mL does not automatically discount meat contamination, but the athlete does lose the presumption afforded to him or her if the concentration was under 5ng/mL. The athlete can still prove the AAF was due to meat contamination by providing evidence as he would even if it were an ATF (i.e. receipts of meat, how much he ate, types of meat, PKS study, etc). However, since the athlete has an AAF instead of an ATF, his results would need to be Disqualified, even if it is found that Code Article 10.4 is applicable*".

57. The FEI is of the opinion that the present matter can lead to different scenarios and leaves it up to the Tribunal to decide which scenario is fulfilled, depending on whether the Tribunal considers that the Athlete established how the prohibited substance entered his body and, in the negative, whether there are exceptional circumstances pointing to the unintentional character of the anti-doping rule violation.

58. Regarding the other 3 Atypical Findings to Clenbuterol, the FEI also investigated them, and concluded that those Atypical Findings were compatible with ingestion of meat contaminated with Clenbuterol. Thus, those cases were closed by the FEI without any further action and all respective parties, including WADA and the Mexican Anti-Doping Agency, were duly informed. The estimated concentration of Clenbuterol in the Athlete's Sample was however significantly higher than the estimated concentration of Clenbuterol in the other samples collected on 3 and 4 June 2019 (i.e. 0,07 ng/mL, 0,12 ng/mL and 0,3 ng/mL).

59. In the ADAMS system, the Athlete has one negative test registered sixteen days before his positive test to Clenbuterol and one negative test registered twenty days after.

60. The Athlete has been notified of the positive finding only ten months after the Sample collection, which could have prevented him to recollect what and when he ate, and perhaps also to secure the necessary evidence.

61. The Athlete did not provide any document corroborating his claims that the meat he ingested was indeed contaminated with Clenbuterol. In this sense, the investigation conducted by the Equestrian Centre remained unsuccessful. The FEI however recognises, as mentioned *supra*, that the significant delays occurred for the notification of the Adverse Analytical Finding may have prevented the Athlete to collect evidence in support of his case.

62. The FEI collected a scientific opinion from an independent expert, Professor Bruno Le Bizec ("the **Expert**"), who is the Director of the French national Reference Laboratory in charge of forbidden growth promoters in farm animals and a wide range of persistent organic pollutants in food. He is also a member of the WADA Laboratory Expert Group since 2015.

63. In summary, and after a very comprehensive report submitted by the FEI, the Expert explained the following:

    a. Despite Clenbuterol being prohibited in Mexico, several state inspections conducted at the occasion of random checks permitted to show that Clenbuterol is still used in Mexico.

    b. Residual concentrations of Clenbuterol in meat even show concentrations above the ng residue per gram of meat, and can reach about twenty ng/g.

    c. Several tests were also performed on athletes, including at the occasion of international events held in Mexico, which resulted in urinary concentrations of Clenbuterol.

    d. Based on several calculations, hypothesis and scenarios made in accordance with the information at disposal from the present case, the Expert concluded the following:

       [Quote]

       "*The value found in the urine of the athlete was roughly estimated at 5 ng/mL (not strictly with a quantitative approach), which may, given the associated expanded uncertainty (which I estimate in the range of +/-30%) be indifferently a*

value belonging to the range 3.5-6.5 ng/mL.

Theoretical values were calculated according to two different scenarios:

- *The deterministic approach, **extremely protective for the athlete**, led to the prediction of a maximum value in urine ranging from 2.0 to 5.2 ng.mL-1 whereas the semi-quantitation performed by the laboratory concluded 5.0 ng.mL-1. The probability is very low but we demonstrated that the **hypothesis of the consumption of a contaminated meat** the day before the antidoping control **is compatible** with the reported urinary clenbuterol concentration.*
- *The probabilistic approach, which considered not values fixed a priori for each variable but intervals of permitted values, resulted in the following values:*
  - *At the p50 of the calculated values distribution, the calculated urinary clenbuterol concentration is 1.5 ng.mL-1; the basic principle of the probabilistic approach would give a strong credit to this value;*
  - *At the p95, p99 and p99.9 of the distribution, the calculated concentrations are 3.5 ng.mL-1, 4.5 ng.mL-1 and 5.6 ng.mL-1. These values take into account the concomitant occurrence of the upper limits of the assumptions made for each of the variables.*

*At the p99 and p99.9 of the distribution, the found concentrations are compatible with the estimated value by the antidoping laboratory. It shows again that the **hypothesis of the consumption of a contaminated meat** the day before the antidoping control **is compatible** with the reported urinary clenbuterol concentration*."

64. In view of the above, the FEI is of the opinion that the meat contamination scenario is scientifically plausible, and quoted another part of the Expert's report, explaining that: "*The hypothesis of a urinary excretion of clenbuterol in this athlete at a concentration roughly estimated to 5 ng/mL, taking into account the information available to us and the particularity of the situation linked to bovine breeding in Mexico, is conceivable although the probability that it will occur in practice is rather low as the values retained for each variable are extreme*." [emphasis added by the FEI].

65. Since the Sample was collected from the Athlete out-of-competition, there are no results to be disqualified. With respect to fine and costs, in application of Article 10.10 of the ADRHA, the FEI submits that, should the Athlete be sanction, a fine should be imposed on him, but each Party shall bear its legal costs of the proceedings. Should the Tribunal decide that the Athlete committed No Fault or Negligence pursuant to Article 10.4 of the ADRHA, then the Athlete shall not incur any fines and each Party

shall bear its legal costs of the proceedings.

66. In view of the above, the FEI's conclusions are the following:

[Quote]

6.1 For the reasons set out above, the FEI respectfully requests that the FEI Tribunal issue a decision:

6.1.1 upholding the charge that the Athlete has violated Article 2.1 of the ADRHA; and

6.1.2 confirming that:

6.1.2.1 the Athlete established on a balance of probabilities that the Prohibited Substance Clenbuterol entered his body through the ingestion of meat contaminated with Clenbuterol;

6.1.2.2 the Athlete 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 ADRHA;

6.1.2.3 in accordance with Article 10.7.3 of the ADRHA, this violation of the ADRHA shall not be considered a prior violation for the purpose of Article 10.7 (Multiple Violations) of the ADRHA;

6.1.2.4 the Athlete shall not incur any fines;

6.1.2.5 each Party shall bear its legal costs of the proceedings;

6.1.3 or alternatively confirming that:

6.1.3.1 the Athlete did not establish on a balance of probabilities how the Prohibited Substance Clenbuterol entered his body;

6.1.3.2 the Athlete has nevertheless established on a balance of probabilities that his anti-doping rule violation was not-intentional and therefore he shall be sanctioned with two (2) years Ineligibility period in accordance with the Article 10.2.2 of the ADRHA;

6.1.3.3 the Provisional Suspension served by the Athlete as of 2 April 2020 shall be credited against the imposed Ineligibility Period in accordance with Article 10.11.3.1 of the ADRHA;

6.1.3.4 the Athlete shall incur a fine in accordance with the Article 10.10 of the ADRHA;

6.1.3.5 each Party shall bear its legal costs of the proceedings;

6.1.4 or alternatively confirming that:

6.1.4.1 the Athlete did not establish on a balance of probabilities how the Prohibited Substance Clenbuterol entered his body;

6.1.4.2 the Athlete did not establish on a balance of probabilities that his anti-doping rule violation was not-intentional and therefore he shall be sanctioned with four (4) years Ineligibility period in accordance with the Article 10.2.1.1 of the ADRHA;

6.1.4.3 the Provisional Suspension served by the Athlete as of 2 April 2020 shall be credited against the imposed Ineligibility Period in accordance with Article 10.11.3.1 of the ADRHA;

6.1.4.4 the Athlete shall incur a fine in accordance with the Article 10.10 of the ADRHA;

6.1.4.5 each Party shall bear its legal costs of the proceedings.

[End Quote]

C. Summary of the Athlete's testimony at the Hearing dated 16 June 2021

67. At the Hearing dated 16 June 2021, the Athlete provided his testimony, in Spanish with an interpreter translating questions and answers into English. He was also questioned by the FEI and the Tribunal. In summary, the Athlete provided the following additional information:

a. When residing at the Equestrian Centre, the Athlete would eat meat on a daily basis, sometimes three times a day, up to 600 grams of meat per meal.

b. The Athlete had, during that period, breakfast and lunch at the Equestrian Centre, and would then have dinner outside. At this occasion, he would often eat tacos, which can contain different types of meat, including kidney, liver, and eating cow and pork meat. Those dinners outside would usually take place at street food stalls, which are common in Mexico, and he would not be eating with the other athletes.

c. After he became aware of the Adverse Analytical Finding, the Athlete changed his eating habits, by eating less meat, especially when eating outside of the Centre, where he would less easily know what exactly the meat contains.

d. The Athlete confirmed not having taken any medicine or food supplement before the test took place. The only food complement he took was a B complex vitamin, which only contains vitamin B, but which does not contain Clenbuterol. This B vitamin was purchased in a pharmacy.

e. The daily routine of having breakfast and lunch at the Equestrian Centre, and then dinner outside, was followed by the Athlete on 4 June 2019. The other athletes at the Equestrian Centre usually follow the same routine, but the Athlete does not know whether they eat the same amount of meat as he does.

f. Before receiving the notification of the Adverse Analytical Finding, the Athlete had never heard of Clenbuterol, except on television, where it was discussed about some football players.

g. The Athlete is aware of his anti-doping responsibility, although he did not pursue any specific training courses in this respect.

h. The equestrian sport has always been the Athlete's life, and he has been representing his country and the army. He thus hopes that the sanction taken by the Tribunal will be adapted to his situation, so that he can continue to take care of his family.

D. Summary of the witnesses' testimonies at the Hearing dated 16 June 2021

Athlete's first witness

68. At the Hearing, Mr. Cuauhtémoc Fuentes Simental provided his testimony, in Spanish with an interpreter translating questions and answers into English. In summary, Mr. Fuentes Simental indicated the following:

a. He is the Head of the Equestrian Centre. As such, he can testify that the Equestrian Centre decided, upon receiving notification of the present issue, to change its meat supplier, so that no similar cases of meat contamination with Clenbuterol happen in the future.

b. On behalf of the Equestrian Centre, he deeply regrets this situation. The Equestrian Centre had never experienced anything similar before. If there would be an intentional anti-doping violation committed at the Equestrian Centre, the persons would be severely punished.

Athlete's second witness

69. At the Hearing, Mr. Eduardo Herrera Guzman provided his testimony, in Spanish with an interpreter translating questions and answers into English. In summary, Mr. Herrera Guzman indicated the following:

a. He is the Chief Technical of the Equestrian Centre. As such, he testified that the Equestrian Centre never had similar situations in the past (being with

horses or riders) and neither did the Athlete.

b. The Athlete has always showed good conduct and discipline, both during national and international events. He is respectful to coaches and to the officials.

c. In Mr. Herrera Guzman's opinion, there was no clear indication of the provenance of the meat, in particular that it would contain Clenbuterol.

d. Mr. Herrera Guzman respectfully requests that the Athlete can continue to do his equestrian activity, which is something for which he offers his life.

Athlete's third witness

70. At the Hearing, Dr. Berenice Gomez Barrios provided her testimony, in Spanish with an interpreter translating questions and answers into English. In summary, Dr. Gomez Barrios indicated the following:

a. She is a Major Surgeon, specialist in Sport Medicine, and as such in charge of the Eventing Team. Since she started in March 2020, she has been performing several medical tests on athletes, including the Athlete, and provided a summary of the tests he needed to pass, and the results thereof.

b. The Athlete showed a good state of health, good eating habits and a responsibility in the consumption of food and established schedules. Furthermore, he does not consume supplements or food supplements. The tests performed in the last 18 months did not show any major changes in the Athlete.

c. There are no studies that would prove that the Vitamin B complex would have any effects, from a medical point of view.

VII. 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 Mexican Equestrian Federation, and as such is bound by the ADRHA. The jurisdiction of the Tribunal is undisputed.

VIII. LEGAL DISCUSSION

Source of the Prohibited Substance – Meat contamination scenario

72. The suggestion that the Athlete's Adverse Analytical Finding was the result of the consumption in Mexico of meat illegally treated with Clenbuterol may, *prima facie*, appear speculative. However, the Tribunal considered various elements, in the overall weighing of all of the evidence, including the absolute absence of any suggestion of intentional doping or cheating, the Athlete's and the witness statements and the content and manner in which he gave his oral testimony at the hearing, the witness statements who gave compelling evidence, largely uncontested by the FEI, on the Athlete's diligence and approach to his role as an athlete, and the technical report of the FEI and the Tribunal's findings.

73. In the hearing, the Athlete provided more information that he consumes a very high amount of all kinds of meat on a daily basis, consisting of liver, kidneys, cow and pork meat. Also, he has been eating outside of the equestrian facilities in different street food stalls, on a daily basis where he ate all sorts of meats, mainly within tacos.

74. Therefore, the meat contamination scenario became a reasonable inference to explore in the absence of evidence of any other reasonable explanation as to how Clenbuterol entered the Athlete's system.

75. Having taken into account all written and oral submissions of the Athlete, as well as the scientific opinion from the independent expert which was provided by the FEI in its written submission, the Tribunal is of the view that the meat contamination scenario is the only reasonably possible and credible explanation for the Athlete's Adverse Analytical Finding and is more likely than not to have occurred.

76. Having considered all the evidence, the Tribunal is not satisfied that there is sufficient evidence to establish that the violation was intentional within the meaning of ADRHA Article 10.2.3.

77. On very careful review and examination of the totality of the evidence and testimony in this case, the Tribunal accepts the Athlete's explanation that he consumed meat which, on the balance of probabilities, was most likely contaminated with Clenbuterol.

78. The Tribunal finds that the Athlete has established on a balance of probability how Clenbuterol entered his system in an unintentional manner.

79. Aggravating this situation of course is the slowness of the laboratory's notification of the results of its analysis of the A sample. The Tribunal points out that this tardiness may well have caused potentially relevant evidence regarding the source of the prohibited substance to become unavailable to the Athlete.

80. Accordingly, a two year period of ineligibility should be imposed unless the Athlete has satisfied the Tribunal that the period can be reduced either because he has established, pursuant to ADRHA Article 10.4, that he bears No Fault or Negligence for the presence of Clenbuterol in his Sample, in which case the period can be eliminated; or, he has established, under ADRHA Article 10.5, that he bears No Significant Fault or Negligence for the presence of Clenbuterol in his Sample, in which case the period can be reduced having regard to the degree of fault or negligence found.

Reduction or Elimination of the Period of Ineligibility

81. Article 10.4 of the ADRHA provides that if the Athlete establishes in his case that he bears "No Fault or Negligence", then the Two-Year Sanction shall be eliminated. "No Fault or Negligence" is defined in the ADRHA as follows: "The Athlete [...] 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 [...]. Except in the case of a Minor, for any violation of Rule 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."

82. "Fault" is defined in the ADRHA as follows: "Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing the Athlete or other Person's degree of Fault include, for example [...] the degree of risk that should have been perceived by the Athlete [...]." For a finding of No Fault or Negligence, the Athlete is specifically required 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 ingested Clenbuterol through meat consumed in Mexico.

83. At this stage, it is important to note that Clenbuterol has been a problem within Mexico for many years. There have been a number of cases where governing bodies, and indeed CAS, have had to decide upon the appropriate sanction for an anti-doping violation involving Clenbuterol. The first step is for the Athlete to establish how the Clenbuterol entered his system. Then, assuming that intentional use is not established, the Athlete should take reasonable care to ensure that prohibited substances does not enter his system. In particular, an experienced athlete has a duty to be knowledgeable about doping issues and risks.

84. This requirement clearly has not been met in this case. The Athlete pointed out that he has heard about Clenbuterol on television, but never attended an anti-doping education or informed himself about the risks. With Clenbuterol being a known issue in Mexico within meat contamination, the Athlete should have been more careful in where he consumed his daily meat. Especially, as stated by him, if eating a large amount of meat on a daily basis outside the Equestrian Centre in street food stalls, where he has no control over the ingredients within the foods he consumes.

85. An athlete who eats such a high amount of meat in a country where there is an issue with Clenbuterol, thereby assumes the risk of such contamination and therefore cannot successfully plead No Fault or Negligence, save in exceptional circumstances, if the risk transpires. Given the fact that the Athlete ate considerable amounts of different meats outside the Equestrian Centre, it was especially important that he should ensure that the products he was consuming did not contain any Prohibited Substance.

86. Therefore, in the Tribunal's view, the Period of Ineligibility cannot be eliminated on the ground that there was No Fault or Negligence by the Athlete.

87. The Tribunal does however accept that the meat consumed by the Athlete was contaminated by Clenbuterol, unknown to the Athlete. The Tribunal takes the view that the Athlete is entitled, under Article 10.5 of the ADRHA, to have the consideration of his Period of Ineligibility measured having regard to the degree of fault or negligence that occurred. Depending on the degree of fault or negligence Article 10.5 ADRHA can be applied to reduce the two-year Period of Ineligibility. The CAS decision in Cilic v ITF, CAS 2013/A/3327, paras 69 et seq, provides some helpful guidance on assessing where an athlete's fault lies within the range of a reprimand to two years. Three categories of fault are set out there: light (0-8 months); normal (8-16 months); and considerable (16-24 months). The athlete's 'objective' fault is assessed to determine into which category he/she falls, and then his/her 'subjective' fault is assessed to move him/her up or down within a specific category (or into a different category in exceptional circumstances).

88. Having regard to all the circumstances of the present case, in the Tribunal's view, the category, on the objective test, is neither 'light' or 'considerable'. The Tribunal further cannot find anything that should, applying the subjective test, change this view. Accordingly, the Tribunal finds that the Athlete's conduct falls within the 'normal' category, and, in the Tribunal's view, in the top range of that category.

89. In the Tribunal's view, for the purposes of Article 10.5 of the ADRHA, a period of ineligibility of 16 months is the appropriate sanction.

90. 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, considering the degree of the Athlete's fault, , which is not Significant, but which remains present, the Tribunal rules that a fine of CHF 3,000.- is appropriate given the circumstances. This amount is also in line with the FEI Guidelines for Fines and Contributions Towards Legal Costs. As the FEI concluded that, in all of their scenarios, each Party shall bear its legal costs of the proceedings, the Tribunal will not allow any costs to the Parties, which shall therefore bear their own costs.

IX. DECISION

1. The Tribunal upholds the charge that the Athlete violated Article 2.1 of the ADRHA.

2. The Tribunal rules that the Athlete established, on a balance of probabilities, that the Prohibited Substance Clenbuterol entered his body through the ingestion of meat contaminated with Clenbuterol.

3. The Athlete bears No Significant Fault or Negligence pursuant to Article 10.5 of the ADRHA and therefore he shall be sanctioned with sixteen (16) months Ineligibility Period in accordance with Article 10.5.2 of the ADRHA.

4. The Provisional Suspension served by the Athlete as of 2 April 2020 shall be credited against the imposed Ineligibility Period in accordance with Article 10.11.3.1 of the ADRHA. Consequently, the Athlete shall be suspended until 1 August 2021.

5. The Athlete shall incur a fine amounting to CHF 3,000, in accordance with Article 10.10 of the ADRHA.

6. Each Party shall bear its legal costs of the proceedings.

7. 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.

8. 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
- Mexican NADO

FOR THE TRIBUNAL

Ms Valérie Horyna, One-Member Panel