

DECISION of the FEI TRIBUNAL

From 13 June 2022

Notified on 27 June 2022

(Reference No. FEI Tribunal: A22-0002)

In the matter of

UAE Equestrian and Racing Federation (the "UAEERF" or the "1st Appellant")

and

Mr Ismail MOHD (the "2nd Appellant")

together, the **Appellants**

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the Respondent or the FEI)

together, the **Parties**

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Ms. Diane Pitts (USA), Panel Chair

Mr. Gautier Aubert (SUI), FEI Tribunal Clerk

INTRODUCTION

1. The Appellants submitted this Appeal / Request for Reconsideration (for ease of reference, the “**Appeal**”) after the 1st Appellant received 80 Penalty Points at the occasion of the CEI 1* 100 km ride in Windsor (UK) on 13 May 2022, where the 2nd Appellant acted as Trainer for the Horse.

Applicable Rule Provisions:

Statutes 24th edition, effective 19 November 2019 (the **Statutes**), Art. 38.1.

General Regulations 24th edition, updates effective 1 January 2022 (the **GRs**), Art. 161, Art. 162, Art. 165.

FEI Endurance Rules, 11th Edition, effective 1 July 2020, updates effective 1 January 2022 (the **Endurance Rules**), Art. 864, Art. 866.

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (the **IRs**), Art. 18, Art. 23, Art. 38, Art. 39, Art. 40.

FACTUAL BACKGROUND

2. The 2nd Appellant, Mr Ismail Mohd (FEI ID 10017691), is an FEI registered Trainer in Endurance for the United Arab Emirates.
3. On 13 May 2022, Mr Manohar Singh Sang Singh competed with the Horse Gheerulla Galaxy (the “**Horse**”) at the CEI 1* 100 km ride in Windsor (UK; the “**Event**”). The 2nd Appellant was the Horse’s Trainer at the occasion of the Event.
4. The Horse suffered an injury during the Event, which resulted in its disqualification.
5. Following the Horse’s disqualification, the Trainer received 80 Penalty Points from the FEI, pursuant to Art. 864.1 of the Endurance Rules.

PROCEDURAL BACKGROUND

6. On 27 May 2022, the Appellants submitted an “Appeal Brief / Request for Reconsideration” to the FEI Tribunal contesting the Decision imposing him 80 Penalty Points (the “**Decision**”) and asking the FEI Tribunal, “*To set aside the Appealed Decisions and (i) to remove the Penalty Points imposed on Mr. Ismail Mohd during the CEI 1* 100 km ride held in Windsor (UK) on 13th*”

May 2022; (ii) to lift any and all suspensions and restrictions of participation associated with the Decision; (iii) to order that the FEI shall bear the costs of this proceedings and contribute to the legal fees incurred by the Appellant [sic]". The Appellants requested expedited proceedings and to have a final decision (operative part) issued by the Tribunal by 13 June 2022 at the latest.

7. On 30 May 2022, the FEI Tribunal Chair (the "**Chair**") acknowledged receipt of the Appellants' Appeal Brief / Request for Reconsideration and enclosures. The Chair noted that the Appellants did not seem to have provided the Tribunal with a copy of the Decision under Appeal, i.e. the alleged Decision taken by the FEI on 13 May 2022. The Appellants were requested to provide such document to the Tribunal. The Chair further noted the Appellants' request for expedited proceedings and asked the FEI for its position on this. Finally, the Chair informed the Parties of the nomination of a Sole Panel Member to handle the present matter, informing them that they had a deadline to object to her nomination where applicable.
8. On 1 June 2022, the Appellants indicated that the Decision under Appeal was taken during the Event, but that the Appellants did not receive such decision in writing. The Appellants only received a subsequent correspondence on 18 May 2022 from the FEI, notifying the 2nd Appellant's of his suspension. The Appellants therefore submitted to have provided the Tribunal with the entire file. Finally, the Appellants were hopeful to have the FEI agreeing on expedited proceedings, and informed the Chair having no objection to the nomination of the Sole Panel Member.
9. On 2 June 2022, the FEI requested the Tribunal to first rule on its own jurisdiction, as the FEI considered that the matter is non-appealable pursuant to Art. 162.2 and Art. 161.2 of the GRs. Further, it was the FEI's position that the Tribunal has no jurisdiction to adjudicate the matter, which is a clear field of play decision. Finally, the FEI informed the Chair refusing the expedited proceedings, should the Tribunal consider having jurisdiction on this matter, and informed in any event having no objection to the appointment of the Sole Panel Member.
10. On 3 June 2022, the Sole Panel Member requested the Parties to provide the Tribunal with additional information and answer four questions, in order for the Tribunal to rule on its own jurisdiction, pursuant to Art. 23 al. 1 let. B of the IRs. The Parties were requested to answer the following questions:
 - (i) Who eliminated the Horse at the Event? Was it the Ground Jury, or did the 2nd Appellant and/or the Athlete pull the Horse after the incident?

- (ii) Did the Ground Jury disqualify the Horse at the end of the competition?
 - (iii) Where applicable, how was the Ground Jury's Decision notified to the Athlete and/or the 2nd Appellant?
 - (iv) Was there any attempt by the 2nd Appellant, to protest that Decision at the time of the competition?
 - (v) Did the 2nd Appellant contest / complain about the prior penalty points received, and if so, please provide relevant evidence.
11. On 8 June 2022, the Appellants submitted their position, with two additional exhibits. On the same day, the FEI also submitted its position, with three additional exhibits. The Parties' submissions will be summarized below.
12. On 13 June 2022, the Sole Panel Member issued the Operative Part of its Decision, declaring the Appeal inadmissible.

THE PARTIES' SUBMISSIONS

13. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and documentary evidence submitted during these proceedings. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in this Appeal, the Tribunal will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

Submissions by and on behalf of the Appellants

14. The Appellants submitted the following in their written submissions:

Initial submission

- (i) The Appellants appeal the FEI Decision dated 13 May 2022, but also request the Tribunal to reconsider the FEI Decisions dated 20 and 23 May 2022, by which the 1st Appellant was informed that the FEI would be unable to intervene in this matter.
- (ii) The Appellants consider that the Tribunal's jurisdiction emanates from Art. 38.1 of the FEI Statutes and Art. 165 of the GRs.
- (iii) At the occasion of the Event, the Horse accidentally tripped, while approaching the finish line, which caused a muscular injury.

- (iv) Following said incident, to the Appellants' *"great surprise"*, the 2nd Appellant received 80 Penalty Points. As a consequence, he was suspended for two months, until 14 July 2022. The suspension not only affects the 2nd Appellant himself, but also all the horses he trains, in application of Art. 828.3 of the Endurance Rules. Although it is possible to change the Trainer of those Horses, they are barred from participating in Endurance events for 30 days following the transfer.
- (v) On 18 May 2022, the 1st Appellant contacted the FEI and explained the situation.
- (vi) The FEI responded on 20 May 2022, indicating being unable to intervene.
- (vii) A subsequent exchange happened between 20 and 23 May 2022 between the 1st Appellant and the FEI, but the positions remained the same.
- (viii) As to the merits, the Appellants consider the Decision to be extremely unfair, as the 2nd Appellant is entirely without fault. The Legal basis to take the Decision is Art. 864.1 of the Endurance Rules, which cannot possibly mean that a Trainer being entirely without fault, where an accidental incident happened, completely out of the Trainer's control, would be sanctioned. The Decision is therefore arbitrary.
- (ix) Art. 864.1 of the Endurance Rules could not have been drafted to apply in a scenario where the accused party is sanctioned although being at absolutely no fault.
- (x) The Appellants submitted that it is the first time they came across such situation, thus they request the Tribunal to treat the 2nd Appellant equally as others, and that no Penalty Points is imposed on him.
- (xi) Based on Art. 828.3 of the Endurance Rules, the suspension not only affects the Trainer, but also all the other Horses trained by him, which cannot compete for 30 days. This makes it considerably more difficult for these horses to qualify for and participate in the upcoming FEI World Endurance Championships for Seniors, at Verona (ITA) on 22 October 2022.
- (xii) The Appellants are convinced that the FEI, including the FEI Tribunal, have the statutory power to reconsider the Decision and eliminate the entirely unjustified sanction against the Trainer.

- (xiii) The Decision is null and void from the beginning, and therefore the FEI is not bound by it, and may reconsider and reverse it at any time.
- (xiv) The unjustified suspension of the 2nd Appellant has led to significant expenditures, from the 1st Appellant, to become useless, in particular operational costs for travelling horses from Dubai to the UK. The 1st Appellant assesses those costs to be of at least £ 5'000'000, and reserves all its rights in this respect.

Subsequent submissions

- (xv) The Decision to sanction the 2nd Appellant was taken during the Event. The Appellants did however not receive the decision in writing. What the Appellants did receive in writing was the subsequent correspondence of 18 May 2022, by means of which the FEI notified the Appellants of the 2nd Appellant's suspension. Therefore, all available files have been submitted to the Tribunal.
- (xvi) The Decision is not a Field of Play decision. The Appellants do not challenge the elimination, or the disqualification of the Horse for veterinary reasons, but the subsequent imposition of Penalty Points on the 2nd Appellant, under Art. 864.1 of the Endurance Rules, which had "*evidently and undisputedly*" nothing to do with what happened.
- (xvii) The Appellants are of the view that Art. 162.2 in connection with Art. 161.2 of the GRs are not applicable in the case at hand.
- (xviii) Art. 161.3 of the GRs is also not applicable, since the Appellants did not challenge the results of the Competition. The Appellants did not challenge that the combination was disqualified (failure to qualify), but challenge the subsequent imposition of 80 Penalty Points. Therefore, the provisions on the Protests from the GRs do not apply at hand, leading to the Appeal to be admissible.
- (xix) The Appellants could not have lodged a protest against the Decision imposing them 80 Penalty Points, since they were notified of such decision only a couple of days later, i.e. on 17 May 2022.
- (xx) The Decision is null and void, and therefore non-existent from the very beginning. The question of the nullity of the Decision and the subsequent sanction becomes a so-called "doubly pertinent fact", meaning the matter is both relevant on procedural

and substantive (material) law. The Tribunal may therefore not only decide on its jurisdiction, but must analyze the case on the merits.

- (xxi) On the FEI Database, the reason for the disqualification of the Combination was for not conforming with many rules, and not due to serious injury. Such disqualification could not lead to 80 Penalty Points.
- (xxii) The Appellants not only appealed the Decision, but also the two subsequent FEI's decisions of 20 and 23 May 2022, which can be revised by the FEI, and therefore appealed to the Tribunal.

Answer to the Tribunal's queries

- (xxiii) Upon request from the Sole Panel Member, the Appellants submitted the following responses:
 - (i) *Just before crossing the finish line at the final loop, the Horse accidentally tripped and fell. Following this, and based on the veterinary panel recommendation, the Ground Jury eliminated the horse on veterinary grounds.*
 - (ii) *As per above.*
 - (iii) *A clear distinction must be made here, between (1) the decision of the Ground Jury to eliminate the Horse and (2) the decision to impose 80 Penalty Points on, and to suspend, the Trainer. As to (1), the decision was communicated by the Ground Jury based on the veterinary panel recommendation at the Event. As to (2), both First and Second Appellant only became aware of the sanction by communication of 17/18 May 2022, which was made by the FEI and notified through the First Appellant.*
 - (iv) *There were no Penalty Points or suspension imposed on the Trainer at the point of time the Horse was eliminated of the competition on veterinary grounds, therefore, no protest was possible. As to the decision of the Ground Jury to eliminate the Horse, this is a Field of Play decision, which cannot be protested or appealed against. Therefore, also no protest was made in this respect.*
 - (v) *No, as the trainer had only 30 Penalty Points and was not suspended.*

Submissions by and on behalf of the FEI

15. The FEI submitted the following in its written submissions:

Initial Submissions

- (i) The FEI requested the Tribunal to first rule on its jurisdiction and on the admissibility of the Appeal, since it considers the matter to be non-appealable in accordance with Art. 162.2 and Art. 161.2 of the GRs.
- (ii) If the Appellants wanted to challenge the matter, the challenge should actually have been made in accordance with the Protest procedure (Art. 161 of the GRs). There is a specific deadline to do so as per Art. 161.3 of the GRs, which is thirty (30) minutes after the announcement of the results of the relevant Competition.

Answer to the Tribunal's queries

- (iii) Upon request from the Sole Panel Member, the FEI submitted the following responses:
 - (i) The Horse was designated "FTQ" (Failed to Qualify) with the code "SI-MUSCU: Serious Injury (musculoskeletal injury)" and what was done at the Vet Gate by the Veterinary Commission. The Horse was then disqualified ("DSQ") by the Ground Jury at the Event for exceeding the presentation time as per the Endurance Rules. Failure to Qualify is defined at Art. 809.5.1 of the Endurance Rules, and Disqualification at Art. 809.5.2 of the Endurance Rules. Finally, Serious Injury is defined at Annex 1 of the Endurance Rules.
 - (ii) The Ground Jury did disqualify the Horse at the end of the competition, as the results are evidenced in the FEI website. The Ground Jury disqualified the Horse for exceeding the presentation time as per the Endurance Rules.
 - (iii) *The disqualification and elimination code were part of the official results as communicated and published on the FEI website. The FEI is not aware of any other specific "decision" on this matter as it is merely part of the results.*
 - (iv) *According to the reports submitted by the FEI Officials (Foreign Judge and Chief Steward) on-site, there were no mention of any Protest (please see as annexes extracts from said reports that are left blank, meaning that there was no Protest). Please note however that according to Annex 5 of the FEI Endurance Rules and in particular article 1.3, it states the following: "1.3 The Ground Jury will make decisions concerning Horse welfare based on the decisions and advice of the Veterinary Commission. Any decision of the Veterinary Commission or the Ground*

Jury taken on the direct advice of the Veterinary Commission is final, and may not be appealed.” (emphasis added).

- (v) *The FEI is not aware of any complain or protest against the prior penalty points received.*

LEGAL DISCUSSION

16. As a preliminary matter, the Tribunal wishes to clarify that the Tribunal has jurisdiction to issue a decision on jurisdiction prior to determining the merits of the case (if any). Pursuant to Article 23.1 (a) of the IRs, the Tribunal has the power, either on the application of a party or of its own motion, to order that certain potential dispositive issues be heard and determined in advance of any other issues in the matter. Therefore, it does not matter whether or not the Parties agreed for the Tribunal to hear jurisdiction first.
17. Furthermore, and pursuant to Article 23.1 (b) of the IRs, the Tribunal has the power *to rule finally (subject only to any right of appeal to CAS) on its own jurisdiction to hear and determine proceedings brought before it either in a preliminary decision or in the Decision on the merits. When an objection to FEI Tribunal jurisdiction is raised, the Hearing Panel shall invite the opposing party (parties) to file written submissions on the matter of the FEI Tribunal's jurisdiction.*
18. The Panel must determine whether it has jurisdiction to hear the present matter, respectively whether the matter at hand is appealable. This leads to an analysis of whether the 80 Penalty Points imposed on the 2nd Appellant is a Decision that is appealable to the Tribunal, or whether it should have been contested – if possible – by the Appellants earlier.
19. The parties were invited to submit their respective positions in this respect, and were further requested to answer some questions raised by the Sole Panel Member. Both parties submitted positions on the jurisdiction of the Tribunal.
20. Pursuant to Art. 162.2 (a) of the FEI GRs, *An Appeal is not admissible against Decisions by the Ground Jury in cases covered by Article 161.2. Art. 161.2 of the GRs states the following: There is no Protest against (a) Decisions of the Ground Jury arising from the field of play, which are final and binding, such as, but not limited to: (i) where the Decision is based on a factual observation of performance during a Competition or the awarding of marks for performance; (ii) whether an obstacle was knocked down; whether a Horse was disobedient; whether a Horse refused at an obstacle or knocked it down while jumping; (iii) whether an Athlete or Horse has fallen; (iv) whether a Horse circled in a combination or refused to ran out; (v) the time taken for the round; (vi) whether*

an obstacle was jumped within the time and/or whether, the particular track followed by an Athlete caused the Athlete to incur a penalty under the applicable Sport Rules (b) The Elimination or Disqualification of a Horse for veterinary reasons, including non-acceptance of a Horse at a Horse Inspection unless otherwise specified.

21. In the present matter, it is not disputed or contested by both parties that the Horse combination was eliminated and disqualified by the Ground Jury for veterinary reasons. In particular, the Appellants admitted having received the Ground Jury decision disqualifying them, and further admitted having not contested said decision – and are still not contesting it in the present Appeal.
22. In view of the above, the Sole Panel Member rules that the Ground Jury's decision to eliminate and disqualify the Horse for veterinary reasons is, as stated in the GRs, a "Field of Play" decision, not subject to Appeal.
23. The Appellants tried to "create" a way of Appeal by contesting the subsequent automatic suspension imposed on the 2nd Appellant. However, their reasoning cannot be followed.
24. Pursuant to Art. 864.1 of the Endurance Rules, *"an Athlete and Trainer will each automatically receive the following number of penalty points for each incident set out below: [...] Failure to Qualify – Serious Injury (musculoskeletal) and/or a Catastrophic Injury : 80"*. Failure to Qualify is further defined in the Endurance Rules, under Art. 809.5.1: *"Failure to Qualify for the next Phase or for final classification occurs when a Combination is removed from the Competition for failure to pass a Horse Inspection, complete the full course as required, comply with applicable speed restrictions, and/or meet all time requirements for completion, or as a result of such other 'FTQ' designations as specified in Annex 3 (elimination codes)." Annex 3 of the Endurance Rules lists the various elimination codes. In particular, under "FTQ", Failed to Qualify, the following codes apply, *inter alia*: "SI-MUSCU" Serious Injury (musculoskeletal injury) [...] CI: Catastrophic Injury". Finally, a Serious Injury is defined under the definition section of Annex 1 of the Endurance Rules in the following terms: *"a serious injury of a Horse may be classified as musculoskeletal or metabolic: Serious musculoskeletal injuries include but are not limited to fractures, serious tendon or ligament damage, or muscle injuries that preclude normal ambulation. A Horse that is non-weight-bearing, even if the cause is undiagnosed, must be classified as having a Serious Injury (musculoskeletal) [...]. Art. 809.5.2 of the Endurance Rules defines the situation of disqualification, which occurs "when a Combination is removed from a Competition and/or Event (or its results are subsequently disqualified after the Competition and/or Event) for a violation of these Endurance Rules or other FEI Rules and Regulations or the Competition Schedule"*.*

25. As submitted by the FEI, the decision to disqualify the Horse was thus taken by the Ground Jury, based on the advice from the Veterinary Commission, following the procedure provided for under Annex 5 of the Endurance Rules. The Appellants did not contest the due process of this procedure, nor did they contest, as indicated above, the result of the competition. For that latest point, if the 2nd Appellant were to have wanted to contest the results of the competition, he should have done so, under Art. 161.3 of the GRs, within thirty minutes following the announcement of the results of the Competition, which he did not (and actually did not allege to have done).
26. In the FEI Database, the Vet Code indicates clearly the mention "SI-MUSCU", which, as indicated above, stands for Serious Injury (musculoskeletal injury). As indicated by the FEI, the Horse was therefore designated "FTQ" (Failure to Qualify) at the Vet Gate with the Code "SI-MUSCU", and later disqualified by the Ground Jury ("DSQ"). This is further evidenced by the Appellants' own Exhibit 4, which also shows that the Horse was coded "FTQ", with the mention "SI-MUSCU".
27. The 2nd Appellant was therefore aware of the results of the competition, which were not contested. What the 2nd Appellant claims – indirectly – not to have been aware, was the consequences of his disqualification for the abovementioned reasons.
28. As provided for under Art. 864.1 of the Endurance Rules, the Trainer (and probably also the Athlete) automatically received 80 Penalty Points, due to the Horse's Failure to Qualify for a Serious Injury (musculoskeletal). As underlined, the Penalty Points are imposed in an automatic manner, depending on the qualification of the incident. It is not a decision taken by a disciplinary body, subject to appeal. It is not the Tribunal's role to determine the pertinence of this automatic sanction. It however applies equally to all Athletes and Trainers in Endurance. The Sole Panel Member understands that, in the present matter, the addition of those Penalty Points, to the previous Penalty Points already imposed on the 2nd Appellant, had more severe consequences, since, all added, they exceeded the 100 Penalty Points within a year, resulting in the 2-months suspension imposed on the Trainer. However, it is the duty of the 2nd Appellant to be aware of those rules, as the legal principle that ignorance of the law is not a defense is widely acknowledged.
29. While the application of this provision might be seen unfair by the Appellants in the present matter, it is not the Tribunal's role to evaluate the fairness of a provision in the rules that is automatically applied. The fairness of the provision is a matter for the FEI to evaluate, via its legislative power, with input from the NFs, riders and trainers. The Sole Panel Member however noted that, in her 20 May 2022 answer to the Appellants, the FEI Endurance Director

indicated that the FEI has “learned from this incident and will consider it for [its] rules revision”.

30. Accordingly, the Tribunal is therefore not in a position to hear the present matter, which is to be considered non-appealable. The Appeal will therefore be declared inadmissible, and the Appellants will be required to pay the proceeding costs, which can be reduced to CHF 500.- considering the matter, and which will be satisfied by the deposit paid by the Appellants. All other prayers for relief are dismissed.

DECISION

31. The Tribunal decides as follows:

1. The Appeal is not admissible.
2. All other requests are dismissed.
3. No Deposit shall be returned to the Appellants.
4. Each party shall pay their own costs in these proceedings.

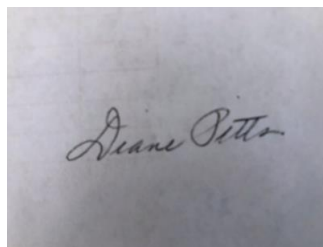
32. According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.

33. According to Articles 162.1 and 162.7 of the GRs, this decision may be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. Any other: No

FOR THE TRIBUNAL

A rectangular box containing a handwritten signature in cursive script that reads "Diane Pitts".

Ms Diane Pitts (USA), Sole Panel Member