

DECISION of the FEI TRIBUNAL

dated 24 February 2022

**Mr Khalid ALMARI
(Additional Person Responsible)**

(FEI Case number: 2021/FT08 [REDACTED])

FEI Tribunal Hearing Panel:

Ms. Valérie Horyna (SUI) one-member panel

FEI Tribunal Reference: C21-0053

Horse/Passport: [REDACTED]

Additional Person Responsible: Mr Khalid ALMARI/10027732/KSA

Person Responsible/ID/NF: [REDACTED]

Event/ID: CEI1* 100 - Riyadh (KSA), 2021_CI_1699_E_S_01

Date of Event: 19-20.03.2021

Date of Sample Collection: 20.03.2021

Prohibited Substances: Flunixin

Bar Code Nos.: 5596068

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, 24 th edition, 1 January 2021, updates effective 1 January 2021, Arts. 118, 143.1, 159, 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, 3rd Edition, effective 1 January 2021 ("**EADCM Regulations**") comprising of the Equine Anti-Doping Rules (**hereinafter "EAD Rule" or "EAD Rules"**) in the first chapter of the EADCM Regulations, and the Equine Controlled Medication Rules (**hereinafter "ECM Rule" or "ECM Rules"**), in the second chapter of the EADCM Regulations, which are the applicable Rules in these proceedings.

FEI's Endurance Rules, Updated 11th Edition, effective 1 January 2021 ("**Endurance Rules**").

- B. APR:** Mr. Khalid ALMARI

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."

FEI Endurance Rules, Art. 800.4.1: the Trainer is the person who is responsible for preparing the Horse both physically and mentally for competition (which includes determining the appropriate exercise programme, nutrition, and veterinary care for the Horse)".

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 Page 3 of 13 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 may be considered additionally responsible under this Article and 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 2.5 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 Controlled Medication violation."

II. FACTUAL BACKGROUND

- 1.** Mr. Khalid ALMARI, was the registered Trainer **(the APR)** for the horse [REDACTED] **(the Horse)** which participated at the CEI1* 100 - Riyadh (KSA), 2021_CI_1699_E_S_01 **(the Event)**.
- 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.** Blood samples were collected from the Horse on 20 March 2021 and sent to the FEI approved laboratory, **(the Laboratory)**, the Hong Kong Racing Laboratory **(the Laboratory)** in Sha Tin, Hong Kong, China, for analysis. The Horse's Blood samples were divided into "A sample" and "B sample", with reference number 5596068.
- 4.** The laboratory analysis of the A sample reported an Adverse Analytical Finding **(AAF)** for Flunixin, which is a "Prohibited Substance" (Controlled Medication Substance) under the FEI's Equine Anti-Doping and Controlled Medications Regulations **(the EADCM Regulations¹)**.

¹ The EADCM Regulations applicable to these proceedings were adopted by the General Assembly in November 2020 and came into force on 1 January 2021 (FEI EADCMRs, 3rd edition).

5. The Equine Controlled Medication Rules 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"*.² Most relevantly for present purposes, the FEI submitted that Article 2.1 of the ECM Rules prohibits "The presence of a Controlled Medication Substance or its Metabolites or Markers in a Horse's Sample" and that "Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's samples..." .
6. In addition, the FEI noted, that according to Article 118.3 of the GRs, *"the Person Responsible (PR) 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. In Endurance, the Trainer shall be the additional Person Responsible."*

In Endurance *"The Trainer is the person who is responsible for preparing the Horse both physically and mentally for competition (which includes determining the appropriate exercise programme, nutrition, and veterinary care for the Horse)"*³.

7. The FEI explained that 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 GRs.

The FEI noted that interpretation of the Trainer, was further confirmed in the FEI Tribunal Decision dated 25 June 2020 in the case 2019/FT07 and 2019/CM08 CASTLEBAR CADABRA and 2019/CM06 VAGABON DE POLSKI where the Tribunal stated the following (paragraph 9.6): *'In casu, therefore, if the Trainer accepted to be registered for 154 horses in 2019, he is presumed to have accepted pursuant to Article 800.3-4 of the ERs to be "the person who is in charge of the preparation of the Horse both physically and mentally for Competition(...)", and therefore he is presumed to have made relevant decisions about these horses, including the Horses in question. The Tribunal would expect that if a trainer does not carry out*

²Introduction to the EADCMR at p 2.

³ Article 800.4.1 of the Endurance Rules, updated 11th Edition, effective 1 January 2021.

all tasks himself, he puts procedures in place to be informed and oversee all decisions regarding the horses he is the registered trainer for. Ultimately however, when registering as trainer for a horse, or a number of horses, this person accepts the responsibilities which come with such a registration, i.e., to be considered as additional Person Responsible pursuant to the GRs and EADCMRs. The Tribunal finds that the provision in the ERs, defining the role of the Trainer, has been precisely put in place in order to avoid the arguments made by the Trainer, namely that he was not responsible and did not take any relevant decisions for the Horses in question. In the view of the Tribunal this provision has been put in place because the FEI expects trainers to take responsibility for all horses they train, regardless of the number of horses, as well as the decisions which might be made by others, such as veterinarians and grooms. And the reason for that is to safeguard the welfare of the horses, one of the statutory aims of the FEI.'

Registration of Trainers in Endurance

8. The FEI submitted that as a prosecutor they rely on the FEI database system through which Athletes, Trainers, Officials, Owners etc. are registered with the FEI. The registration system allows the FEI to hold registered people accountable in case of violations of FEI Rules and Regulations.

By registering in the FEI Database as a Trainer, the registered person acknowledges and accepts the definition of a Trainer as per Article 800 of the Endurance Rules. Namely, persons registering as Trainers are to be the persons who are responsible for preparation of the Horse both physically and mentally for Competition.

Once a person is registered as a Trainer in the FEI database he/she is irrebuttably presumed to be the person that is responsible for taking relevant decisions on 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 as per Article 800 of the Endurance Rules.

A Sample Analysis Results

9. As previously stated, the analysis of the above-mentioned A-sample revealed the presence of a Prohibited Substance- Flunixin, according to the FEI Equine Prohibited Substances List. Flunixin is an anti-inflammatory used as analgesic. The substance is classified as a Controlled Medication

Substance under the FEI Equine Prohibited Substances List. The FEI confirmed that the positive finding of Flunixin in the Horse's sample gave rise to a Controlled Medication Rule Violation.

III. INITIAL PROCEEDINGS

- 10.** On 22 April 2021, the FEI Legal Department officially notified the APR of an alleged Controlled Medication Rule Violation pursuant to Article 2.1 and Article 2.2. of the ECM Rules, based on the Laboratory's finding of Flunixin in the Horse's Sample collected at the Event⁴.
- 11.** It was also outlined in the Notification Letter that in accordance with Article 7.4.1 of the ECM Rules, the APR was not provisionally suspended as the violation involved only one Controlled Medication Substance and the Trainer had no prior/pending violations at the time of the notification. The Notification Letter also informed the APR that he had the right to request the Horse's B Sample to be analysed. On 1 May 2021, the Trainer requested the B Sample to be analysed. On 14 June 2021, the FEI informed the Trainer and his National Federation that the confirmatory analysis of the Horse's B Sample performed at LGC Laboratory in UK, confirmed the presence of the Prohibited Substance Flunixin⁵.

IV. NOTICE OF CHARGE

- 12.** By Notice of Charge dated 16 September 2021, the FEI notified the APR that he was being charged with an Equine Controlled Medication Rule Violation under Article 2.1 of the ECM Rules. The APR was given a deadline of 20 days to either admit the asserted violation and accept the proposed consequences or challenge in writing the asserted violation and the proposed consequences⁶. The APR did not reply to the Notice of Charge issued by the FEI nor request a Hearing.

V. FURTHER PROCEEDINGS

- 13.** By email dated 8 October 2021, the FEI submitted its request to the FEI Tribunal (**the Tribunal**) for the appointment of a hearing panel.
- 14.** On 5 November 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 10 November

⁴ FEI Response Exhibit 2: Blood Sample Test Results

⁵ FEI Response Exhibit 3: B Sample Analysis Request dated 1 May 2021.

⁶ FEI Response Exhibit 4: Notice of Charge dated 16 September 2021.

2021. The APR was also granted the opportunity to respond to the FEI's submissions by 25 November 2021. The APR was also informed that the Tribunal will generally decide such cases based on written submissions but that the Parties had the right to request an oral hearing by 28 November 2021.

15. On 5 November 2021, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel. On 6 November 2021, the APR informed the Tribunal that he had no objections to the constitution of the hearing panel.

VI. The Submissions of the APR

16. Despite two reminders from the FEI, the APR did not reply to any of FEI's communications⁷.
17. As stated in the Notification Letter, the FEI considered that failure to response to their communications meant that the Trainer has waived his right to a hearing, he had admitted the violation and accepted the proposed Consequences by his failure to challenge the asserted violation or proposed Consequences.

VII. Written Response of the FEI

Violation by the APR - Article 2.1 of the ECM Rules

18. The FEI submitted that Article 3.1 of the ECM Rules made it the FEI's burden to establish all the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal.
19. Furthermore, the FEI noted that the elements of Article 2.1 violation are straightforward i.e., *'It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1'*. Instead, it was a *'strict liability'* offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample. Therefore, the FEI noted that the analysis of the A sample taken from the Horse at the Event which confirmed the presence of Flunixin, constituted sufficient proof of the violation of Article 2.1 of the ECM Rules.

⁷ FEI Response Exhibit 5: FEI Reminder Emails to APR

Disqualification of Results

20. The FEI did not submit any request for the disqualification of results obtained by the PR and Horse combination at the Event as this will be resolved in the procedure against the PR (in his capacity as a minor) wherein he has accepted the proposed Consequences including the disqualification from the whole Event with resulting consequences⁸.

The presumption of fault

21. The FEI submitted that Article 10.2 of the ECM Rules provided that a Person Responsible with no previous doping and/or Controlled Medication offences who violated Article 2.1 of the ECM Rules would be eligible to a period of Ineligibility of six months, unless he was able to rebut the presumption of fault. In order to do this, the FEI specified that he/she must be able to establish to the satisfaction of the FEI Tribunal (it being his/her burden of proof, on the balance of probability⁹):

(i) How the Prohibited Substances (here, Flunixin) entered into the horse's system; and

(ii) 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 Controlled Medication Substance (in which case, the presumptive six months period of Ineligibility is eliminated completely pursuant to Article 10.4 of the ECM Rules); or

(iii) That he/she bears No Significant Fault or Negligence for that occurrence (in which case, the presumptive six months period of ineligibility may be reduced depending on his degree of fault, pursuant to Article 10.5 of the ECM Rules).

The 'threshold' requirement: proving how the Flunixin entered into the Horse's system

22. As previously submitted by the FEI, the APR did not submit any explanation throughout the proceedings as to the source of the Prohibited Substance. Similarly, the PR in this case did not provide any description of events that

⁸ FEI Response Exhibit 6: Acceptance of Consequence Form dated 4 October 2021.

⁹ Art. 3.1 ECMR

led to this Controlled Medication Rule Violation and elected to have his case processed through the acceptance of the proposed Consequences.

- 23.** The FEI therefore submitted that the APR did not establish how Flunixin entered the body of the Horse. The FEI provided that should the APR submit any additional information and/or documents the FEI would provide a supplementary response in respect of same. However, this was never required.

Fault/Negligence for the Rule Violation

- 24.** The FEI also submitted that due to the APR's inactiveness in providing an explanation of the circumstances that led to this Equine Controlled Medication Rule Violation the FEI could not evaluate the APR's level of Fault or Negligence, if any. Therefore, Article 10.5 and Article 10.6 of the ECM Rules could not be applied. Consequently, the FEI noted that no elimination or reduction of the period of Ineligibility in this case was possible.
- 25.** The APR did not have any prior or pending Rule Violations under the EADCMRs. Therefore, the FEI requested that the applicable period of Ineligibility imposed on the APR in the present case should be six (6) months.

Fine And Costs

- 26.** In respect of the matter of fines and costs, the FEI referred to Article 10.2 of the ECM Rules which provided that for a violation of an article 2.1, a PR shall be fined up to fifteen thousand (15'000) CHF and appropriate legal costs shall also be ordered. However, the FEI noted that the FEI Guidelines for Fines and Contributions provide additional guidance on the appropriate fines and legal costs for Controlled Medication cases taking into account the level of Fault/Negligence, multiple violations, aggravating circumstances, if present etc.
- 27.** In this regard, for a first time Controlled Medication Substance Rule Violation without any reduction of the Ineligibility period, as per the case under consideration, the proposed range for the fine is between 3'000 - 5'000 CHF with a contribution towards legal cost ranging between 1'000 - 5'000 CHF.
- 28.** The FEI requested the following prayers for relief against the APR:

- (i) upholding the charge that the APR has violated Article 2.1 of the ECM Rules;

- (ii) imposing a period of Ineligibility of six (6) months on the APR, commencing from the date of the Final Decision;
- (iii) fining the APR in the amount of 3'500 CHF; and
- (iv) ordering the APR to pay the legal costs of 2'000 CHF that the FEI has incurred in these proceedings; and
- (v) ordering the Trainer to pay the costs of the B Sample analysis of 1'000 CHF which the Trainer has incurred in these proceedings.

VI. Jurisdiction

- 29.** The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159, 167 of the GRs, the ECM Rules and Article 18 of the IRs. The APR is a member of the KSA-NF, which is a member of the FEI; therefore, the APR is bound by the ECM Rules.

VII. The Decision

- 30.** Although the Tribunal has fully considered all the facts, allegations, legal arguments, and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this Decision.
- 31.** The APR, Mr Khalid ALMARI, was the Registered Trainer of the Horse at the occasion of the Event and is, as such, to be considered as the Person Responsible pursuant to Article 118.3 of the GRs.

Considering

- 32.** The Horse's sample confirmed the presence of a Controlled Medication Substance. As set forth in Article 2.1 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Prohibited Substance in the Horse's sample. The Tribunal is satisfied that the test results establish the presence of Flunixin in the A Sample taken from the Horse at the Event. Flunixin is a Controlled Medication Substance, the presence of which in a Horse's body during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 33.** As a result, the FEI has established an AAF and sufficiently proven, to the Tribunal's comfortable satisfaction, the offence in accordance with Article 3.1 of the ECM Rules.

- 34.** Pursuant to Article 10.2 of the ECM Rules, the period of Ineligibility for an Article 2.1 violation, i.e., the Presence of a Controlled Medication Substance in a Horse's sample, as in this case, is six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.5 or 10.6 of the ECM Rules.
- 35.** In cases brought under the ECM Rules, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule Violation has been established by the FEI, a PR and/or APR has the burden of proving that he bears "No Fault or Negligence" for the rule violation as set forth in Article 10.5 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.6 of the ECM Rules.
- 36.** In order for Articles 10.5 and 10.6 of the ECM Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substances entered the Horse's system.
- 37.** The APR did not submit any position or acknowledge the Tribunal's correspondence.
- 38.** Therefore, the Tribunal finds that the APR has not discharged his burden of proving he bore no fault or significant fault or negligence pursuant to Articles 10.5 and 10.6 of the ECM Rules.
- 39.** The Tribunal finds that the applicable period of Ineligibility is six (6) months pursuant to Article 10.2 of the ECM Rules.
- 40.** With respect to the fine to be imposed and the procedural costs, the Tribunal takes into account that the APR provided no further evidence within the parameters and options outlined in the Notice of Charge dated 16 September 2021 to the Tribunal and indeed the FEI in this matter, the Tribunal rules that the fine to be imposed and the procedural costs to be borne by the APR will therefore remain as requested i.e., three thousand five hundred Swiss Francs (CHF 3 500) and his part of the legal costs will amount to two thousand Swiss Francs (CHF 2 000).

VIII. OPERATIVE PART OF THE DECISION

- 41.** In summary, the Tribunal imposes the following sanctions in accordance with Article 159 of the GRs and Article 10 of the ECM Rules:

Sanctions:

- a) The Tribunal upholds the charge that the APR violated Article 2.1 of the ECM Rules;
 - b) The APR shall be suspended for a period of six (6) months, starting as of notification of the present decision;
 - c) The APR is fined three thousand Swiss Francs (CHF 3 500);
 - d) The APR shall pay his part of the costs of these proceedings in the amount of two thousand Swiss francs (CHF 2 000); and
 - e) The APR shall pay the costs of the B Sample analysis of one thousand Swiss francs (CHF 1 000) incurred in these proceedings.
- 42.** 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 authorized or organized by the FEI or any National Federation, or participate in any capacity in competitions authorized or organized by any international or national-level event organisation (Article 10.13.1 of the ECM Rules).
- 43.** Where a Person Responsible or member of the Support Personnel who has been declared Ineligible violates any of the conditions in the previous paragraph 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 10.13.3 of the ECM Rules).
- 44.** According to Article 165 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 45.** In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for

Sport (CAS) within twenty-one (21) days of its receipt.

IX. DECISION TO BE FORWARDED TO:

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

FOR THE FEI TRIBUNAL



Ms Valérie Horyna (SUI), One-Member Panel