

DECISION of the FEI TRIBUNAL

dated 27 August 2021

**(FEI Case number: FEI 2020/BS12-GER ASHIR and
2020/FT21 TAKADA PRINCE)**

FEI Tribunal Hearing Panel:

Ms Valérie Horyna (SUI)

FEI Tribunal Reference: C21-0023 FEI 2020/BS12-GER ASHIR and 2020/FT21
Takada Prince

Horse/Passport: GER ASHIR/103UH98/KSA and TAKADA PRINCE/104PB34/KSA

Additional Person Responsible/ID/NF: Mr. ALFAQEIH/10062545/KSA

Event/ID: CEI1*100 - Riyadh (KSA), 2020_CI_0102_E_S_01 and
CEI1*100 Riyadh (KSA), 2020_CI_0102_E_S_01

Date of Event: 06-07.11.2020

Prohibited Substances: Diisopropylamine and Flunixin

Bar Code Nos.: 5586907 and 5586909

I. Factual background

- 1.** Mr. Munair ALFAQEIH, (FEI ID 10062545), was the registered Trainer of the Horse in the FEI database at the time of the Event, the Additional Person Responsible **(the APR)**.
- 2.** The Fédération Equestre Internationale **(the FEI and together with the APR, 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.** The APR was the registered Trainer of the Horse GER ASHIR **(the Horse 1)**, which competed with its rider Mr Odai ALQURASHI **(the Person Responsible 1)** at the CEI1* 100 in Riyadh (KSA) on 6-7 November 2020 **(the Event)**. The APR was also the registered Trainer of the Horse TAKADA PRINCE **(the Horse 2)**, which competed with its rider Mr Jaber WADANI **(the Person Responsible 2)** which competed at the Event on 6-7 November 2020.
- 4.** In Endurance the “Trainer” is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition.¹ The registered Trainer shall be considered as a member of the Support Personnel for the purposes of the EADCM Rules. Moreover, due to the above specificities of the Endurance discipline with Trainers making relevant decisions about the Horse, a Trainer is regarded as an additional Person Responsible in accordance with Art. 118.3 of the General Regulations.²
- 5.** Blood samples were collected from the Horse 1 and Horse 2 on 7 November 2020 and sent to the FEI approved laboratory, the Hong Kong Racing Laboratory **(the Laboratory)** in Sha Tin, Hong Kong, China, for analysis. The Horse’s samples were divided into an “A sample” and “B sample”, which are collectively (the Samples) with reference numbers 5586907 and 5586909 respectively.
- 6.** The laboratory analysis of the A sample reported an adverse analytical finding for Diisopropylamine and Flunixin in the urine sample, both of which are “Prohibited Substances” under the FEI’s Equine Anti-Doping and Controlled Medications Regulations **(the EADCMRs)**.

¹ Art. 800 of the Endurance Rules, 11th Edition, effective 1 July 2020.

² General Regulations, 24th edition, 1 January 2020.

7. Diisopropylamine, is a vasodilator used in the treatment of peripheral and cerebral vascular disorders and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Flunixin is an anti-inflammatory used as analgesic and is classified as a Controlled Medication Substance.
8. The positive finding of Diisopropylamine and Flunixin in the Horse's sample gave rise to an Anti-Doping Rule Violation under the EADCMRs. In particular, the EADCMRs applicable to these proceedings were adopted by the General Assembly in November 2019 and came into force on 1 January 2020. They apply to *'each Person Responsible and their Support Personnel by virtue of their membership in, accreditation by, or participation in the FEI or National Federation, or in their activities, Competitions or Events'*.³

II. Initial Proceedings

9. On 9 December 2020, the FEI Legal Department officially notified the APR through the National Federation of the Saudi Arabia **(the KSA-NF)**, of the presence of the Prohibited Substances in the Samples collected at the Event in both Horse 1 and Horse 2, the rule violation, and the potential consequences **(the Notification Letter)** based on the Laboratory's adverse analytical finding of Diisopropylamine in the Sample of the Horse 1 and adverse analytical finding of Flunixin in the Sample of the Horse 2, both collected at the Event. In accordance with Article 7.4.1 EADCMRs, the Notification Letter also included notice that the APR was provisionally suspended from all competition until further notice from 9 December 2020 and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal **(the Tribunal)** pursuant to Article 7.4.4 of the EADCMRs.
10. In the Notification Letter of 9 December 2020, the APR was also informed of his right to request analyses of the Horses' B Samples, the APR did not request for analyses of the B Samples and by failing to issue this request this right was therefore waived.

III. Further Proceedings

11. By email dated 21 April 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel.

³ Introduction to the EADCMR at p 2.

12. On 14 May 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to decide this case. The Parties were asked to provide any objections to constitution of the hearing panel by 19 May 2021. The APR was also granted the opportunity to respond to the FEI's allegations by submitting their respective positions by 3 June 2021. The APR was also informed that the Tribunal will generally decide such cases based on written submissions however the Parties were informed that they had the right to request an oral hearing by 6 June 2021, failing which the right for an oral submission would be deemed as waived.
13. On 14 May 2021, both the FEI and the KSA-NF informed the Tribunal that they did not have any objections to the constitution of the hearing panel.
14. Neither Party requested an oral hearing.

IV. Summary of Legal Authority

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

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

General Regulations, 24th edition, January 1st, 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCM Regulations**"), 2nd edition, changes effective January 1st, 2020. The EADCM Regulations are comprised of the equine anti-doping rules (**the "EAD Rules"**) in the first half and the equine controlled medication rules (**the "ECM Rules"**) in the second half.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective January 1st, 2020.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2nd edition, changes effective 1st, January 2020.

FEI Veterinary Regulations (“**VRs**”), 14th edition 2018, effective January 1st, 2020, Arts. 1055 and seq.

FEI Endurance Regulations (“**ERs**”) effective January 1st 2020.

FEI Code of Conduct for the Welfare of the Horse.

B. 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. In vaulting, the lunger shall be an additional Person Responsible.”

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* will be considered additionally responsible under 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. 3.1: “Burden and Standards of Proof. The FEI shall have the burden of establishing that an EAD Rule violation has occurred. The standard of proof shall be whether the FEI has established an EAD Rule violation to the comfortable satisfaction of the Hearing Panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these EAD Rules place the burden of proof upon the Persons Responsible and/or member of their Support Personnel to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability, except where a different standard of proof is specifically identified”.

EAD Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, the period of Ineligibility shall be two years.

EADCMR Art. 10.8.4.1: "For purposes of imposing sanctions under Article 10.8, an EAD/ECM violation will only be considered a second violation if FEI can establish that the Athlete or other Person committed the second EAD/ECM Rule violation after the Person Responsible or other Person received notice pursuant to Article 7, or after FEI made reasonable efforts to give notice of the first anti-doping rule violation. If FEI cannot establish this, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction".

ECM Rules Art. 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication Substance is present in the Horse's body during an Event without a valid Veterinary Form. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.5 ECM Rules where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing Use be demonstrated in order to establish a Rule violation under Article 2.1."

ECM Rules Art. 10.2: "The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be six months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6.

A Fine of up to CHF 15,000 and appropriate legal costs shall also be imposed for any Equine Anti-Doping or Controlled Medication violation".

Article 800 of the Endurance Rules: "the Trainer" is defined as the person who is in charge of the preparation of the Horse both physically and mentally for Competition. Prior to the Event, the Trainer is responsible for the conditioning of the Horse for the Competition which involves the exercise programme, nutrition of the Horse, seeking appropriate veterinary care and the administration of therapeutic substances under veterinary advice".⁴

⁴ Due to the above specificities of the Endurance discipline with Trainers making relevant decisions about their horses, a Trainer is always regarded as an additional Person Responsible in accordance with Art. 118.3 of the General Regulations. This was further confirmed in the recent FEI Tribunal Decision of the cases 2019/FT07 and

V. The Parties' Submissions

The Submissions of the APR

- 15.** The FEI confirmed that no information was received from the APR in relation to this case. The FEI presented evidence of a reminder email sent to the APR on 4 March 2021, however despite such reminder no response to the Charge was submitted by the APR.

Written Response of the FEI

- 16.** In respect of the violation of the EADCMRs of the APR, the FEI noted Article 3.1 of the EADCMR makes it the FEI's burden to establish all the elements of the EAD/ECM Rule violation charged, to the comfortable satisfaction of the FEI Tribunal. Furthermore, the FEI stated that the elements of Article 2.1 violation are straightforward, that 'It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD/ECM Rule violation under Article 2.1'. Instead, it is a 'strict liability' offence, established simply by proof that a Banned Substance/Controlled Medication Substance was present in the Horse's Sample.
- 17.** As such, the FEI confirmed that the results of the analysis of the A Sample taken from Horse 1 at the Event confirmed the presence of Diisopropylamine and constituted sufficient proof of the violation of Article 2.1 of the EAD Rules. In addition, they confirmed that the results of the analysis of the A Sample taken from the Horse 2 at the Event confirmed the presence of Flunixin and together constituted sufficient proof of the violation of Article 2.1 of the ECM Rules.
- 18.** The FEI also pointed out that since the two Rule Violations i.e. 2020/BS12 GER ASHIR and 2020/FT21 TAKADA PRINCE are arising from the same Event the FEI was not able to notify the APR of the first Rule Violation before the second Rule Violation was committed, therefore the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carried the more severe sanction (Art. 10.8.4.1 of the EADCMR) i.e., for the purposes of this case the violation that carried the more severe sanction is the Banned Substance Rule Violation i.e. 2020/BS12 GER ASHIR.

Disqualification of results

- 19.** The FEI also submitted that the Disqualification of the results obtained in the Events has been addressed in the proceedings against the PR. Therefore, the FEI had no further request in relation to these proceedings.

Presumption of fault:

- 20.** The FEI furthered that as a result of the presumption of fault, Article 10.2 of the EAD Rules provided that an APR with no previous doping and/or Controlled Medication offences who violates Article 2.1 of the EAD Rules is subject to a period of Ineligibility of two years, unless he is able to rebut the presumption of fault. In addition, the FEI also provided that in accordance with Article 10.2 of the ECM Rules that an APR with no previous doping and/or Controlled Medication offences who violates Article 2.1 of the ECM Rules is subject to a period of Ineligibility of six months, unless he is able to rebut the presumption of fault.
- 21.** In order to do this, the FEI noted that the rules specify that he/she must establish to the satisfaction of the Tribunal (it being his/her burden of proof, on the balance of probability⁵):
- How the Prohibited Substances (here, Diisopropylamine and Flunixin entered into the horse's system; and
 - That he/she bears No Fault or Negligence for that occurrence, i.e., that he/she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he/she had administered to the horse (or the horse's system otherwise contained) a Banned Substance (in which case, the presumptive two-year period of Ineligibility is eliminated completely pursuant to Article 10.4 of the EADCMR); or
 - That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive two-year period of ineligibility may be reduced, depending on his degree of fault, pursuant to Article 10.5 of the EADCMR).
- 22.** The FEI submitted that in respect of the 'threshold' requirement i.e, proving how Diisopropylamine and Flunixin entered into the Horses' system, the APR to date had not provided a substantiated explanation on how Diisopropylamine and/or Flunixin could have entered the bodies of the

⁵ Art 3.1 EADR

Horses. In addition, neither of the PRs in the cases in question provided any explanations. The FEI therefore submitted that the APR has not established how the Prohibited Substances entered the body of the Horses.

- 23.** The FEI further explained that due to the APR's inactiveness in providing any explanation of the circumstances that led to this Equine Anti-Doping and Controlled Medication Rule Violations the FEI cannot evaluate the APR's level of Fault, if any, and as such Articles 10.4 and Art. 10.5 of the EADCMR. Consequently, no elimination or reduction of the period of Ineligibility in the present Rule Violations is possible.
- 24.** The FEI outlined that the applicable Period of Ineligibility for the Banned Substance Rule Violation would therefore amount to 2 years and the applicable Period of Ineligibility for the Controlled Medication Rule Violation would amount to 6 months. As previously noted in accordance with Article 10.8.4.1 of the EADCMR: "...the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction..."
- 25.** The FEI therefore respectfully submitted that the applicable period of Ineligibility imposed on the APR in the present case should be two (2) years based on the Rule Violation of 2020/BS12 GERASHIR that carries the more severe sanction.
- 26.** In respect of the matter of fines and costs, the FEI referred to Article 10.2 of the EAD Rules which provided that a Person Responsible for an Article 2.1 violation should be fined up to CHF 15,000 '*unless fairness dictates otherwise*' and should be ordered to pay '*appropriate legal costs*'. The FEI respectfully submitted that fairness does not dictate that no fine be levied in this case and requested that a fine be imposed on the APR and that the APR are ordered to pay the legal costs that the FEI incurred pursuing this matter.
- 27.** The FEI Guidelines for fines and contributions towards legal costs provide additional guidance on the appropriate fines and legal costs for Controlled Medication and Banned Substance cases taking into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc.
- 28.** For a first time Banned Substance Rule Violation without any reduction of the Ineligibility period, as in present case, the proposed range for the fine is between 7'500 -15'000 CHF with a contribution towards legal cost ranging between 2'000 – 7'500 CHF.

- 29.** In summary and taking into account all the particulars of these proceedings, the FEI requested the following prayers for relief:

In respect of the APR

- (i) upholding the charge that the APR has violated Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules;
- (ii) imposing a period of Ineligibility two (2) years on the APR in accordance with Article 10.8.4.1 of the EADCMR, commencing on the date of the Final Decision, and crediting the Provisional Suspension already served as of 9 December 2020 (the date upon which the Provisional Suspension was imposed);
- (iii) fining the APR, a fine of 7 500 CHF; and
- (iv) ordering the APR to pay legal costs of 2 000 CHF that the FEI has incurred in these proceedings.

VI. Jurisdiction

- 30.** The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMRs, as well as Article 18 of the IRs. The APR is a member of the KSA-NF, which is a member of the FEI, as such the APR is bound by the EADCMR.

VII. The Decision

- 31.** As set forth in Article 2.1 of the EAD/ECM Rules, sufficient proof of an EADCMR violation is established by the presence of a Banned Substance and/or Controlled Medication Substance in a Horse's Sample. The Tribunal is satisfied that the laboratory reports relating to the A Samples in Horse 1 and Horse 2 reflect that the analytical tests were performed in an acceptable manner and the findings of the laboratory are accurate. The Tribunal is further satisfied that the test results evidenced the presence of the Banned Substance and Controlled Medication Substance in the A Samples taken from the Horse 1 and Horse 2 at the Event. The Tribunal notes that the APR did not challenge the accuracy of the test results or the positive findings.
- 32.** As a result, the Tribunal accept that FEI has established the adverse analytical findings and has sufficiently proven the objective elements of the violation in accordance with Article 3 of the EADCMR.

- 33.** Pursuant to Article 10.2.1 of the EAD Rules, the period of Ineligibility for an Article 2.1 EAD rule violation, *i.e.*, the presence of a Banned Substance in a Horse's sample is two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules. In addition, pursuant to Article 10.2.1 of the ECM Rules, the period of Ineligibility for an Article 2.1 ECM rule violation, *i.e.*, the presence of a Controlled Medication Substance in a Horse's sample is six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.
- 34.** In cases brought under the EADCMR, a strict liability principle applies as described in Article 2.1.1 of the EADCMR. Once an EAD/ECM Rule violation has been established by the FEI, the APR have the burden of proving that they bear "*No Fault or Negligence*" for the rule violation pursuant to Article 10.4 of the EADCMR, or "*No Significant Fault or Negligence*" pursuant to Article 10.5 of the EADCMR.
- 35.** In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the APR must establish, as a threshold requirement, how the Prohibited Substance entered the Horse's system.
- 36.** As confirmed by various CAS panels as well as FEI Tribunals, the APR must present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. The APR submitted no Response to the Charges in these proceedings. As a result, the Tribunal finds that the APR has not established – on a balance of probability – how the Banned Substance of Diisopropylamine and Controlled Medication Substance of Flunixin entered the systems of Horse 1 and Horse 2.
- 37.** Where the first hurdle has not been met, *i.e.*, establishing the source of the Banned Substance and Controlled Medication Substance, the Tribunal cannot continue with the second step and evaluate the APR's degree of fault. The Tribunal finds that no reduction under Articles 10.4 and 10.5 of the EADCMR is warranted in these proceedings.
- 38.** The Tribunal further agrees with the FEI's recommendation for the fine and costs.

VIII. Sanctions

- 39.** In summary, the Tribunal imposes the following sanctions on the APR and in accordance with Article 169 of the GRs and Article 10 of the EADCMR Rules:

- a. upholds the charge that the APR violated Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules;
 - b. imposes a period of Ineligibility of two (2) years on the APR. The period of the Provisional Suspension, effective from 9 December 2020 is credited against the period of Ineligibility imposed in this decision. Therefore, the APR will be ineligible until the 8 December 2022;
 - c. the APR is fined in the amount of **seven thousand five hundred Swiss Francs (CHF 7,500)**; and
 - d. the APR will contribute **two thousand Swiss Francs (CHF 2,000)** for costs that the FEI has incurred in these proceedings.
- 40.** No APR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the EADCMR).
- 41.** Where a Person Responsible who has been declared Ineligible violates the conditions in paragraph 40 during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EADCMR).
- 42.** This Decision is subject to appeal in accordance with Article 12.2 of the EADCMR. 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.
- 43.** This Decision shall be notified to the APR and to the NF of the APR, and to the FEI.
- 44.** This Decision shall be published in accordance with Article 13.3 of the EADCMR.

FOR THE FEI TRIBUNAL

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Ms. Valérie Horyna (SUI), One-Member Panel