

DECISION of the FEI TRIBUNAL

dated 13 June 2022

CASE NUMBER: C22-0023

MS URSULA KLINGBEIL (PR)

FEI Tribunal Hearing Panel:

Jose A. Rodriguez Alvarez

FEI Tribunal Reference: C22-0023

Case: 2022/CM03

Horse/Passport: BADR AL TAJ/106KJ96/JOR

Person Responsible/ID/NF: Ursula KLINGBEIL/10014504/GER

Trainer/ID/NF: Moh'd NSOUR/10203247/JOR

Event/Place/Date: CEI2* 120 - Al Ula (KSA), 29.01.2022,
2022_CI_0298_E_S_02

Date of sample collection: 29.01.2022

Prohibited Substance(s): Dexamethasone, Phenylbutazone, Oxyphenbutazone

Bar Code Nos.: 5607023

I. Introduction

- 1.** This Settlement Agreement pertains to: FEI CASE 2022/CM03-BADR AL TAJ. In respect of the case outlined above, the FEI notified Ms. Ursula Klingbeil that a violation of Article 2.1 of the Equine Controlled Medication Rules¹ (**the ECMRs**) - the Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample had occurred. The FEI notified Ms Klingbeil of the respective charges in her capacity as the Person Responsible (**the PR**) for the case entitled 2022/CM03 BADR AL TAJ.

¹ FEI Equine Anti-Doping and Controlled Medication Regulations 3rd edition, effective 1 January 2021

Applicable Rule Provisions:

Statutes 24th edition, effective 17 November 2021 ("**Statutes**").

General Regulations, 24th edition, 1 January 2020, updates effective 1 January 2022. ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations, 3rd edition, effective 1 January 2021 ("**EADCMRs**").

II. Factual background

- 2.** Ms Ursula Klingbeil (FEI ID 10014504) is the PR in accordance with Article 118.3 of the FEI General Regulations, and a rider in the discipline of Endurance for Germany.
- 3.** The Fédération Equestre Internationale (**the FEI**) together with the PR, (**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, Para-Equestrian).
- 4.** The PR participated with the horse BADR AL TAJ (FEI ID: 106KJ96) (**the Horse**) in the CEI2* 120 - Al Ula (KSA), 2022_CI_0298_E_S_02, on 29 January 2022 (**the Event**).
- 5.** The PR was a member of the German Equestrian Federation (**the GER NF**), the latter being a member of the FEI, thus the PR was bound by the FEI EADCM Regulations (**the EADCMRs**).²
- 6.** The Horse was selected for Sample Collection on 29 January 2022. Blood samples were collected from the Horse and sent to the FEI approved Racing Laboratory, The Hong Kong Jockey Club, Sha Tin, Hong Kong, China, (**the Laboratory**), for analysis.
- 7.** The analysis of the blood Sample revealed the presence of Dexamethasone (Corticosteroid with anti-inflammatory effect), Phenylbutazone (anti-inflammatory medication with analgesic effects) and Oxyphenbutazone (a metabolite of Phenylbutazone). The

² FEI Equine Anti-Doping and Controlled Medication Regulations 3rd edition, effective 1 January 2021

aforementioned substances are classified as Controlled Medication Substances under the 2022 FEI Equine Prohibited Substances List.

- 8.** The positive findings of Phenylbutazone and Oxyphenbutazone in the Horse's sample gave rise to Controlled Medication Rule Violation pursuant to Article 2.1 of the FEI Equine Controlled Medication Rules **(the ECMRs)**.
- 9.** By Notification Letter dated 21 March 2022, the FEI informed the PR, through the GER-NF of an alleged violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) and Article 2.2 (*the Use of a Controlled Medication Substance and/or Controlled Medication Method*) of the ECMRs based on the Laboratory's adverse analytical findings of Dexamethasone, Phenylbutazone and Oxyphenbutazone in the Horse's Samples collected at the Event.
- 10.** In accordance with Article 7.4.1 of the ECMRs the PR was provisionally suspended as the Rule Violation involved more than one Controlled Medication Substance (and its metabolite).
- 11.** In the Notification Letter dated 21 March 2022, the PR was informed of her right to provide an explanation. The PR provided her initial explanations on 25 March 2022, 31 March 2022 and 7 April 2022.
- 12.** The PR was also provided with the right to request the Horse's B Sample to be analysed. She did not exercise this option and in accordance with the Article 7.1.4 of the ECMRs and therefore such analysis was deemed irrevocably waived.
- 13.** Following the receipt of the PR's explanations, the FEI charged the PR, through a Notice of Charge dated 20 April 2022, with a violation of the Article 2.1 of the ECMRs, the Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample.
- 14.** Subsequently, the PR provided an additional round of explanations and evidence, dated 25 April 2022 and 8 May 2022 respectively, which allowed the FEI to enter into the Settlement Agreement with the PR.

III. Procedural background in front of the FEI Tribunal

- 15.** By email dated 19 May 2022, the FEI submitted the Settlement Agreement to the FEI Tribunal **(the Tribunal)** signed by the PR on 18 May 2022 and the FEI on 19 May 2022. The FEI requested for the Tribunal to issue confirmation of the Settlement Agreement and also to lift Provisional Suspension by the 21 May 2022 that was imposed on PR. The FEI further

explained that the PR was Provisionally Suspended on 21 March 2022, that the Parties agreed that the appropriate sanction for the present rule violation would be a 2-month suspension. As such the FEI noted that the two months suspension period was going to elapse on 21 May 2022 and thus required prompt attention by the Tribunal in order to lift the Provisional Suspension given the timeframes.

- 16.** On 19 May 2022, the Parties were informed of the nominated Hearing Panel appointed to address this Provisional Suspension part of this case and afforded the opportunity to submit objections to the constitution of the named panel by 20 May 2022.
- 17.** On 19 May 2022, the FEI confirmed they had no objections to the composition of the Hearing Panel. The PR nor the GER-NF did not inform the Tribunal of any objection to the constitution of the hearing panel. Therefore, by not responding within the deadline, it was deemed they agreed to the constitution of the hearing panel.
- 18.** On 20 May 2022, the Tribunal issued a Partial Decision and ruled that the Provisional Suspension imposed on Ms. Ursula Klingbeil was lifted with immediate effect, as of notification of that preliminary Decision.
- 19.** On 27 May 2022, the Parties were informed of the nominated Hearing Panel appointed to address the Settlement Agreement part of this case and afforded the opportunity to submit objections to the constitution of the named panel by 1 June 2022.
- 20.** On 30 May 2022, the FEI confirmed they had no objections to the composition of the Hearing Panel.

IV. The Parties' Submissions: PR

- 21.** Following the FEI's Notification Letter of 21 March 2022, the PR provided several rounds of written submissions³ wherein she explained how the Prohibited Substances entered the Horse's body. In short, those explanations can be summarised as follows:
 - That the Prohibited Substances were administered to the Horse by the Groom of the Trainer;
 - The Trainer had asked the Groom to accompany him to the Event since it was a long journey and he needed help. It was the first time for the Groom to participate with the Trainer in Endurance competitions. Up to that date, the Groom was working with race camels in a stable in Jordan;

³ FEI Settlement Agreement- Exhibits 8-12 (Submissions of the PR)

- The evening before the race, the Groom was asked to check the water and the feed of the Horse as well as to take it for a walk. During this walk, the Groom felt that the Horse was weak and a little bit stiff (probably because it was a long journey from Jordan to Al Ula and they had to wait for a long time at the border);
- The Groom was used to working with race camels and administering medicines before races. The Groom always carried a bag with him to the camel races with several items, including some horse medicines (they always use horse medicines for camels because they have no special medicines for the camels). The Groom brought the same bag to the Event as he thought there was no difference between camel and horse races;
- The Groom gave two injections into the muscles of the Horse because he wanted to help the Horse for the race day. He administered Fatrocortin (the medicine which he uses when camels are a bit weak) and Phenylarthrit (the medication he uses when camels are stiff or lame);
- The medicines noted above were always available in the camel stables where he worked previously, and the owners of the camels would buy it at the camel shops located at the racetrack. Therefore, the Groom did not know where the specific medicines that he administered to the Horse, were bought and by whom as he did not have any purchase receipts;
- When the Groom arrived from the stables to the farm where they were accommodated at Al Ula that night, everybody was already asleep. The Groom forgot to tell the Trainer the next morning that he had administered two medications to the Horse in the evening;
- The Groom was not aware that it was not allowed to administer medicines to competitions horses before an Event. The Groom was used to working in the camel races where it was only important that camels were running well. In these races, nobody asks about the medicines, and it was common to administer such medicines before the races;
- The Groom believed that he had acted in a good faith, as he wanted to help the Horse and the Trainer at the Event;
- The Groom was apologetic for administering these medicines to the Horse and not informing the Trainer about such administration. The Groom admitted that he learnt his lesson and that he will never administer again any medications to the competition horses.

V. The Parties' Submissions: FEI

- 22.** The FEI submitted that there was no doubt that administration of the two medications Fatrocortin (which contains Dexamethasone) and Phenylarthrit (which contains Phenylbutazone) in the evening before the Event would result in the Sample of the Horse returning positive findings for Dexamethasone, Phenylbutazone and Oxyphenbutazone (a metabolite of Phenylbutazone).

- 23.** Furthermore, the FEI noted that the testimonies of the PR and the Trainer were corroborated by the written and signed statement from the Groom who also provided a copy of his ID card and a telephone number.
- 24.** The FEI therefore submitted that the explanation provided as to source(s) was very likely to account for the Adverse Analytical Finding (**the AAF**) in the Horse and was therefore the FEI was satisfied that the PR had established, on a balance of probabilities, how Dexamethasone, Phenylbutazone and Oxyphenbutazone entered the Horse's system.

Fault and Negligence for the rule violation

- 25.** In evaluating the PR's level of fault or negligence for the Rule Violation under Article 2.1 of the ECMR, the FEI took into account the following considerations⁴:
- The PR was an experienced person in Endurance discipline since many years and in different functions (rider, veterinarian, FEI-official, OC-member, trainer, chef d'Equipe);
 - The PR admitted that she knows that the rider and the trainer are the PRs in cases of EADCMR violations;
 - The PR met the Horse in the morning of the pre-inspection at the Event (28 January 2022) for the first time;
 - The PR was not allowed to manage the Horse's feed, medications or supplements;
 - The PR asked several times about the way the Trainer managed the Horse (performance, health, training, food supplements and especially for possible medications) and she stated that she always got a negative answer (such was confirmed also by the witness statements of Merle Rohm and Iris Werron);
 - The PR tried to understand as many details as possible about the Horse's training, health, supplements and medications also before her arrival to Al Ula (confirmed also by the witness statements Tanja Kraft and Monther Al Baddawi);
 - After the disqualification from the competition, the PR went with the Horse out of the vet gate, and such was her last contact with the Horse. The PR did not know that the Horse underwent a doping control test;
 - The reason why the PR decided to ride an unknown horse in competition was that the PR heard about Al Ula and that it was trying to get the World Championships next year. As part of the German Team for several years, the PR felt it was a good opportunity to get an impression of the track. A flight for a horse from Germany to Saudi Arabia is very expensive and, since the PR was not a professional rider,

⁴ FEI Settlement Agreement- Exhibits 8-12 (Submissions of the PR)

she could not afford this amount in order to fly in one of her own horses. So, the only possibility for the PR was to ride a foreign horse;

- The PR claimed that she did not actively participate in causing the present rule violation and was not even aware at that time that the Horse was administered the Controlled Medications by the Groom (as confirmed later by the Trainer and the Groom).

- 26.** The FEI submitted that they noted the various precautions the PR took to ensure that the Horse she rented for the Event was well managed and not administered any medications or food supplements which could contain Prohibited Substances. The FEI noted that the PR enquired about performance, health, training, food supplements and possible medications of the Horse not only before the competition, but also before the PR's arrival to Al Ula.
- 27.** Furthermore, the testimony of the PR was corroborated not only by the testimonies of the Trainer and the Groom, but also by third parties who were present with the PR when she made her enquiries about the Horse.
- 28.** Finally, the PR was an experienced person in the discipline of Endurance and was fully aware of the EADCMRs and the responsibility they impose on the rider of the Horse. Despite not being actively involved or aware of the administration of the Prohibited Substances to the Horse, the PR did not deny her responsibility for the rule violation and was very cooperative with the FEI in order to establish the source and the exact circumstances of the rule violation.
- 29.** The FEI referred to Article 10.6.2 of the ECMRs wherein it is provided that if the PR established in an individual case (where Article 10.6.1 was not applicable) that he/she bears No Significant Fault or Negligence, then the otherwise applicable ineligibility period and other sanctions may be reduced in regard to such Person (provided that the source of the Prohibited Substances was established).
- 30.** Taking into account the totality of the circumstances in the present matter, the FEI concluded that the PR established that her level of Fault or Negligence was not significant in relation to the violation of the ECMRs committed, thus the PR's period of ineligibility should therefore be reduced in accordance with Article 10.6.2 of the ECMRs.
- 31.** In addition, since the PR tried to actively prevent any occurrence of a breach of the EADCMRs, that she promptly admitted the present violation and fully co-operated with the FEI on establishing the facts of this case, the FEI recommended that the PR shall be sanctioned with a two (2) month ineligibility period for her first EADCMR violation as per the Article 10.6.2 of the ECMRs.

- 32.** In accordance with Articles 9.1 and 10.1.2 of the ECMRs the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes.
- 33.** The FEI further noted that Article 10.2 of the ECMRs stipulates that for a violation of the Article 2.1 of the ECMRs, a PR shall be fined, and the FEI Guidelines for Fines and Contributions towards Legal Costs provide further instructions. Consequently, the PR shall be fined in the amount of two thousand five hundred (2'500) CHF for this ECMR violation.
- 34.** As the case is concluded with a Settlement Agreement the FEI does not seek any contribution to the legal costs from the PR. In accordance with Article 10.8.2 of the ECMRs an agreement between the parties is permitted, subject to FEI Tribunal's confirmation:

"Where the Person Responsible and/or member of the Support Personnel and/or other Person admits an ECM Rule violation after being confronted with the ECM Rule violation by the FEI and agrees to Consequences acceptable to the FEI, at its sole discretion, then: (a) the Person Responsible and/or member of the Support Personnel and/or other Person may receive a reduction in the period of Ineligibility based on an assessment by the FEI of the application of Articles 10.1 through 10.7 to the asserted ECM Rule violation, the seriousness of the violation, the Person Responsible and/or member of the Support Personnel's and/or other Person's degree of Fault and how promptly the Person Responsible and/or member of the Support Personnel and/or other Person admitted the violation; and (b) the period of Ineligibility may start as early as the date of Sample collection or the date on which another ECM Rule violation last occurred. In each case, however, where this Article is applied, the Person Responsible and/or member of the Support Personnel and/or other Person shall serve at least one-half of the agreed-upon period of Ineligibility going forward from the earlier of the date the Person Responsible and/or member of the Support Personnel and/or other Person accepted the imposition of a sanction or a Provisional Suspension which was subsequently respected by the Person Responsible and/or member of the Support Personnel and/or other Person.

The agreement shall be submitted to the FEI Tribunal for the sole purpose of the FEI Tribunal confirming that the above criteria have been fulfilled (or do not apply) and, where so confirmed 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 published as provided in Article 13.3 of the ECMRs. The

Decision by the FEI to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of, the period of Ineligibility and the confirmation of the case resolution agreement by the FEI Tribunal are not subject to appeal under Article 13. (...)"

VI. The Decision

Agreement between the Parties:

*****Quote*****

35. NOW, THEREFORE, THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

In the matter of the AAF related to the Sample, which was collected from the PR's Horse at Event on 29 January 2022, the PR and the FEI agree in accordance with 10.8.2 ECMR on the following:

- a) The PR admits the violation of Article 2.1 ECMR (The presence of Controlled Medication Substance(s) and/or its Metabolites or Markers in a Horse's Sample);
- b) The PR has established on a balance of probabilities how Dexamethasone, Phenylbutazone and Oxyphenbutazone entered the Horse's system;
- c) The PR has established that she bore No Significant Fault or Negligence for the rule violation in accordance with Article 10.6.2 ECMR;
- d) The period of Ineligibility imposed on the PR shall therefore be two (2) months (the Provisional Suspension served by the PR shall be credited against the imposed Ineligibility Period);
- e) The results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes, in accordance with ECMR Articles 9.1 and 10.1.2;
- f) The PR shall be fined in the amount of two thousand five hundred (2'500) CHF;
- g) Each party will bear its own legal and other costs incurred in connection with these proceedings; and
- h) No other Sanctions will apply in this case.

- 36.** This agreement is made in accordance with Article 10.8.2 of the ECMR and is subject to the confirmation of the FEI Tribunal. The Parties hereby kindly request that the FEI Tribunal confirms this agreement. The confirmation of this Settlement Agreement by the FEI Tribunal is not subject to appeal under Article 13 ECMR.

- 37.** The parties acknowledge and agree that pursuant to Article 13.3 of the ECMR, the FEI Tribunal's Decision will be made public by the FEI.
- 38.** 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. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

*** End Quote***

VII. Jurisdiction

- (a) The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ECMRs, as well as Article 18 of the IRs.
- (b) The PR is a members of the German Equestrian Federation, and as such are subject to the ECMRs.
- (c) Article 10.8.2 of the ECMRs provides for agreements to be reached between parties.
- (d) As a result, the Tribunal has the requisite jurisdiction to approve and issue this Decision.

VIII. Approval of Agreement

- 39.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the Parties agree the PR has established on a balance of probability – how Dexamethasone, Phenylbutazone and Oxyphenbutazone were present in the sample of the Horse.
- 40.** The Tribunal acknowledges that the PR and the FEI have agreed on terms for the closure of proceedings in accordance with 10.8.2 of the ECMRs as detailed at Section VI of this Decision.
- 41.** The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding the source of the Prohibited Substances, nor her degree of fault. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law.
- 42.** To conclude, the Tribunal finds that the Agreement between the Parties

could be considered as within the consequences that are mandated by the ECMRs.

- 43.** 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 2022/CM03-BADR AL TAJ.

IX. Decision

- 44.** The Tribunal rules that the Agreement reached between the FEI and the PR, Ms Ursula Klingbeil concerning the case 2022/CM03-BADR AL TAJ is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Section VI above, which are incorporated into this Decision.

- 45.** The Decision by the FEI to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of, the period of Ineligibility and the confirmation of the case resolution agreement by the FEI Tribunal are not subject to appeal under Article 13 of the ECMRs.

- 46.** This Decision shall be notified to the PR, to the Secretary General of the GER-NF of the PR, and to the FEI.

- 47.** This Decision shall be published in accordance with Article 13.3 of the ECMRs.

X. DECISION TO BE FORWARDED TO:

a. The Parties: Yes

b. The Secretary General of the NF of the person sanctioned: Yes

c. The President of the Organising Committee of the Event through her NF: No

d. Any other: No

FOR THE FEI TRIBUNAL



Mr. Jose A. Rodriguez Alvarez, One-Member Panel