

DECISION of the FEI TRIBUNAL

dated 28 October 2021

in the matter of

[REDACTED] (PR)

[REDACTED] (PR)

Mr Luca SHORT BRAVO (APR)

(FEI Case number: FEI 2019/BS37 [REDACTED])

FEI Tribunal Hearing Panel:

Mr Jose A. Rodriguez Alvarez (MEX), one-member panel

FEI Tribunal Reference: C21-0030

Person Responsible/NF/ID: [REDACTED]

Event/ID: CVIj1* - Bogotá (COL)/2019_CL_1644_V_J_01

Person Responsible/NF/ID: [REDACTED]

Event/ID: CVICh1* - Bogotá (COL)/2019_CL_1644_V_Ch_01

Additional Person Responsible/NF/ID: Luca SHORT BRAVO/COL/10087748

Horse/Passport [REDACTED]

Date of Events: 29-31.05.2019

Prohibited Substance: Ractopamine

Bar Code Nos.: 5582077

I. SUMMARY OF LEGAL AUTHORITY

A. 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’s Equine Anti-Doping and Controlled Medication Rules, based upon the 2015 WADA Code, changes effective 1 January 2019 (“EADCM Rules”).

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

B. Persons Responsible: [REDACTED], Mr Luca SHORT BRAVO.

C. Justification for sanction:

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

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

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

to establish an *EAD Rule* violation under Article 2.1.”

EAD Rules Art. 7.6.1: “In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”

II. Factual background

1. [REDACTED], the Person Responsible (“the PR 1”) and vaulter from Colombia, competed with the Horse [REDACTED] (“the Horse”) at the CVIJ1* in Bogotá (COL) between 29 and 31 May 2019 (“the Event 1”).
2. [REDACTED] the Person Responsible (“the PR 2”), and vaulter from Colombia, competed with the Horse at the CVICh1* in Bogotá (COL), between 29 and 31 May 2019 (“the Event 2”).
3. Mr Luca SHORT BRAVO (FEI ID: 10087748), the Additional Person Responsible (“the APR”), is a lunger from Colombia, which attended both Events as lunger for the Horse.
4. The Fédération Equestre Internationale (“the FEI” together with the PRs and 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).
5. The Horse was selected for testing on 30 May 2019, and returned a positive result for Ractopamine, which is a Banned Substance under the FEI’s Equine Prohibited Substances List. Ractopamine is a beta adrenoceptor agonist used to promote growth and leanness in certain food-producing animals. While Ractopamine, as a feed additive, is legal for certain animal consumption in Colombia, it is however illegal in most parts of the world.

6. The positive finding of Ractopamine in the Horse's sample gave rise to an Anti-Doping Rule Violation ("**the AD Rule Violation**").
7. By way of a notification letter dated 22 August 2019, the FEI informed the PR 1, the PR 2 and the APR of a possible violation of Article 2.1 (*The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules.
8. The PR 1 and PR 2 were not suspended, as they were Minors at the time of the AD Rule Violation.
9. The APR was provisionally suspended by the FEI as of 22 August 2019 (as was the Horse), in accordance with art. 7.4.1 of the FEI Equine Anti-Doping Rules ("**the EAD Rules**").
10. On 3 September 2019, the APR requested the lifting of the provisional suspension imposed on him, and on the Horse. Following a Preliminary Hearing which took place via telephone conference on 10 September 2019, the FEI Tribunal Preliminary Hearing Panel decided to lift the provisional suspension imposed on the APR as of 11 September 2019, midnight Swiss time. The provisional suspension of the Horse was however maintained until 21 October 2019.
11. The PR 1, the PR 2 and the APR submitted various documents in the context of the FEI proceedings and in front of the FEI Tribunal Preliminary Hearing Panel, which will be summarized below.

III. Procedural background in front of the FEI Tribunal

12. By email dated 25 May 2021, the FEI submitted its request to the Tribunal for the appointment of a hearing panel for the adjudication and approval of a Settlement Agreement.
13. On 25 June 2021, the Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel.
14. On 25 June 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
15. Neither party requested an oral hearing.

A. Written Submissions by the PR 1, the PR 2 and the APR:

16. The PR 1, the PR 2 and the APR – which were all represented by the same lawyer in the context of the current proceedings – submitted their position on 1 September 2019 by way of three different “FEI Questionnaire for Completion by PR”, but which included the same explanations. In said questionnaires, the PR 1, the PR 2 and the APR indicated the following.
- a) The Owner of the Horse, [REDACTED], has been involved with horses for more than 5 years.
 - b) The Horse is a very healthy horse, which receives periodically only the vaccines required, pursuant to the FEI calendar.
 - c) In support of their case, the PR 1, the PR 2 and the APR submitted a statement from Dr Mauricio Umaña, the treating veterinarian of the Horse, which “certified” the following:
 1. *“That the horse has presented an excellent state of health in the last year, prior to the competition relative to the case 2019/BS37.*
 2. *That the horse has not been subjected to any medical treatment or received any medication for the last year.*
 3. *That the horse has been dewormed every three months and has been vaccinated according to the FEI rules and calendar for sport horses.*
 4. *That the horse has been fed with granular concentrated products of the highest quality, from the brand SOLLA GLADIADOR CRESSE who is the only provider feed for the afore mentioned HORSE.*
 5. *In addition to the concentrated feed, he is fed with hay.*
 6. *During the year prior to the event, the horse has not received or been subjected to any banned substance or controlled medication in order of FEI list.*
I expressly state that under my veterinary control I have not supplied the substance “ractopamine” to the horse [REDACTED].
 - d) The PR 1, the PR 2 and the APR control and check the food given to the Horse, which is concentrated granular food of *first quality nationally recognized Company*. The Horse does not eat food which would not be certified as food for sport horses. The brand of the food is “Gladiator – Cresse”.

- e) In terms of procedures in place, the PR 1, the PR 2 and the APR have a treating veterinarian responsible for any medications, for treating preventively. The veterinarian further advise them of how to proceed with the Horse, before and during competitions.
- f) The Horse is stabled at the PR 1's stables' family, which is located in the rural area of Cajica in Colombia. The only time when the stable is opened to the public is when there are official competitions taking place. The Horse leaves the facility only to go competing to FEC or FEI competitions.
- g) The PR 1 has 5 years of experience as jump rider and vaulter and has always complied with all FEC and FEI regulations. She has further been instructed by her coach and veterinarian on the content of the regulations and necessary procedures, in order to compete in a clean sport and honourable way within the sporting rules.
- h) The PR 2 has 3 years of experience as vaulter and has always complied with all FEC and FEI regulations. She has further been instructed by her coach and veterinarian on the content of the regulations and necessary procedures, in order to compete in a clean sport and honourable way within the sporting rules.
- i) The APR has 7 years of experience as vaulter and 3 years as lunger and has always complied with all FEC and FEI regulations. He has further been instructed by his coaches on the content of the regulations and necessary procedures, in order to compete in a clean sport and honourable way within the sporting rules.
- j) The Prohibited Substance was not administered to the Horse by anybody, neither by the PR 1, the PR 2, the APR, the owner or the treating veterinarian. The only explanation that can be given is that it appeared in the Horse's system due to a cross-contamination event, caused by the granular concentrated feed which was supplied to the Horse. It is the PR 1's view that it is impossible to technically analyse the content of each ration of food given to the Horse. The PR 1, the PR 2 and the APR placed her trust on the brand and its quality.
- k) For the future, the PR 1, the PR 2 and the APR have warned the company SOLLA, which was the food supplier company, of this incident. In the near future, the PR 1, the PR 2 and the APR will store samples of the granular concentrate and will continue to make regular controls.

17. On 3 September 2021, in the context of the proceedings related to the provisional suspension of the Horse and the APR, the PR 1 and the PR 2 submitted an additional

statement, via their legal representative. The APR also submitted a separate statement, via the same legal representative. The abovementioned submissions can be summarised as follows.

- a) The Prohibited Substance was found in the urine sample and not in the blood sample, which would show that the traces of the Prohibited Substance in the Horse were low.
 - b) Following an investigation that was conducted by the Horse's owner, it could be determined that the Prohibited Substance entered the Horse's system via a case of cross contamination of the food (granular food of the brand Gladiador – Cresse), consumed before and during the competition.
 - c) The Horse did not receive any medical treatment the year prior to the Event, nor during the Event.
 - d) The PR 1, the PR 2 and the APR acted in good faith, and placed their trust in the owner, which in turn trusted the manufacture.
 - e) The Company which produced the contaminated product, Solla SA, is big company in Colombia, known for producing horse food. In this respect, it appeared that during the food manufacturing process, some components of the food made for horses have been mixed with food manufactured for pigs, and after the manufacture, the packages were placed in the same space.
18. In addition, the PR 1, the PR 2 and the APR provided two letters (dated 19 June 2019 and 23 August 2019), from the Colombian Equestrian Federation ("**the COL-NF**") addressed to food and agricultural authorities in Colombia informing them as follows: *"We have direct knowledge, and also through the Equine Federation, that several cases of cross-contamination caused by feedstuffs have occurred on some horses that compete nationally and internationally in the Colombian territory"*, requesting their intervention in this respect. The COL-NF further stated that *"it is a serious concern for us that our horses are subject to being involved in cases of doping due to the involuntary intake of feedstuffs which might have been cross-contaminated with substances that may be allowed for other kind of animals, such as chickens, pigs, cattle, etc., like in the cases that have been reported to date and we want to avoid them from happening again"*.
19. By way of emails dated 11 and 18 September 2019, the legal representative of the PR 1, the PR 2 and the APR provided additional documents and information.

- a) The Manufacturer, i.e. the company SOLLA SA, is one of the few companies which produce horses' feed in Colombia. Furthermore, it is not possible to import other horse feed from abroad to Colombia.
- b) The Manufacturer not only produces feed for horses, but also for other animals, such as pigs.
- c) As Ractopamine is allowed in Colombia as a food additive for pigs, the Manufacturer does use Ractopamine in some of its feeds for pigs.
- d) Therefore, it is probable that the feed ingested by the Horse was contaminated with Ractopamine at the production, or at the storage phase in the Manufacturer's facilities.
- e) Upon request from the PR 1, the PR 2 and the APR, the Manufacturer indicated that it complies with all the applicable laws in Colombia. But it did not mention whether there was indeed a possibility or not for the horse feed to be contaminated with Ractopamine.
- f) In view of the above, the PR 1, the PR 2 and the APR filed a lawsuit in Colombia against the company SOLLA SA and submitted copy of their claim.

B. The Submission of the FEI:

20. On 25 May 2021, the FEI provided the Tribunal with the Settlement Agreement reached between the Parties, which contains accordingly the FEI's position. The FEI's position is summarised below.
- a) The FEI acknowledged that Ractopamine is indeed allowed as feed additive for pigs in Colombia. Furthermore, it can be shown from an internet search that Ractopamine is indeed used in the products of the Manufacturer.
 - b) Based on a precedent¹, the FEI indicated that the same Manufacturer had admitted using Ractopamine as an ingredient for the production of feed for pigs, and that *"the company [was] unable to state or deny that by accident, this ingredient could have reached and become mixed with the horse feed at certain moment, due to human error"*.
 - c) Taking into consideration the PR 1, the PR 2 and the APR's explanations, as well as the various evidence produced, the FEI is of the opinion that the PR 1, the PR

¹ FEI Case 2017/BS31 HSM CORNELIO

2 and the APR established, on a balance of probabilities, that Ractopamine entered the Horse's system *most probably* through the contaminated feed.

- d) For Article 10.4 of the EAD Rules to apply, the Person Responsible must not only prove how the Banned Substance entered the Horse's system, but must also establish that he bears No Fault or Negligence for the EAD Rule Violation.
- e) The PR 1, the PR 2 and the APR alleged that the Horse had been given feed from a manufacturer in Colombia, which was certified for sport horses. While Ractopamine is not allowed as feed additive for horses in Colombia, it can however be used as feed additive for pigs.
- f) The FEI submitted that the PR 1, the PR 2 and the APR could not have suspected that the feed had been contaminated with Ractopamine in the production, the packaging or the storage chain.
- g) Furthermore, and since there was no possibility to import feed from abroad, the PR 1, the PR 2 and the APR would have been obliged to use feed produced in Colombia, even if they had had some doubts about the quality processes of the production, packaging or storage of animal feeds.
- h) Therefore, and taking into account the totality of the circumstances of the present matter, the FEI is of the opinion that the PR 1, the PR 2 and the APR have, on a balance of probabilities, established that they bear No Fault or Negligence for the Rule Violation. In application of Article 10.4 of the EAD Rules, no Ineligibility Period shall be imposed on the PR 1, the PR 2 and the APR. This conclusion is consistent with other similar cases which involved the presence of Ractopamine in horse's samples due to feed contamination².

IV. The Decision

21. Agreement between the Parties:

Quote

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

² Cf. e.g. most recently FEI Tribunal Decision dated 12 May 2021, Ref. C19-0015 (FEI Ref. 2019/BS24).

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the Horse during the Event 1 and the Event 2 held from 29-31 may 2019, the PR 1, the PR 2, the APR and the FEI agree in accordance with 7.6.1 EAD Rules on the following:
- (a) The PR 1, PR 2 and APR admit the violation of Article 2.1 of the EADCM Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*);
 - (b) The PR 1, PR 2 and APR established on a balance of probabilities how the Ractopamine entered the Horse's system;
 - (c) The PR 1, PR 2 and APR bear No Fault or Negligence for the Rule Violation and therefore they shall not serve any period of Ineligibility and the otherwise applicable period of Ineligibility shall be eliminated;
 - (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the EAD Rules;
 - (e) In accordance with Articles 9.1 and 10.1.2 of the EAD Rules the results achieved by the PR1, PR2 and APR and the Horse at the Events (CVIJ1* - Bogotá (COL) and CVICH1* - Bogotá (COL), 29-31.05.2019) are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
 - (f) The PR1, PR2 and APR shall not incur any fines;
 - (g) No other Sanctions (other than the Disqualification of the Horse's results at the Events 1 and 2 in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules) will apply in this case.
- 3.2 Each party will bear its own legal and other costs incurred in connection with these proceedings;
- 3.3 This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.

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

*** End Quote***

V. Jurisdiction

22. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EAD Rules, as well as Article 18 of the IRs. The PR 1, the PR 2 and the APR are all members of the Colombian Equestrian Federation, and as such are bound by the EAD Rules. Article 7.6.1 of the EAD Rules provides for agreements to be reached between parties, subject to approval by the Tribunal. As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VI. Approval of Agreement

23. Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI accepts – on a balance of probabilities – that the PR 1, the PR 2 and the APR established (i) how the Banned Substance entered the Horse’s system and (ii) that they bear No Fault or Negligence for this first anti-doping rule violation.
24. Furthermore, the Tribunal also takes note that the FEI is satisfied that the present finding took into consideration the totality of the evidence and written submissions produced in the context of the present proceedings, and is consistent with past jurisprudence of the Tribunal in relation to AD Rule Violations involving Ractopamine, which entered the Horse’s system by way of feed contamination.
25. The Tribunal wishes to emphasise that it did not evaluate whether the PR 1, the PR 2 and the APR have met the burden of proof regarding the level of Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
26. To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the EADCM Rules.

27. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2019/BS37 [REDACTED], C21-0030 [REDACTED] & SHORT BRAVO.

VII. Decision

1. The Tribunal rules that the Agreement reached between the FEI and the PR 1, [REDACTED], the PR 2, [REDACTED], and the APR, Mr Luca SHORT BRAVO, concerning the case 2019/BS37 [REDACTED] (C21-0030 [REDACTED] & SHORT BRAVO) is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Paragraph IV above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 12.2 of the EADCM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
3. This Decision shall be published in accordance with Article 13.3 of the EADCM Rules.

VIII. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The NF of the PR 1, the PR 2 and the APR: Yes
- c. Any other: No

FOR THE TRIBUNAL



Mr Jose A. Rodriguez Alvarez, One-Member Panel