

DECISION of the FEI TRIBUNAL

dated 6 January 2022

(FEI Case number: FEI 2020/RF01-Mohammed ALMALKY)

FEI Tribunal Hearing Panel:

Mr Cesar Torrente

FEI Tribunal Reference: C21-0049

Horse/Passport: SAREM/105MZ22/KSA

Person Responsible/ID/NF: Mohammed ALMALKY/10134839/KSA

Trainer/ID/NF: Meshary ALMALKY/10158793/KSA

Event/ID: CEI2* 120 – Al Ula (KSA) 2020_CI_0100_E_S_01_01

Date of Event: 1st February 2020

EAD Rule Violation: Article 2.3, Evading, Refusing or Failing to submit the Horse to Sample Collection

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 and 38.

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 Equine Anti-Doping and Controlled Medication Regulations (“EADCMRs”), 2nd edition, changes effective 1 January 2020. The EADCMRs are comprised of the equine anti-doping rules (the “EAD Rules”) in the first half – which are the ones applicable in the present matter – and the equine controlled medication rules (the “ECM Rules”) in the second half.

Veterinary Regulations (“VRs”), 14th edition 2018, effective 1 January 2020, Art. 1068 and seq.

B. Person Responsible: Mr Mohammed ALMALKY.

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

EAD Rules Art. 2.3: “Evading, Refusing or Failing to submit to Sample Collection”.

EAD Rules Art. 2.3.1: “Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after Notification

(in accordance with the FEI Veterinary Regulations) or to comply with all Sampling procedure requirements including signing the Sampling form or otherwise evading Sample collection”.

EAD Rules Art. 2.3.2: “It is each Person Responsible’s personal duty to ensure that if the Horse with/on which they competed or will compete is selected for Sampling and a notification of Sampling in accordance with the FEI Veterinary Regulations has taken place, such Horse is submitted to Sample collection and that all Sampling procedure requirements are met”.

EAD Rules Art. 2.3.3: “Accordingly, although it is permissible for the Person Responsible to delegate the submission and supervision of the Horse to a third party, the Person Responsible remains responsible for the Horse throughout the Sample collection process and for:

(i) any evasion of Sample collection; and/or

(ii) any refusal or failure, without compelling justification, to submit the Horse to Sample collection; and/or

(iii) any failure to comply with any or all of the Sampling procedure requirements, including signing the Sampling form”.

EAD Rules Art. 2.3.4: “It is not necessary to demonstrate intent, fault, negligence or knowledge in relation to any delegation relating to the Sampling process or to the acts of a relevant third party in order to establish an EAD Rule violation under this Article 2.3”.

VRs Art. 1098: Definition of PR

1. “As set forth in Article 118 of the General Regulations and in the EADCMRs, the PR shall be the Athlete who rides, vaults or drives the Horse during an Event. The Owner and other Support Personnel including but not limited to grooms, trainers 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.
2. PRs are strictly liable and responsible for their Horse(s) at all times. PRs and their Horse(s) may be subject to inspection for compliance with all applicable FEI rules and regulations by FEI Officials at any time during an Event.”

VRs Art. 1099: Responsibilities

“PRs must ensure that they and their Horse(s) comply with all aspects of these VRs, and EADCMRs including but not limited to:

(...)

j) all provisions related to the implementation of the EADCMRs and Elective Testing; (...)”

VRs Art. 1068: Sampling

6. “The PR is responsible for the Horse at all times.
7. Evading, refusing or failing to submit to sample collection is a violation of the EADCMRs Article 2.3.”

VRs Art. 1071: Notification of Sampling

3. “From the moment of notification, the Horse must be chaperoned by an FEI Official until it has been taken to the Testing Veterinarian or VD. The PR may cool down their Horse between notification and presenting their Horse to the Testing Veterinarian or VD.
4. Following notification, the PR or a member of their Support Personnel must accompany the Horse to the Testing Veterinarian or VD and witness the sampling procedure.
5. The Testing Veterinarian or VD may appoint an FEI Official for any or all of the following:
 - a) to notify the PR or a member of their Support Personnel that the Horse has been selected for sampling; and/or
 - b) to chaperone the Horse to the Testing Veterinarian or VD.”

II. Factual background

1. Mr Mohammed Almalky (FEI ID 10134839), the Person Responsible (“**the PR**”), is an FEI registered Endurance rider.
2. 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, Reining, Para-Equestrian).

3. The PR participated, with the Horse SAREM (“the Horse”) (FEI ID 105MZ22), in the event CEI2* 120 in Al Ula (KSA) on 1 February 2020 (“the Event”).
4. The Horse was selected for an in-competition doping control test during the Event. The test did not take place as the PR disappeared with the Horse, despite being notified about the selection for testing.
5. The FEI Officials from the Event reported the PR for Evading, Refusing or Failing to Submit to Sample Collection which is an Equine Anti-Doping Rule Violation pursuant to Article 2.3 of the EAD Rules.
6. On 19 February 2020, the FEI Legal Department officially notified the PR and the Saudi Arabian Equestrian Federation (the “KSA-NF”), of an apparent violation of Article 2.3 of the EAD Rules (Refusal to Submit to Sample Collection) for evading, refusing, or failing to submit to Sample Collection at the Event and the potential consequences (the “Notification Letter”). The Notification Letter included notice that the PR was provisionally suspended as of the 19 February 2020 in accordance with Article 7.4.2 of the EAD Rules. Finally, the Notification Letter informed the PR of his right to request a Preliminary Hearing with the FEI Tribunal, where he would be able to present all explanations necessary for the FEI Tribunal to assess whether the provisional suspension imposed on him shall be lifted or maintained.
7. On 23 February 2020, The KSA-NF confirmed having duly transmitted the Notification Letter to the PR, the Trainer and the Owner of the Horse.
8. On 1 June 2021, the FEI contacted the KSA-NF to give the PR a final opportunity to submit written explanations by 23 June 2021. The FEI further informed the KSA-NF that after the abovementioned deadline, the FEI would submit the case file to the FEI Tribunal for adjudication.
9. On 2 June 2021, the KSA-NF confirmed to the FEI that the PR had been informed.
10. However, the PR did not submit any explanations.

II. Procedural background in front of the FEI Tribunal

11. By email dated 24 August 2021, the FEI submitted its Response to the Tribunal and made a request for the appointment of a Panel.

12. On 31 August 2021, the Parties were informed of the nominated Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel. The PR was given the opportunity to reply to the FEI's Correspondence of 24 August 2021 by 20 September 2021. Furthermore, the KSA-NF was requested to forward the Correspondence to the PR and to provide the Tribunal with the personal contact details of the PR by 3 September 2021.

13. On 31 August 2021, the FEI informed the Tribunal it had no objections regarding the composition of the Panel.

14. On 1 October 2021, the Tribunal asked the KSA-NF to confirm that the PR had been duly provided with the case file.

15. On 2 October 2021, the KSA-NF confirmed to the Tribunal that the PR had received the case file.

A. Written Submission by the PR:

16. The PR did not submit any position in the present matter, despite being offered to do so by the FEI and by the Tribunal.

B. Written Response by the FEI:

17. On 24 August 2021, the FEI submitted its Response to the Tribunal.

18. The FEI's Response is mainly based on two reports: the Report of the Testing Veterinarian and the Report of the Chief Steward.

19. The Testing Veterinarian Report noted the following incident at the Event: *"the Chief Steward accompanied two horses to from vet gate to testing boxes, no. 205 and 27. Horse no 205, stopped at their resting point, while dealing with this horse no. 27 disappeared. 205 was tested, 27 never to be found again on the venue nor PR answering his phone."*

20. The Chief Steward described the incident in a separate Report:

"Like C.S., I was going with two horses to the MCP test, the 27 in front of me and the 205 behind, the rider and PR had been informed. When we were going to the MCP test, I realized that coach or PR of the horse 205 told the groom to go slowly, I had to tell him several times that faster please"

When we were in one corner of the vet gate I saw 205 moving away to his padok. I asked to number 27 to wait for me, in English and also with gestures in case he didn't understand, and I went for 205, I told him (205) that he must come with me to the MCP test and at first he didn't pay much attention to me but when I said I was going to call the police then he came with me, about 10 minutes passed.

But when we arrived to continue to MCP test with the horses (27 and 205) the horse 27 had disappeared.

We looked for him (27) everywhere: paddocks, boxes, ... And the horse did not appeared.

Finally MCP test was done only to 205 and the yellow card was communicated.

Both of them were eliminated by GA previously.

Impossible to communicate the YWC to the raider or PR of number 27, because he was missing.

[..]"

21. According to the FEI, these two Reports clearly established that:
- a) The PR was notified about his Horse's selection for a Doping Control;
 - b) The PR and the Horse were accompanied by the Chief Steward to the testing area;
 - c) The PR was advised by the Chief Steward, both in English and with gestures, to wait for him while the Chief Steward was dealing with the incident involving the horse 205;
 - d) Seizing the opportunity of the Chief Steward being occupied with the incident concerning the horse 205, the PR disappeared with his Horse and he was nowhere to be found on the premises of the Event venue;
 - e) The FEI Officials tried to contact the PR trough his phone. It was not possible to do so as the PR simply did not pick up his phone;
 - f) As a result, it was not possible to conduct an in-competition testing on the Horse.

22. Furthermore, the FEI points out that the PR never responded to the charges of the FEI, nor provided any explanations of the incident nor contested in any way the Provisional Suspension.
23. The FEI concludes that the events described in the two Reports above represent the exact course of the incident and by disappearing with his Horse the PR clearly violated Article 2.3 of the EAD Rules – namely the PR Failed to Submit the Horse to Sample Collection after notification of the selection of the PR's Horse to the Doping Control.

IV. Jurisdiction

24. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the EADCMR, as well as Article 18 of the IRs. The PR is a member of the KSA-NF, which is a member of the FEI; therefore, the PR is bound by the EAD Rules.

V. The Decision

25. 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.
26. Pursuant to Article 2.3 of the EAD Rules, there is an EAD Rule violation when a person evades, refuses or fails to submit to sample collection.
27. Pursuant to Article 2.3.3 of the EAD Rules, the rider of the Horse is the PR for the Horse and remains responsible for the Horse at all times. He is therefore responsible for bringing the Horse to the sample collection and remains responsible for the Horse throughout the Sample collection process.
28. In the present matter, the Testing Veterinarian Report mentioned an incident that took place during the Event involving the PR and the Horse. The Chief Steward also submitted a Report about the same incident.
29. The Tribunal considers that the abovementioned reports clearly state that that the PR was notified about his Horse's selection for a Doping control. Furthermore, when going to the testing area, the PR was advised by the Chief Steward, both in English and with gestures. Instead of following the instructions, the PR disappeared with the Horse, and was nowhere to be found on the premises of the Event venue. The

PR further did not respond to his phone when being called by the FEI Officials. It follows from the above that the Horse could not be tested.

30. In view of the above, the Tribunal is comfortably satisfied that the FEI has demonstrated that the PR committed a violation of Article 2.3 of the EAD Rules. Furthermore, based on the reports of the testing Veterinarian and the Chief Steward, the Tribunal concludes that the PR's conduct was clearly intentional. The attempts of the FEI Officials to contact the PR, as well as the lack of responsiveness from the PR in the context of the proceedings, confirm the Tribunal's view that the PR indeed evaded, refused or failed to submit his Horse to sample collection, pursuant to Article 2.3 of the EAD Rules.
31. The Tribunal agrees with the FEI that Evading, Refusing or Failing to Submit the Horse to Sample Collection is a very serious offence. Indeed, the entire anti-doping system, as well as the integrity and credibility of the equestrian sport relies on the cooperation and abidance by the rules, of all participants in the context of the testing procedures.
32. With respect to the sanction to be imposed, and pursuant to Article 10.3.1 of the EAD Rules, the period of Ineligibility for an Article 2.3 violation, *i.e.*, Evading, Refusing or Failing to submit to Sample Collection, as in the case, is two (2) years, subject to a potential elimination, reduction, or suspension pursuant to Articles 10.4 to 10.6 of the EAD Rules.
33. In cases brought under the EAD Rules, a strict liability principle applies as described in Article 2.3 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, the PR has the burden of proving that he bears "*No Fault or Negligence*" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "*No Significant Fault or Negligence*", as set forth in Article 10.5 of the EAD Rules.
34. In the present matter, the PR did not submit any position, which does not need any further explanations. No elimination, reduction, or suspension of the period of Ineligibility is therefore applicable.
35. The Tribunal finds that the applicable period of Ineligibility is two (2) years pursuant to Article 10.3.1 of the EAD Rules in connection with Article 2.3 of the EAD Rules.
36. In relation to fines and costs, the Tribunal considers that the PR has never made the effort to give his version of the fact at the FEI level and later during the Tribunal proceedings. Accordingly, the Tribunal rules that the fine to be imposed and the procedural costs to be borne by the PR should follow what is requested by the FEI,

which reflects the seriousness of his behaviour and his lack of collaboration throughout the proceedings. The PR will therefore be fined seven thousand five hundred Swiss Francs (CHF 7'500) and his part of the procedural costs will amount to two thousand Swiss Francs (CHF 2'000).

VI. Disqualification of Results

37. Since an EAD Rule has been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1 of the EAD Rules.

VII. Sanctions

38. In summary, the Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- a. upholds the charge that the PR has violated Article 2.3 of the EAD Rules;
 - b. imposes a period of Ineligibility of **two Years** on the PR. The period of the Provisional Suspension, effective from 19 February 2020 is credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until 18 February 2022;
 - c. the PR is fined in the amount of **seven thousand five hundred Swiss Francs (7'500 CHF)**; and
 - d. the PR will contribute **two thousand Swiss Francs (CHF 2'000)** for costs that the FEI has incurred in these proceedings.
39. No PR who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorised or organised by the FEI or any National Federation, or participate in any capacity in Competitions authorised or organised by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
40. Where a PR who has been declared Ineligible, violates the prohibition against participation or attendance during Ineligibility, the results of any such participation shall be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility.

In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).

41. According to Article 168 of the GRs, the present decision is effective from the day of the written notification to the Parties concerned.
42. In accordance with Article 12 of the EAD 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.

VIII. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The President of the NF of the person sanctioned: Yes
- d. Any other: No

FOR THE TRIBUNAL

A handwritten signature in blue ink, appearing to read 'Torrente', is written over a horizontal line. The signature is stylized and cursive.

Mr. Cesar Torrente, One-Member Panel