

DECISION of the FEI TRIBUNAL
dated 21 July 2021
(Reference No. FEI Tribunal: A21-0005)

In the matter of

The Royal Dutch Equestrian Federation (KNHS) (“the Appellant”)
Represented by Mr. Dolf Segaar (Segaar Law)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI” or “the Respondent”)

together “the Parties”

I. COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr Martin Gibbs (GBR)

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 2 July 2021.

Hearing: 2 July 2021 at 9 am Central European Time by videoconference (via Cisco WebEx).

Present:

- The FEI Tribunal Panel
- Ms. Hilary Forde, FEI Tribunal Clerk

Appellant:

- The Royal Dutch Equestrian Federation (KNHS)
- Ms. Iris Boelhouwer, (High Performance Director/Secretary General KNHS)

- Mrs. Van der Bij (in-house counsel of the KNHS)

Counsel for the Appellant:

- Mr. Dolf Segaar (Segaar Law)

Counsel for the owner of the Horse (Mr Joop van Uytert):

- Mr. Luc Schelstraete

For the FEI:

- Mr. Mikael Rentsch, FEI Legal Director

III. 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, updates effective 1 January 2021, (“GRs”).

FEI Regulations for Equestrian Events at the Olympic Games, effective for the Olympic Games Tokyo 2020 23 July-8 August 2021 (“Olympic Regulations”)

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

2. The Relevant Legal Provisions

FEI Statutes Article 38.1:

“Subject to Articles 38.2 and 38.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matter not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

- i. Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behaviour, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;

GRs Article 139 (Owners and Lessees of Horses)

1. NFs must keep a register of the Owners and lessees of Horses with official passports. Changes of Owners and records of leasing agreements must be

entered in the FEI and/or national passport and authenticated by the stamp and signature of an NF official.

2. The nationality of a Horse is that of its Owner or of the Lessee, where a lease is current, or of the country in which the company owning or leasing it is registered. A company may, however, own a Horse in partnership with an individual.
3. When one or more Horses belong to a partnership of Owners of different nationalities, the Owners must declare to the FEI, before making the first entry, the nationality under which the Horse or Horses will compete and that nationality must be entered in the FEI and/or national passport. The Horses must retain that nationality until the partnership is dissolved or the Horses are sold. Any consequent change of nationality must be reported to the FEI.
4. Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15 January of the year of the Games (see Olympic Regulations).
5. Athletes may take part in all Events except Olympic Games with Horses belonging to Owners of a different nationality (see also Article 118 Person Responsible).

GRs Article 162 (Appeals)

Article 162.1 (General Principles)

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 Article 162.2 below):

- a. With the FEI Tribunal against Decisions of the Ground Jury or any other person or body.
- b. With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department.

Article 162.5 (Process for Filing an Appeal against other FEI Decisions)

Appeals to the FEI Tribunal against other FEI Decisions (i.e., other than an Appeal against a Decision arising from a Protest) must be dispatched to the FEI Tribunal (fei.tribunal@fei.org) and signed by the appellant or his/her 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 twenty one (21) days of the date on which the notification of the earlier Decision was sent.

Article 162.7 (Process for Filing an Appeal to CAS)

Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible.

Article 165.1 (Time of Implementation of Decisions)

Decisions are effective from the date of oral or written notification to the affected party or parties, so long as such notification is possible under the circumstances. Otherwise, Decisions are effective as of the date specified by the body or person authorised to make the Decision.

Olympic Regulations

Article 606 – Eligibility of Athletes and Horses

Article 606.2.2 Ownership

2.2.1 Horses entered for the Equestrian Events at the Olympic Games must have been registered with FEI as property of owners of the same nationality as the Athlete, by **15 January 2021**.

2.2.2 Horses, with multinational ownership, must be registered with FEI by **15 January 2021** (as per above paragraph), under the name of the nation for which the Horse will compete during the Olympic Games.

2.2.3 National Olympic Committees (NOCs) in close consultation with National Federations (NFs) are responsible to ensure that Horses which do not meet ownership requirements as laid down by FEI, are not entered for the Equestrian Events at the Olympic Games.

2.4 – Any Horse entered for the Equestrian Events at the Olympic Games must have a valid FEI Passport or an FEI approved national passport with a valid FEI Recognition card as a means of identification and to establish ownership. These documents must be duly completed at the time of the Competitions.

Article 607 – Deadlines for Qualification of Nations, Minimum Eligibility Requirements and Certificates of Capability and Tokyo 2020 Entry Deadlines

Article 607.2 FEI Minimum Eligibility Criteria for participation at the Olympic Games

2.1 The deadline for Athletes and Horses to achieve the FEI minimum eligibility requirements and, where applicable, a Confirmation Result is 21 June 2021 midnight in the country where the qualification event takes place.

[...]

2.2 NFs qualified to take part at the Olympic Games must send a FEI Certificate of Capability for all Athletes and Horses nominated, on a form provided by the FEI (see **Annex C**), to FEI no later than **21 June 2021** midnight (Swiss time).

Athletes and Horses for which FEI Certificates of Capability have not been received on time will not be accepted or allowed to participate.

[...]

IRs of the FEI Tribunal 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. (...)

IRs of the FEI Tribunal, Article 23.1 (General Powers of a Hearing Panel):

"A Hearing Panel (or, if urgent action is required before a Hearing Panel is appointed, the FEI Tribunal Chair) shall have all powers necessary for, and incidental to, the discharge of its responsibilities under the FEI Rules and Regulations and these Procedural Rules of the FEI Tribunal, including (without limitation) the power, whether on the application of a party or of its own motion:

[...]

(e) to expedite or to adjourn, postpone or suspend the proceedings, and/or to extend any deadline or time-limit otherwise provided for in these Procedural

Rules of the FEI Tribunal or in its own directions or orders, upon such terms as it shall determine, where appropriate;

Article 38 – Decision of the Hearing Panel

38.3 The Hearing Panel may decide to communicate the operative part of the Decision to the parties, prior to the reasons. The Decision shall be enforceable from such notification of the operative part by courier, facsimile and/or electronic mail. In exceptional circumstances, the Hearing Panel may advise the parties verbally of its Decision following the close of the hearing and the Decision shall be enforceable immediately unless the Hearing Panel specifies otherwise.

Article 39 – Written Decisions

39.2 The time to Appeal shall not begin to run until receipt of the written, reasoned Decision. The Hearing Panel (or the FEI where instructed by the Hearing Panel to do so) will send copies of the Decision to the parties and to any other Person that has a right of Appeal against the Decision.

IV. DECISION

3. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and documentary evidence submitted during these the proceedings as well as the oral testimony given at the hearing held on 2 July 2021. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present Appeal, 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

4. The Appellant **(the Appellant)**- Koninklijke Nederlandse Hippische Sportfederatie **(the KNHS)** submitted an Appeal on 29 June 2021, the Appellant stated, in summary, the following:
 - The Appeal relates to the nationality of a Horse, Hermes **(the Horse)** due to compete in the dressage event at the 2020 Tokyo Olympic Games with the KNHS;

- On 23 June 2021, the KNHS were informed by the FEI that the Horse did not pass the final check of eligibility to compete at the Olympic Games because he was registered under German ownership;
 - The Appellant submitted that this had occurred due to an error at the FEI when owner profiles had been created which had resulted in the owner of the Horse being registered in the FEI Database as German;
 - The Appellant requested that the FEI Tribunal (**the Tribunal**) issue a decision to cancel the FEI Decision of 23 June which ruled that the Horse did not pass the final check for participation at the Olympic Games.
5. On 29 June 2021, the Tribunal acknowledged receipt of the Appeal and appointed a one-member panel to hear the matter. The Parties were given until 30 June to object to the constitution of the panel.
 6. On 29 June 2021, following the Tribunal's acknowledgment of the Appeal, the Parties submitted an expedited timeline for processing the Appeal.
 7. On 29 June 2021 the Tribunal acknowledged the request for an expedited process and also noted the Appellant's suggestion that the Parties agree to proceed directly to the Court of Arbitration for Sport (**the CAS**). Thus, the Tribunal requested that the Parties confirm to the Tribunal by 30 June 2021 whether they would be willing to go directly to CAS to have this matter heard.
 8. On 30 June 2021, the FEI confirmed they did not agree to go directly to CAS.
 9. On 1 July 2021, the FEI submitted their Answer to the Appeal of KNHS and confirmed they would be available for a hearing on Friday 2 July 2021.
 10. Also on 1 July, the KNHS confirmed their availability for a hearing on 2 July 2021 via their legal counsel Dolf Segaar and submitted an additional set of documents.
 11. Following the confirmations by the Parties the Tribunal issued a hearing schedule for an oral hearing to take place on 2 July 2021 at 9am (Central European Time).
 12. On 1 July 2021, Counsel for the Owner (**the Owner**) of the Horse Mr Joop van Uyert wrote to the Tribunal and sought permission to attend the hearing and if necessary, address the Tribunal.
 13. On 1 July 2021, the Tribunal wrote to the Parties asking if they had any objections with the attendance of Mr Joop van Uyert at the hearing on 2 July 2021. Both the FEI and KHNS confirmed they had no objections to this request.

14. The Hearing took place on 2 July 2021 at 9:00 am (Central European Time).

15. On 2 July 2021, the Tribunal issued the Operative Part of this Decision.

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 Appeal is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

A. APPELLANT:

16. The Appellant's position in their written and oral submissions addressed the following key points:

- 16.1 They alleged that the Horse was registered under German ownership because of a clerical error made by the FEI;
- 16.2 Specifically, that in 2015 the FEI created a new system for owner profiles and when creating these profiles, the Owner of the Horse was assigned a German nationality and a German address by error;
- 16.3 They further submitted that because the Horse had always been owned by the Owner, a well-known Dutch breeder, they had no reason to doubt the Horse's nationality was Dutch. Therefore, the Horse was registered as German unbeknownst to the KNHS and the Owner of the Horse;
- 16.4 In this regard they requested that the Tribunal set aside the Decision of the FEI and order that the Owner's nationality be backdated correctly in the FEI Database to reflect his actual nationality thereby enabling the Horse to be eligible to compete in the Olympics;
- 16.5 They also stated that it is important to note that there was no dispute that Mr Joop van Uyert has always been the Owner of the Horse and he is a Dutch national.;
- 16.6 The Appellant sought to distinguish its Appeal from other cases such as the Bluman¹ Appeal referred to by the FEI given that a mistake made by the FEI administration was at the root of the problem regarding the Horse's nationality;
- 16.7 They submitted that the FEI changed the nationality of the Owner without any actions or knowledge of the KNHS and the actual nationality of the

¹ Daniel Bluman v FEI, Decision dated 25 June 2021

Owner should prevail. Furthermore, that a mistake made by the FEI in their system did not change the fact the Owner was Dutch and therefore the FEI's Database should be corrected to reflect the facts;

- 16.8 The Appellant also submitted that the FEI Regulations allowed for an interpretation in the Appellant's favour by virtue of Article 139.1 which states "that NFs must keep a register of the Owners and lessees of Horses with official passports" which they submitted has been complied with and in respect of Article 139.4 of the GRs which provides that: "Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15 January of the year of the Games" they argued that this was indeed the factual circumstances of this case despite the FEI's system incorrectly showing the Owner as German;
- 16.9 Similarly, in respect of the issue of registration in the Database, the KNHS referred to Article 606.2.2.1 of the FEI Regulations for Equestrian Events at the Olympic Games wherein it stipulates "that Horses entered for the Equestrian Events at the Olympic Games must have been registered with FEI as property of owners of the same nationality as the Athlete, by 15 January 2021", and the Appellant noted that Article 606.2.4 of these Regulations states "that any Horse entered for the Equestrian Events at the Olympic Games must have a valid FEI Passport or an FEI approved national passport with a valid FEI Recognition card as a means of identification and to establish ownership these documents must be duly completed at the time of the Competitions", and as such they submitted that this Article provided the FEI with an opportunity to complete the passport taking into account the facts, i.e., that at the 15 January 2021 the nationality of the Owner was Dutch;
- 16.10 In view of the above, the Appellant respectfully requested that the Tribunal:
- (a) set aside the Decision of the FEI regarding Certificates of Capability for the Olympics due to an error in registration;
 - (b) order the FEI to backdate and re-register the Owner of the Horses' nationality as Dutch since the beginning of the ownership;
 - (c) order that the Horse be considered eligible to compete at the Olympic Games.

B. FEI:

17. The FEI's position in its written and oral submissions addressed the following key points:

- 17.1 The FEI rejected the Appellant's allegations that it was due to a mistake made by the FEI that the nationality of the Horse was registered as German² and whilst this was an unfortunate case it was avoidable if straightforward checks had been carried out by the Appellant before the 15 January 2021 deadline, taking into account, they had almost three years to check the Horse's nationality;
- 17.2 The FEI submitted that they have no role in determining who is/are the legal owner(s) of a horse and therefore their nationality. They further submitted that the FEI GRs makes it clear that this is the responsibility of National Federations pursuant to Article 139.1 which states that "NFs must keep a register of the Owners and lessees of Horses with official passports. Changes of Owners and records of leasing agreements must be entered in the FEI and/or national passport and authenticated by the stamp and signature of an NF official". The FEI confirmed they do not verify the information entered by National Federations on the FEI Database and are reliant on the National Federations data entry which they accept on the basis that as it is the National Federations who are in contact with Owners they are therefore best placed to confirm this information;
- 17.3 The FEI also noted that the Horse was first entered into the FEI Database on 28 June 2017 by the Appellant and on 14 August 2017 the Appellant updated the Owner of the Horse, declaring the Owner as "J.M.M.M. van Uyttert" with Dutch nationality. The FEI explained that this was carried out in the old format of the FEI Database, in which National Federations typed in the name and details of the Owner and selected the nationality from a dropdown list of countries. They further explained that on 9 July 2018 the Appellant updated this entry, this time in the new format of the FEI Database, where Joop van Uyttert had a FEI ID number. The FEI assumed that the error occurred when the Appellant searched for a Joop van Uyttert in the FEI Database and chose the profile with FEI ID 10129539 – Joop van Uyttert with a German nationality and assigned the Horse to him.
- 17.4 The FEI submitted that the profile for Joop van Uyttert was originally created by the FEI in 2015 when the FEI commenced cleaning up owner's profiles in the FEI Database. The FEI explained that they created these profiles with the information at their disposal. The FEI further explained that while it is correct that the FEI assigned a nationality for each profile, none were linked to any Horse. The FEI also explained that when a National Federation selected one of these profiles, they can check the information and inform the FEI if the nationality or any other information is not correct, and the FEI would amend accordingly;

² Appeal Brief KNHS, page 1

- 17.5 The FEI also noted that the Owner profile for Joop van Uytert in question had been used 13 times on the FEI Database and the Appellant never indicated that the nationality was incorrect. While the FEI acknowledged that it created a profile with German nationality, they confirmed that they did not assign him as an Owner of the Horse HERMES or as the Owner of any other horses; the FEI only created “a profile”. In this specific case, the FEI stated the Appellant would have to select Dutch (NED) or German (GER) from a dropdown list and it is apparent that, the Appellant selected the Owner profile with GER nationality. Furthermore, the FEI submitted that the Horse’s FEI passport which is presented by the athlete, or their representative, at every FEI event participated in, clearly showed the nationality of the Horse as German. The FEI provided images of the passport which showed this was the case;
- 17.6 The FEI noted that the Appellant stated in its Appeal that due to “the special circumstances of corona, no competitions in 2020 and 2021 and a quick contender make it unreasonable to require the KHNS to check the system before January 15 to see if an error has been made by the FEI.” The FEI argued that this statement was in fact a form of acknowledgement that the Appellant had taken insufficient steps to verify the nationality of the Horse on the FEI Database, prior to 15 January 2021 deadline;
- 17.7 The FEI stated that they were conscious that National Federations have a lot to deal with in the period before the Olympic Games and that it could be easy to overlook or forget to ensure that their horses are registered in the FEI Database as having the same nationality as their riders. For that very reason, the FEI proactively sent an email communication to all NFs who had qualified teams/individual quota places for the Tokyo Olympic Games to remind them of this requirement;
- 17.8 Furthermore, that given the specificities of the Tokyo 2020 Olympic Games and the postponement from 2020 to 2021 due to Covid-19, a reminder email was sent out twice, first on 6 December 2019 (in advance of the original 15 January 2020 deadline) and again on 15 December 2020 (in advance of the January 2021 deadline). On each occasion, the FEI gave approximately one month’s notice of the upcoming deadline (together with a simple bullet point explanation of the rules) so that NFs would have time to check and ask the FEI for advice and/or clarifications if necessary;
- 17.9 The FEI explained how they had taken great care in these emails to explain the rules regarding nationality in detail to the National Federations in advance of the 15 January deadline, both in advance of the original 15 January 2020 deadline and prior to the applicable 15 January 2021 deadline. The FEI produced the correspondence to National Federations explaining

these deadlines and the consequences of not meeting them. They were entitled **‘Tokyo2020 Olympic Games: Horse Ownership/Nationality REMINDER!’**;

- 17.10 The FEI also highlighted that the Athlete connected to the Horse, Dinja Van Liere, had obtained their Certificate of Capability with a different horse (HAUTE COUTURE) and therefore the Horse is not the only horse that could be selected for her to compete with at the Olympic Games;
- 17.11 The FEI also reminded the Parties that in the recent case of FEI v Bluman³, which has some similar facts to the current case, the Tribunal held the following in paragraph 61:

“61. The Tribunal acknowledges that proper registration on FEI Database is paramount to the FEI because the FEI is not the entity responsible for inputting a horse’s nationality. This is the responsibility of the NFs and Athletes. The FEI relies on its Database as the mechanism to ensure that the rules and regulations are complied with.”

Accordingly, the FEI submitted that it is a matter of fact and undisputed that on 15 January 2021, the Horse was registered with German nationality on the FEI Database. They further submitted that the Tribunal should not need any further evidence than this to conclude that the Appeal should be dismissed.

18. The FEI also highlighted that given the high stakes involved with the Olympic Games, it was particularly important that they apply the rule in question very strictly and with 100% consistency.

- 18.1 The FEI explained that the Appellant is not the first party to miss the 15 January 2021 deadline and the FEI had received many requests to alter and backdate the nationality of horses. The FEI stated that they had consistently refused these requests and in this respect, the FEI provided six examples of previous refusals in their Exhibits attached. They contended that the only way to ensure transparency and that all National Federations are treated fairly and equally is to apply the rule in the same way for everyone;
- 18.2 With regard to potential exceptions or leniency in this matter, the FEI submitted that the Tribunal had previously confirmed that if the rule in question does not allow for an exception then the FEI cannot grant one. In the UAE v FEI appeal⁴ the FEI Tribunal stated “the Tribunal considers that the

³ FEI Exhibit 1

⁴ UAE v FEI, FEI Tribunal Decision, 27 February 2019, paras 6.8 - 6.9 FEI Exhibit 7

wording of the relevant provisions is clear and the ERs do not provide for any exceptions. The Tribunal also notes the FEI's position in this regard, namely that the particular rule itself does not actually provide for granting of exceptions, and that the implication was that if a rule does not state that exceptions are possible, no exceptions may be granted. The Tribunal fully agrees. Related to that, the Tribunal wishes to clarify 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 the specific provisions allow for it – grant exceptions to the rules. Therefore, and unless there exists overriding rule which would allow for it, which is not the case, the FEI had no authority to grant exceptions to the provision”.

19. The FEI also noted that the Tribunal confirmed the FEI's position regarding nationality deadlines in their recent ruling in the case of Bluman v FEI, (Award dated 25 June 2021) which confirmed the following points, which the FEI submitted are equally applicable to this case, described below (referenced paragraphs of that Decision):

- 19.1 “61. The Tribunal acknowledges that proper registration on FEI Database is paramount to the FEI because **the FEI is not the entity responsible for inputting a horse's nationality**. This is the **responsibility of the NFs and Athletes**. The FEI relies on its Database as the mechanism to ensure that the rules and regulations are complied with;
- 19.2 62. The Tribunal agrees that the intent of the two Articles is to create a level playing field as well as ensure equal and fair treatment among all NFs and Athletes. **If the FEI did not strictly adhere to the 15 January deadline, this could potentially “open the floodgates”** for Athletes to attempt to change a horse's nationality in an Olympic year based on exceptional circumstances, which in some cases, could be merely an attempt to change to a superior horse and nothing more. Furthermore, this could also lead to the possibility that a competitor files a protest on site at the Olympics on the eligibility of the Athlete/Horse in question pursuant to Article 161.3 of the GRs.” (...);
- 19.3 65. It is clear from the UAE Decision that the **Tribunal does not have the authority to grant any exception to Articles 139.4 or 606.2.2.1 because neither Article permits this**;
- 19.4 The FEI also noted that the CAS had recently dismissed a request for provisional measures filed by the appellant, Mr Bluman, seeking to suspend the effect of the FEI Tribunal's Decision dismissing his appeal⁵.

⁵ FEI Exhibit 8

VII. JURISDICTION & ADMISSIBILITY OF THE APPEAL

20. The Tribunal has jurisdiction over this matter pursuant to Article 38.1 of the Statutes, Articles 18.1 and 40 of the IRs and Article 162 of the GRs. The jurisdiction of the Tribunal is undisputed.
21. The Tribunal considers the Decision dated 23 June 2021 regarding Certificates of Capability OG Tokyo 2020 as the "Decision" under appeal. For the purposes of this Appeal this Decision is considered as a "Decision made by any person or body authorised under the Statutes, GRs or Sport Rules", as defined in Article 162.1 of the GRs.
22. The Appellant is validly registered with the FEI and as such, a Member of the FEI is bound by its rules and regulations.
23. The Appellant has a legitimate interest in having the Decision of the FEI dated 23 June 2021 overruled as it prevents one of their horses from participating in the Olympics.
24. The matter under review in the context of this Appeal concerns the qualification process and requirements for the Olympics Games, as specified in Section 18 of this decision. Therefore, these rules and regulations apply to this matter.
25. The Appeal, filed on 29 June 2021, was submitted within the 21-day deadline required in Article 162.5 of the GRs.
26. The Appeal complies with the other formal requirements required in Article 162 of the GRs.

VIII. LEGAL DISCUSSION

27. Having considered all the applicable rules and regulations as well as the submissions and evidence (both oral and written) provided by the Parties, the Tribunal acknowledges that pursuant to Article 162 of the GRs, the Appeal is admissible, and its jurisdiction is confirmed as set out in the previous section.

A. MERITS

28. Articles 139.2 and 139.4 of the GRs and Article 606.2.2.1 of the Olympic Regulations are set out in Section III. In brief, each Article requires that horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15 January in the year of the Olympic Games. Article 139.4 concludes with “see Olympic Regulations” and Article 606.2.2.1 adds a registration requirement. Neither Article 139.2, 139.4 of the GRs nor Article 606.2.2.1 of the Olympic Regulations permit any exceptions.

Interpretation

29. The Appellant referred to Article 139.2 of the GRs which states, in part, that; “the nationality of a horse is that of its owner” and Article 139.4 of the GRs provides that; “Horses entered for the Olympic Games must be the property of Owners of the same nationality as the Athlete by 15 January of the year of the Games”, and they argued that by virtue of the Horse’s FEI recognition card⁶ (provided to the Tribunal) they have ensured full compliance with the rationale of the FEI Rules i.e., the Horse and the Owner have the same nationality;

30. Moreover in respect of the provisions set out at Article 139.4 of the GRs they also contested that this regulation does not require the Appellant to expressly point out that they have the same nationality rather than merely “have” the same nationality which they believed was satisfied by the Horse always being owned by a Dutch national despite being mistakenly registered as German due to a clerical error by the FEI, i.e., that at the 15 January 2021 the nationalities of the Owner and the Horse were in fact the same even if the registration was incorrect;

31. As set out in Section 17 of this Decision, the FEI rejected the Appellant’s arguments that the Horse was registered as German due to any error of the FEI and further submitted that this was the responsibility of the National Federation pursuant to Article 139.1 of the GRs. The FEI emphasised they do not verify information entered by the National Federation on the FEI Database, and they are reliant on the National Federations to enter data on the basis they are in contact with the Owner and/or Athlete and therefore, best placed to confirm this information;

32. The Tribunal noted the FEI’s submission regarding the clarity of the rules regarding the nationality of horses entered to compete in the Olympic Games. The Tribunal was satisfied that these rules were indeed clear, that the FEI had made the National Federations aware of them and sent reminders regarding the deadlines to check the nationality of their

⁶ Annex 1 with Appeal Brief dated 29 June 2021

horses and explained the consequences of missing those deadlines. In particular the Tribunal noted that Article 606.2.2 was clear that the nationality of a Horse entered for the Olympics depends on the nationality of the Horse's owner as registered with the FEI and not the passport they hold. The Tribunal considered that this provision was logical given the potential for ambiguity if, for example, an owner had more than one nationality.

33. The Tribunal has the benefit of CAS jurisprudence where CAS clearly stated that hearing panels are obliged to interpret a rule according to how the rule maker intended it and not in a way that would frustrate or run contrary to that intention. This is in line with the general principles of legal interpretation under Swiss law, the latter being the applicable law in the present case, as confirmed by the Parties (Appeal Brief, para. 3.3; FEI's Answer). According to CAS, *"the Panel is obliged to interpret rules in question in keeping with the perceived intention of the rule maker and not in a way that frustrates it."*⁷ The Tribunal also notes that as submitted by the FEI it is clear, from Article 606.2.2.1, that the horse was required to have been registered with the FEI on 15 January 2021 as being the property of an owner who had the same nationality as the Athlete. The intention of the FEI in drafting this rule is clear given the rule specifically says *"..registered with FEI"*, thereby establishing that what is required is that the nationality is registered correctly with the FEI, i.e., in the FEI Database.

34. The Tribunal also has the advantage of jurisprudence of a previous hearing panel on whether exceptions may be granted i.e., the UAE v FEI Appeal Decision⁸, the hearing panel held that if a particular rule does not actually provide for granting of exceptions, then no exceptions may be granted, thus the findings in the UAE Decision set an important precedent. In this Decision the hearing panel states in paragraph 6.8:

"The Tribunal considers that the wording of the relevant provisions is clear and the ERs do not provide for any exceptions. The Tribunal also notes the FEI's position in this regard, namely that the particular rule itself does not actually provide for granting of exceptions, and that the implication was that if a rule does not state that exceptions are possible, no exceptions may be granted. The Tribunal fully agrees." [Emphasis is added.]

35. The Tribunal also took into account the FEI's reasoning that it was essential given the importance of the Olympic Games that it was seen to apply the rules in question strictly and consistently in order to ensure fairness, transparency and a level playing field for all National Federations;

⁷ CAS 2012/A/2762 Bayer 04 Leverkusen v. Union of European Football Associations (UEFA), award of 15 March 2013, par. 108 and the references mentioned.

⁸ UAE v FEI, FEI Tribunal Decision, 27 February 2019, paras 6.8 - 6.9 FEI Exhibit 7

36. The Tribunal notes that there is no dispute that the Horse was registered with German nationality at the date of the deadline set by the FEI. Furthermore, the Tribunal is satisfied that it should have been clear to all National Federations that it was their responsibility to check the nationality of their horses selected to participate in the Olympic Games. Equally, it was clearly established by the FEI, that in this case the Appellant had been reminded to check the Horse's nationality.
37. The Tribunal found the fact that the Horse's passport prominently showed German nationality and that this passport would have been presented at FEI events to be pertinent to this Appeal. This fact went some way to undermine the Appellant's contention that it had no way of knowing the Horse was registered as German in the FEI Database.
38. Finally, regarding whether an error by the FEI was responsible for the situation arising in this case the Tribunal carefully considered the submissions of the Parties. There is no doubt that the profile assigning German nationality to the Owner was created by the FEI in 2015. However, the Tribunal is satisfied that the FEI established they played no part in assigning the Horse to the Owner. Furthermore, it was clearly demonstrated that the Appellant had access to and interaction with this profile and therefore the opportunity to correct it should it have been considered necessary long before the deadline in question.

IX. DECISION

39. As a result, the Tribunal therefore decides as follows;

1. The Appeal is admissible.
2. The Appeal is dismissed.
3. The FEI Decision is upheld.
4. Each Party shall bear its own costs in these proceedings.
5. Summary of Legal Authority:

40. According to Article 165 of the FEI General Regulations, this Decision is effective from the date of its oral or written notification to the Respondent.

41. According to Articles 162.1 and 162.7 of the FEI General Regulations, this Decision may be appealed to the Court of Arbitration for Sport (CAS) by the persons and within the terms set forth in the applicable rules.

6. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the Appellant: Yes
- c. Any other: No

FOR THE TRIBUNAL

A handwritten signature in black ink, appearing to read "Martin Gibbs", is centered on the page. The signature is written in a cursive, flowing style.

Mr Martin Gibbs (GBR), One-member Panel