

DECISION of the FEI TRIBUNAL

dated 16 June 2022

in the matter of

Mr Saood B S N ALMUTAIRI (PR) and Mr Abdulaziz ALMEQBEL (APR; Ref. C22-0016)

(FEI Case number: FEI 2022/CM02 – WAD TWAIQ)

I. Composition of the FEI Tribunal Hearing Panel:

Ms Valérie Horyna (SUI), one-member panel

FEI Tribunal Clerk: Mr Gautier Aubert (SUI)

II. Articles of the Statutes/Regulations which are, *inter alia*, applicable:

- 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’s Equine Anti-Doping and Controlled Medication Rules, 3rd Edition, effective 1 January 2021 (“EADCM Rules”).
- FEI’s Endurance Rules, Updated 11th Edition, effective 1 January 2022 (“FEI Endurance Rules”).
- The World Anti-Doping Code - International Standard – Prohibited List –

January 2019 (“WADA Prohibited List”).

III. General details of the case:

FEI Tribunal Reference: C22-0016 [2022/CM02 – WAD TWAIQ]

Person Responsible/ID/NF: Saood B S N ALMUTAIRI/10259344/KUW

Additional Person Responsible/ID/NF: Abdulaziz ALMEQBEL/10083307/KSA

Horse/Passport/NF: WAD TWAIQ/107LX94/KSA

Event/ID: CEIJ1* 100 - Riyadh (KSA), 08.01.2022, 2022_CI_0299_E_YJ_01

Date of Event: 08.01.2022

Prohibited Substance(s): Flunixin, Phenylbutazone, Oxyphenbutazone

Bar Code No.: 5607171

IV. Factual background

1. Mr Saood B S N ALMUTAIRI (FEI ID 10259344), the Person Responsible (the “PR”), competed with the Horse WAD TWAIQ (the “Horse”) at the CEIJ1* 100 in Riyadh, Kingdom of Saudi Arabia, on 1 January 2022 (the “Event”).
2. Mr Abdulaziz ALMEQBEL (FEI ID 10083307), the Additional Person Responsible (the “APR”) was the registered Trainer of the Horse, with which the PR competed at the Event.
3. The Fédération Equestre Internationale (the “FEI” together with the PR and the APR, the “Parties”), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
4. Blood samples were collected from the Horse during the Event and returned a positive result for Flunixin, Phenylbutazone and Oxyphenbutazone.
5. Flunixin and Phenylbutazone are anti-inflammatory medications with analgesic effects and Oxyphenbutazone is a metabolite of Phenylbutazone. These are “Prohibited Substances” that are classified as “Controlled Medication Substances” under the FEI Equine Anti-Doping and Controlled Medication Regulations (“EADCMRs”).

6. Furthermore, and as no Veterinary Form was submitted for the use of Flunixin, Phenylbutazone and Oxyphenbutazone, the Adverse Analytical Finding (the “AAF”) in the Horse’s Sample gave rise to a Controlled Medication rule violation (the “CM Rule Violation”) under the EADCMRs.

V. Procedural background

7. By way of a notification letter dated 31 January 2022, the FEI informed the PR and the APR of a possible 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 (*Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method*) of the FEI Equine Controlled Medication Rules (“the ECM Rules”).
8. The PR and the APR were provisionally suspended as of the date of the Notification Letter.
9. By way of a Notice of Charge dated 1 March 2022, the FEI formally notified the PR and the APR of the alleged CM Rule Violation.
10. By email dated 30 March 2022, the FEI submitted the case files to the Tribunal for adjudication. The Kuwait Federation of Equestrian Sports (the “KUW-NF”), respectively the Kingdom of Saudi Arabia Federation of Equestrian Sports (the “KSA-NF”), were copied on the FEI’s correspondence.
11. On 6 May 2022, the Tribunal Chair 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 the constitution of the hearing panel by 9 May 2022. Furthermore, the Tribunal Chair granted the PR and the APR with the opportunity to respond to the FEI’s allegations about the Prohibited Substance discovered in the Horse’s system, by providing a statement of defence and any supporting evidence by 27 May 2022. The Tribunal Chair further informed the PR and the APR that should they fail to respond within the deadline, the Tribunal hearing panel would decide this case using the file material in its possession. Finally, the Tribunal Chair informed the Parties of their right to request an oral hearing.
12. On 9 May 2022, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
13. Neither the PR nor the APR submitted any statement of defence within the prescribed deadline.

14. On 1 June 2022, the PR wrote to the FEI and asked “what happened”. The FEI responded that he needed to confirm whether or not he had any objection to the constitution of the panel. On the same day, the PR indicated having no objection.
15. No further position was submitted and neither Party requested an oral hearing.

VI. Submissions by the Parties:

A. Submissions by the PR and the APR

16. In the course of the FEI proceedings, the PR contacted the FEI on several occasions via email. The FEI correctly summarized his statements as follows:
 - 16.1 The PR is a beginner jockey and the Event was his first race;
 - 16.2 The PR travelled on 6 January 2022 from Kuwait to Saudi Arabia where the Event took place;
 - 16.3 The PR rented the Horse from a Saudi Arabian owner to obtain an “international star”;
 - 16.4 The PR doesn’t know whether the owner gave to the horse any Prohibited Substances; the PR does not even know the owner;
 - 16.5 The PR does not have any knowledge about “medical stuff for horses”; the PR is just a jockey;
 - 16.6 The PR is not employed and he cannot pay any fine.
17. The PR did not supplement his above position in the context of the proceedings in front of the Tribunal.
18. The APR did not submit any position in the context of the proceedings in front of the FEI, despite confirmation received from the Kingdom of Saudi Arabia Federation of Equestrian Sports. Similarly, the APR did not submit any position in the context of the proceedings in front of the Tribunal.

B. Submissions by the FEI:

19. On 30 March 2022, the FEI provided its Responses, with respect to the PR and the APR respectively. The FEI's Responses will be addressed jointly below.
20. The FEI submitted that:
 - 20.1 Article 2.1 of the Equine Controlled Medication Rules (the ECM Rules) prohibits 'The presence of a Controlled Medication Substance or its Metabolites or Markers in a Horse's Sample'. Furthermore, it states that 'Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's samples (...).'
 - 20.2 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.
 - 20.3 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).' (Article 800.4.1 of the Endurance Rules, updated 11th Edition, effective 1 January 2021).
 - 20.4 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 Article 118.3 of the GRs.
 - 20.5 In addition to Article 118.3 of the GRs, the APR was also registered as the Horse's Trainer for the Event in the FEI Database. Once someone is registered as a Trainer in the FEI database, the registered person acknowledges and accepts the definition of a Trainer as per Art. 800 of the ERs. Namely, persons registering as Trainers are to be the persons who are responsible for preparation of the Horse both physically and mentally for Competition. Furthermore, the FEI as a prosecutor relies on the FEI database where Athletes and Trainers are registered with the FEI. The registration system allows the FEI to hold registered individuals accountable when they violate FEI Rules and Regulations.
 - 20.6 Article 3.1 of the ECM Rules makes it the FEI's burden to establish all the elements of the ECM Rule violation charged on the balance of probabilities.

20.7 The elements of Article 2.1 of an ECM Rule violation are straightforward. *"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 is a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the A sample analysis confirmed the presence of Flunixin, Phenylbutazone and Oxyphenbutazone, and together constituted sufficient proof of the violation of Article 2.1 of the ECM Rules. Therefore, the FEI submitted that it has discharged its burden of establishing that the PR and the APR violated Article 2.1 of the ECM Rules.

20.8 Article 10.2 of the ECM Rules provides that a Person Responsible or Additional Person Responsible with no previous doping and/or Controlled Medication offences, but who violates Article 2.1 of the ECM Rules, is subject to a period of Ineligibility of six (6) months, unless he can rebut the presumption of fault on a balance of probability (Article 3.1 of the ECM Rules). If the PR / APR fails to do so, the six (6) months period of Ineligibility applies.

20.9 To rebut the presumption of fault, the ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement that the PR/APR prove how the Prohibited Substance entered the Horse's system before making any plea of No (or No Significant) Fault or Negligence. Indeed, this threshold requirement is strictly applied because without such proof, it would be impossible to assess the degree of Fault or Negligence (or No Significant Fault or Negligence) of the PR/APR for the presence of the Prohibited Substance in the Horse.

20.10 In this case, the FEI submitted that the PR did not provide any explanation regarding the source of the Controlled Medications in the Horse's Sample. The PR has simply stated that he just rented the Horse for the Event from a Saudi Arabian owner whom he does not know personally and therefore the PR does not know whether the owner gave any Prohibited Substances to the Horse. The PR also stated that he does not have any knowledge about "medical stuff for horses" and that he is just a jockey.

20.11 The APR did not provide any explanation regarding the source of the Controlled Medications in the Horse's Sample.

20.12 Considering the above, the FEI does not have at its disposal any information, either from the PR or from the APR, on how the Controlled Medication Substances entered the Horse's body from other sources.

20.13 The FEI submitted therefore that the PR and the APR did not discharge their

burden of proof of establishing how Flunixin, Phenylbutazone and Oxyphenbutazone entered the body of the Horse and the “threshold requirement” has not been fulfilled in this case.

20.14 It is not possible to evaluate the PR’s level of Fault or Negligence based on the applicable rules. As a consequence, the presumption of fault as stipulated in Art. 10.2 of the ECM Rules shall stand.

20.15 For the assessment of fault, the FEI stressed that there are no specific regulations that would exclude the PR’s responsibilities under the EADCM Regulations just because the PR is a beginner jockey. To the contrary, by virtue of accepting an accreditation to an FEI Event, the PR agreed to be bound by the FEI Rules and Regulations, including EADCM Regulations.

20.16 Furthermore, given the explanations provided by the PR so far in the case at hand, the FEI advised the PR on multiple occasions that the most beneficial outcome for him, given the lack of the source of the Controlled Medication Substances in the Horse’s body, would be to admit the violation, accept the proposed consequences and benefit from an automatic 3-month reduction of the potential suspension. The PR did not sign the Acceptance of Consequences within the prescribed deadline.

20.17 In view of the above, the FEI recommended a period of Ineligibility of six (6) months be imposed on each of the PR and the APR in accordance with Article 10.2 of the ECM Rules.

20.18 On the fine to be imposed, the FEI submitted that Article 10.2. of the ECM Rules provides that, for a violation of Article 2.1 ECM Rules, a fine of up to CHF 15’000 and appropriate legal costs shall be imposed.

20.19 The FEI respectfully submits that fairness does not dictate that no fine be levied in this case as the PR did not provide any evidence regarding his unemployment status or his difficult financial situation. The FEI thus requested that a fine of three thousand five hundred Swiss Francs (3’500 CHF) be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI has incurred in the context of these proceedings, namely two thousand Swiss Francs (2’000 CHF).

20.20 With respect to the APR, the FEI requested that a fine of three thousand five hundred Swiss Francs (3’500 CHF) be imposed, and that the APR be ordered to pay the legal costs that the FEI has incurred in the context of these proceedings, namely two thousand Swiss Francs (2’000 CHF).

20.21 The FEI requested the following prayers for relief against the PR:

- (i) *upholding the charge that the PR has violated Article 2.1 of the ECM Rules;*
- (ii) *imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the Final Decision (the Provisional Suspension already served by the PR shall be credited against the imposed Ineligibility Period);*
- (iii) *disqualifying the result(s) of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won pursuant to Article 9 and 10.1.2 of the ECM Rules;*
- (iv) *fining the PR in the amount of three thousand five hundred (3'500) CHF; and*
- (v) *ordering the PR to pay the legal costs of two thousand (2'000) CHF that the FEI has incurred in these proceedings.*

20.22 The FEI requested the following prayers for relief against the APR:

- (i) *upholding the charge that the Trainer has violated Article 2.1 of the ECM Rules;*
- (ii) *imposing a period of Ineligibility of six (6) months on the Trainer, commencing from the date of the Final Decision (the Provisional Suspension already served by the Trainer shall be credited against the imposed Ineligibility Period);*
- (iii) *fining the APR in the amount of three thousand five hundreds (3'500) CHF; and*
- (iv) *ordering the Trainer to pay the legal costs of two thousands (2'000) CHF that the FEI has incurred in these proceedings.*

VII. Legal Analysis

A. Jurisdiction

21. The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the ECM Rules and Article 18 of the IRs. The PR is a member of the KUW-NF and the APR a member of the KSA-NF, which are members of the FEI; therefore, the PR and the APR are bound by the ECM Rules.

B. Legal Discussion

22. 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.

1. The Person Responsible

23. The PR, Mr Saood B S N ALMUTAIRI, was the Rider of the Horse at the occasion of the Event and is, as such, to be considered as the Person Responsible pursuant to Article 118 par. 3 of the GRs.

2. The Additional Person Responsible

24. The Trainer is the Additional Person Responsible for the Horse pursuant to Article 118 par. 3 of the GRs and Article 800.4.1 of the FEI Endurance Rules, confirmed by previous decisions of the FEI Tribunal¹.

3. Considering

25. The Horse's sample confirmed the presence of three Controlled Medication Substances. 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 report relating to the A-sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is further satisfied that the test results evidence the presence of Flunixin, Phenylbutazone and Oxyphenbutazone in the A Sample taken from the Horse at the Event. Flunixin, Phenylbutazone and Oxyphenbutazone are Controlled Medication Substances, 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.
26. As a result, the FEI has established an AAF and sufficiently proven the objective elements of the offence in accordance with Article 3.1 of the ECM Rules.
27. 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

¹ Cf. e.g. FEI Tribunal Decision C21-0014 dated 24 August 2021; FEI Tribunal Decision C20-0045 dated 28 September 2021; FEI Tribunal Decision C21-0057 dated 6 January 2022

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.

28. 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, the PR and the APR have the burden of proving that they bear “*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.
29. In order for Articles 10.5 and 10.6 of the ECM Rules to be applicable, the PR and the APR must establish as a threshold requirement how the Prohibited Substances entered the Horse’s system.
30. As confirmed by various CAS panels as well as FEI Tribunals, the PR and the APR have to present facts substantiated with concrete evidence. Speculation or theoretical possibilities are not sufficient. Furthermore, it was suggested by various CAS panels that the 51% threshold was understood as meaning that panels should separately compare each alternative scenario with the scenario invoked by the PR or the APR. The PR/APR’s scenario has to reach a 51% threshold for it to be successful.²
31. The PR explained that he was a beginner jockey who hasn’t any knowledge about “medical stuff for horses” and that he doesn’t know whether the owner gave to the horse any Prohibited Substances.
32. The APR did not submit any position, which in itself does not need any further explanations.
33. The Tribunal notes however that, while the APR did not make the effort to submit any position, being in front of the FEI or the Tribunal, the PR made some effort to take part in the proceedings and explain his side of the story, even if he failed to explain the source of the Prohibited Substance. This shall therefore be taken into account in his favour when the Tribunal will address the fine and procedural costs to be imposed.
34. Where the first hurdle has not been met, i.e., establishing the source of the Prohibited Substance, the Tribunal cannot continue with the second step and evaluate the PR’s degree of Fault or Negligence. Therefore, the Tribunal finds that

² See for example Viret, M., “Evidence in Anti-Doping at the Intersection of Science & Law”, Asser International Sports Law Series, Springer 2016, (pp. 521-538), as well as CAS 2011/A/2234 & 2386, UCI v. Contador & RFEC, and CAS 2010/A/2230, IWBF v. UKAD & Gibbs. See for example also Case 2017/BS32 SAURA DE FONDCOMBE, Final Tribunal Decision dated 24 February 2020.

the PR and the APR are not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.5 and 10.6 of the ECM Rules.

35. The Tribunal finds that the applicable period of Ineligibility is six (6) months pursuant to Article 10.2 of the ECM Rules.
36. With respect to the fine to be imposed and the procedural costs, the Tribunal takes into account the “effort” made by the PR to provide his explanation of the facts. Consequently, the fine to be imposed on him will be slightly reduced to two thousand five hundred Swiss Francs (CHF 2 500) and the procedural costs to one thousand Swiss Francs (CHF 1 000).
37. The APR, however, did not answer to the various correspondences addressed to him, 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 APR should be increased with respect from the amounts that were requested by the FEI. The APR will therefore be fined five thousand Swiss Francs (CHF 5 000) and his part of the procedural costs will amount to three thousand Swiss francs (CHF 3 000).

VIII. Terms of the Decision

38. As a result, the Tribunal imposes the following sanctions in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

On the PR:

- a) The Tribunal upholds the charge that the PR violated Article 2.1 of the ECM Rules.
- b) The PR shall be suspended for a period of six (6) months, starting as of notification of the present decision. The period of Provisional Suspension, effective from 31 January 2022, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR will be ineligible until 30 July 2022.
- c) The PR is fined two thousand five hundred Swiss Francs (CHF 2 500).
- d) The PR shall pay his part of the costs of these proceedings in the amount of one thousand Swiss francs (CHF 1 000).
- e) This Decision shall be notified to the PR, Mr Saood B S N ALMUTAIRI, to his

National Federation, the KUW-NF, and to the FEI.

On the APR:

- 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. The period of Provisional Suspension, effective from 31 January 2022, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the APR will be ineligible until 30 July 2022.
 - c) The APR is fined five thousand Swiss Francs (CHF 5 000).
 - d) The APR shall pay his part of the costs of these proceedings in the amount of three thousand Swiss francs (CHF 3 000).
 - e) This Decision shall be notified to the APR, Mr Abdulaziz ALMEQBEL, to his National Federation, the KSA-NF, and to the FEI.
39. No PR or 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).
40. 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).
41. According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

IX. Legal Action

42. In accordance with Article 12 of the ECM Rules the Parties may appeal this decision before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

FOR THE TRIBUNAL



Ms Valérie Horyna, One-Member Panel