

DECISION of the FEI TRIBUNAL

17 March 2023

Reasoned decision notified on 21 June 2023

(Ref. no. FEI Tribunal: A23-0001 AUT-NF v FEI)

In the matter of

The Austrian Equestrian Federation (the “AUT-NF” or the “Appellant”)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the “FEI” or the “Respondent”)

together the “Parties”

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr Phillip Cornegé (NZL), Sole Panel Member

## INTRODUCTION

1. The Appellant submitted this appeal (the “Appeal”) to the FEI Tribunal (the “Tribunal”) after it submitted a Protest during an equestrian event held in Basel between 12 and 15 January 2023, in the context of the FEI Dressage World Cup (the “Event”).
2. The Event included the Grand Prix held on 14 January 2023, and the Grand Prix Freestyle to Music held on 15 January 2023.

### **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.

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

FEI Dressage Rules, 26<sup>th</sup> Edition, effective 1 January 2023 (“Dressage Rules”), Art. 401.

FEI Dressage World Cup Rules, Season 2022-2023, updated 25 May 2022 (“Dressage World Cup Rules”), Art. 1.

## FACTUAL BACKGROUND

3. On 14 January 2023, Ms Nanna Skodborg Merrald (“Ms Merrald”) participated in the Grand Prix with the horse BLUE HORS ZEPTER (the “Combination”) and finished in the top 15.
4. At 2:21am on 15 January 2023, the Appellant’s Secretary General protested against Ms Merrald’s participation in the Grand Prix Freestyle to Music. The protest was sent by email to the Ground Jury. Mr Florian Bacher, who participated at the Event, tried to pay the protest fee on behalf of the Appellant.
5. Later that same day the Ground Jury decided to not address the protest.

6. The Grand Prix Freestyle to Music proceeded on 15 January 2023 and Ms Merrald competed in it.

## PROCEDURAL BACKGROUND

7. On 30 January 2023, the Appellant submitted an Appeal Brief to the FEI Tribunal contesting the participation of Ms Merrald in the Grand Prix Freestyle to Music.
8. On 7 February 2023, the FEI Tribunal Chair (the “Chair”) acknowledged receipt of the Appellant’s Appeal Brief. However, the annexes referred to in the Appeal Brief were missing, and the Chair requested that the Appellant submit them. The Appellant did so on 7 February 2023.
9. The Chair nominated a Sole Panel Member to handle the matter and informed the Parties that they had until 10 February 2023 to object to his nomination. None of the Parties objected to the Sole Panel Member’s nomination.
10. On 16 February 2023, the Sole Panel Member notified the FEI of the Appeal, and provided the Appeal Brief and the annexes to the FEI. The Sole Panel Member set a deadline of 8 March 2023 for the FEI to answer the Appeal Brief. The Parties were given the same deadline to indicate whether they requested a hearing via videoconference.
11. On 21 February 2023, the Appellant indicated that they would only request a hearing if the facts were unclear or disputed, which would depend on the answer of the FEI.
12. On 22 February 2023, the FEI asked the Sole Panel Member to make a preliminary ruling on the admissibility of the Appeal before the FEI considered its merits. The FEI considered the Appeal was inadmissible because the Appellant failed to follow the correct procedure to challenge the eligibility of the Combination.
13. On 28 February 2023, the Sole Panel Member acknowledged receipt of the Parties’ respective submissions, which were filed on 21 and 22 February 2023. Pursuant to Art. 23 (b) of the IRs, The Sole Panel Member agreed to consider whether the Tribunal had jurisdiction to hear and determine the substantive appeal. The Appellant was given until 14 March 2023 to file written submissions in response to the FEI’s correspondence, and to address (i) whether the protest was properly lodged and (ii) if the protest was not properly lodged, whether the Tribunal otherwise had jurisdiction to determine the appeal.

14. On 1 March 2023, the FEI informed the Sole Panel Member that it had received a request from the Danish National Federation (DEN-NF, i.e., Ms Merrald's National Federation). The DEN-NF became aware of the Appeal and enquired whether the Tribunal could issue a decision by 19 March 2023, since 20 March 2023 was the deadline for the definite entries for the FEI Dressage World Cup Final 2023, which Ms Merrald had qualified for.
15. On 3 March 2023, the Sole Panel Member acknowledged receipt of the FEI's correspondence dated 1 March 2023. The Sole Panel Member agreed that he could provide the operative decision by 19 March 2023. However, and in order to properly resolve the matter, the Sole Panel Member asked the Parties' assistance in providing answers to the following questions:
  - (i) *The Appellant did not protest against Ms Merrald's participation in the Grand Prix on 14 January 2023. They have not appealed in relation to that matter. Rather, they protested against Ms Merrald's participation in the Grand Prix Freestyle to Music on 15 January 2023. I assume (given the time of the protest) that this was sent 30 minutes prior to the start of that competition?*
  - (ii) *While Ms Merrald was required to place in the top 15 Combinations in the earlier event to qualify for the Grand Prix Freestyle to Music, it appears the FEI accepts that it is nonetheless a separate competition, as opposed to the second half of a continuing competition? For example, does the Grand Prix Freestyle to Music have separate prize money and separate ranking points?*
  - (iii) *If that is not the case, I will need brief submissions on what constitutes a "competition" under the FEI GRs.*
  - (iv) *What were the eligibility criteria for the Grand Prix Freestyle to Music? Was it simply having finished in the top 15 in the earlier competition, or were there other criteria?*
  - (v) *The Ground Jury obviously did not deal with the protest (having formed the view that it was invalid). If I conclude it was validly submitted, what are the parties' positions on whether I can now deal with a matter which the Ground Jury failed to address?*
  - (vi) *What is the FEI's position on whether Ms Merrald's eligibility to compete. If I conclude that I have jurisdiction to deal with this appeal, I will also need to deal with substantive issue by 19 March 2023. I do not yet require detailed submissions – I simply want confirmation from the FEI of its position on this question.*

*(vii) The FEI is obviously in contact with the Danish National federation. Do they or Ms Merrald want to separately participate in this matter?*

16. On 3 March 2023, the FEI provided their answers to the Sole Panel Member's questions, which are summarized below.
17. On 10 March 2023, the Sole Panel Member acknowledged receipt of the FEI's submission dated 3 March 2023. Since the Appellant had not provided an answer, the Sole Panel Member granted them a deadline until 14 March 2023 to provide answers to the matters raised in his letters of 28 February 2023 and 3 March 2023. The Sole Panel Member notified the parties that he would address the entire appeal administratively and issue an operative decision on 19 March 2023. The Parties were given until 13 March 2023 to advise the Tribunal if they disagreed with that approach.
18. On 13 March 2023, the Appellant submitted their answers to the Sole Panel Member's questions and confirmed the case could be addressed administratively.
19. On 17 March 2023, the Sole Panel Member issued the operative part of the decision, declaring the appeal admissible but dismissing it on the merits.

## THE PARTIES' SUBMISSIONS

20. 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 Appellant:*

21. The Appellant submitted the following in its written submissions:

#### *Initial Submission:*

- (i) Ms Merrald participated at the Event. According to the Appellant, this Event was subject to the FEI Dressage Rules, 26<sup>th</sup> edition, effective from 1<sup>st</sup> January 2023 (the "2023 Dressage Rules").
- (ii) Art. 401/7 of the 2023 Dressage Rules states that an Athlete/Horse combination must qualify at a CDI3\*, CDI4\* or CDI5\* (65% in one GP or GPS) in order to compete

at a CDI-W competition. The Appellant did not consider that Ms Merrald met this criteria, and was therefore not entitled to compete at the Event.

- (iii) The Appellant protested by way of an email sent by their Secretary General on 15 January 2023 at 02:21 AM. The Appellant further instructed Mr Florian Bacher, who participated at the tournament, to pay the protest fee. However, the protest fee was not accepted, and the protest was not dealt with by the Ground Jury.
- (iv) Since Ms Merrald unlawfully competed in the Event, it resulted in a disadvantage to all other competitors.
- (v) The 2023 Dressage Rules were adopted by the General Assembly in 2022, and came into force on 1 January 2023; furthermore, they do not provide for any exceptions for certain events.
- (vi) The Appellant therefore asked the Tribunal to declare that the Combination unlawfully started the Event on 15 January 2023, and to re-issue the tournament's result list reflecting her exclusion.

*Subsequent submissions from the Appellant*

22. In response to the Sole Panel Member's requests, the Appellant made the following submissions:

- (i) The Appellant confirmed not having protested against Ms Merrald's participation in the Grand Prix on 14 January 2023, but that it protested against Ms Merrald's participation to the Grand Prix Freestyle to Music on 15 January 2023. The Grand Prix and the Grand Prix Freestyle to Music are two separate competitions; they have different prize money, different world ranking points and World Cup points are awarded for the latter. Qualification in the Grand Prix is a prerequisite for participation in the Grand Prix Freestyle to Music. Ms Merrald was not permitted to compete in the Grand Prix on 14 January 2023, irrespective of whether the Appellant duly lodged a protest.
- (ii) While it is true that qualification for the Grand Prix Freestyle to Music is only possible by means of the Grand Prix, the Appellant is of the view that they are two separate competitions, for the reasons mentioned above.

- (iii) The Appellant is of the opinion that the 2023 Dressage Rules, as adopted by the FEI General Assembly and applicable as of 1 January 2023, are the rules applicable in the present matter, and the FEI is incorrectly referring to the previous edition of the Dressage Rules.
- (iv) Regarding admissibility, the Appellant is of the view that, while the Ground Jury refused to deal with the protest, this should not allow for the Appeal to be inadmissible. Otherwise, this would mean that not dealing with a protest could lead to a serious violation of the Statutes or the applicable Dressage Rules remaining unsanctioned. The fact that the Ground Jury remained inactive should not prevent the Appellant from appealing to the Tribunal.
- (v) The 2023 Dressage Rules were adopted by the FEI General Assembly, i.e. the highest legislative body of the FEI. Administrative bodies of the FEI are not entitled to amend resolutions passed by the General Assembly. In this sense, the (incorrect) response provided by the FEI Dressage Department on 11 January 2023 to the issue raised by the DEN-NF on 10 January 2023 cannot invalidate the FEI Dressage Rules as adopted by the General Assembly.
- (vi) Finally, the Appellant considers their protest to have been properly lodged; a missing signature could have been provided at any time upon request from the Ground Jury and should not be considered in itself sufficient not to deal with a protest.

### *Submissions by and on behalf of the FEI*

23. The FEI submitted the following in their written submissions:

#### *Initial Submission:*

- (i) The FEI first requested the Tribunal to first rule on the admissibility of the Appeal before considering its merits. In this regard, the FEI submitted that the Appellant had failed to follow the correct procedure to challenge the eligibility of the Combination.
- (ii) The FEI referred to Art. 161.3 of the GRs, which provides that a protest must be submitted at least 30 minutes before the start of the relevant competition. Since the Grand Prix and the Grand Prix Freestyle to Music are considered as a sole event, the Appellant should have filed its protest 30 minutes before the start of the Grand Prix, which it failed to do.

- (iii) Furthermore, the protest was not duly signed, which, pursuant to Art. 161.6 of the GRs, is another formal requirement which was not met in the present matter, since the Appellant sent their protest via an email from the AUT-NF Secretary General.
- (iv) The Appellant had ample time to protest against the Combination's participation before the start of the Grand Prix, since Ms Merrald was registered in the entries list on 12 December 2022, initially with another horse, and on 3 January 2023 with the horse Blue Hors Zepter. Not only did the FEI publish all entries on their website 7 days prior to the Event, but the Appellant, as a National Federation, also had access to all entries of the Event from 14 December 2022 onwards.
- (v) The Appellant has failed to satisfy the pre-conditions of Art. 162.3 of the GRs, and therefore their appeal is not valid or admissible. According to Art. 162.3 of the GRs, an Appeal can be filed to the Tribunal against a decision of the Ground Jury arising from a protest, which means that the Appellant had to file a valid protest at the Event and the Ground Jury had to issue a decision, for an Appeal to be lodged. Those prerequisites are not met in the present case, which renders the Appeal inadmissible.
- (vi) The Appellant cannot cure their initial failure to file a valid protest by submitting a subsequent Appeal. This would undermine the protest procedure that is clearly set out in the GRs. The 30-minute deadline mentioned in Art. 161.3 of the GRs exists for reasons of fairness towards the competition, and towards the Athlete whose own eligibility is challenged. It also exists for an athlete to be able to submit their position ahead of the event, and for the Ground Jury to rule on eligibility before the start of the competition. This comes from the fact that in sport, there is a need for certainty over the results of a competition.

#### *Subsequent submissions from the FEI*

24. In response to the Sole Panel Member's request, the FEI made the following submissions:

- (i) While it is true that the Appellant challenged Ms Merrald's participation in the Grand Prix Freestyle to Music more than 30 minutes prior to the start of that competition, the FEI is of the opinion that the Grand Prix and the Grand Prix Freestyle to Music are inextricably linked, which results in the fact that the Appellant should have protested against Ms Merrald's participation at least 30 minutes prior to the start of the Grand Prix.



- (ii) The Grand Prix and the Grand Prix Freestyle to Music can be regarded as two sides of the same coin. While the Grand Prix Freestyle to Music is indeed a competition, it is a competition where participation in the Grand Prix is a pre-condition. The FEI refers to Art. 1.11 of the FEI Dressage World Cup Rules, which states that *At any CDI-W qualifying event, the Short Grand or Grand Prix Test serves as the qualifying test to the Grand Prix Freestyle to Music, which is the competition in which the FEI Dressage World Cup points can be earned.*
- (iii) According to Art. 422.3.1 of the 15<sup>th</sup> edition of the FEI Dressage Rules – the edition applicable to the FEI Dressage World Cup Season 2022/23 according to the FEI (the “2022 Dressage Rules”) – *Qualification score for all Freestyle tests and Grand Prix Special. A Horse must earn a minimum score of sixty percent (60%) in the qualifying Competition, in order to be eligible to start in a Freestyle of all levels or a Grand Prix Special Competition.* This was additional criteria to having finished in the top 15 of the earlier competition.
- (iv) A right to appeal under Art. 162.3 of the GRs only applies where the Ground Jury had taken a decision on the merits of the protest. In the present case, the Ground Jury did not decide on the merits of the protest, and therefore the Tribunal has no jurisdiction to consider the Appeal. Pursuant to Art. 161.11 of the GRs, before reaching a decision on any protest, the Ground Jury must consider if it has jurisdiction or not. Further, in accordance with Art. 161.14 of the GRs, if the Ground Jury decides that it does not have jurisdiction, it cannot proceed to consider or comment on the merits of the protest. It is the FEI's view that, based on those provisions, if a Ground Jury decides that it does not have jurisdiction to decide on the merits of a protest, it is the end of the matter, and no further challenge or appeal is possible.
- (v) Ms Merrald was eligible to compete in the Event for the following reasons:
  - The challenged qualification criterion was only introduced in the 2023 Dressage Rules that took effect as of 1 January 2023. Therefore, such qualification criterion is not applicable to the FEI Dressage World Cup 2022/23 Series, since the 2022/23 Season was already well under way by the time the new 2023 Dressage Rules came into effect and it would be unacceptable to change the “rules of the game” mid-season.
  - It would be contrary to the principle of the level playing field if some combinations were permitted to compete in earlier qualifiers (i.e. before 31 December 2022) without being subject to any qualification criterion whereas the ones competing after 1 January 2023 would be subject to additional requirements.

- The DEN-NF had checked with the FEI Dressage Department on 10 January 2023 regarding Ms Merrald's eligibility to compete in the Event. The FEI Dressage Department confirmed on 11 January 2023 that she was indeed eligible to compete with her Horse in the Event, since, the rule requiring a combination to have a previous qualifying result to be eligible to compete in a FEI Dressage World Cup, Western European Event will come into force only for the season 2023-2024.
- It follows from the above that there is no rule in the FEI Dressage World Cup Rules 2022/2023 which requires a combination to have a previous qualifying result to compete in the FEI Dressage World Cup – Western European League Series 2022/2023.
- Based on the FEI Dressage Department's confirmation, Ms Merrald had a legitimate expectation to be eligible and entitled to compete in the Event, and therefore incurred costs accordingly. The principle of estoppel would prevent either the Ground Jury or the Tribunal to subsequently decide that Ms Merrald was not eligible to compete.

(vi) The DEN-NF have not indicated to the FEI that either the DEN-NF or Ms Merrald wanted to participate in the proceedings.

## LEGAL DISCUSSION

### *Admissibility of the Appeal*

25. To determine the admissibility of the Appeal, the Tribunal must first determine whether the protest had been duly filed by the Appellant.
26. The formal requirements for a protest to be validly filed are set out in Arts. 161.3 – 161.7 of the GRs.
27. First, pursuant to Art. 161.4 of the GRs, *protests may only be lodged by [...] Presidents or Secretary Generals of NFs*. In this case, it is undisputed that the protest was lodged by the AUT-NF's Secretary General, and therefore the first requirement is met.
28. In accordance with Art. 161.6 of the GRs, all protests must be in writing and signed by an authorized person. In the present case, it is undisputed that the protest was sent by way of an email from the AUT-NF Secretary General. While the Appellant considers that the lack of signature could have been easily cured upon request from the Ground Jury, the FEI is of the view that the protest was not signed and was therefore invalid.

29. The Tribunal agrees with the Appellant. The formal requirement mentioned in Art. 161.6 of the GRs should not be interpreted in an unnecessarily formalistic way. If the Ground Jury were to consider that the protest was valid despite it missing a signature, it should have informed the Appellant, enabling them to remedy the shortcoming. This was feasible bearing in mind that the protest was lodged at 2:21 am - more than five hours prior to the start of the Grand Prix Freestyle to Music. Thus, upon request, the Appellant could have remedied this formality. For the sake of completeness, the Tribunal further notes that, pursuant to Art. 161.6 of the GRs the protest must be *signed by an authorized person within the meaning of Article 161.4*, such as, the President or Secretary General of an NF. As mentioned above, it is undisputed that the email was sent by the AUT-NF Secretary General, an *authorized person* within the meaning of Art. 161.4 of the GRs. In the Tribunal's view, an email sent by (and from) the email address of an NF's secretary general is enough to consider that the protest was validly signed under the requirements of Art. 161.6 of the GRs. Had there been any doubt as to who the real author of the email was – and particularly, if it was an *authorized person* – then the Tribunal may have reached a different decision.
30. The Tribunal must also determine whether the protest was filed within the applicable time limit as per the regulations.
31. Pursuant to Art. 161.3 of the GRs, a protest against *the eligibility of an Athlete or Horse for a specific Competition or Event must be filed no later than thirty (30) minutes before the start of the relevant Competition*. In the present case, it is undisputed that the protest was filed on 15 January 2023 at 02:21 AM, i.e. before the start of the Grand Prix Freestyle to Music which was to take place on 15 January 2023, but after the end of the Grand Prix, which had taken place on 14 January 2023.
32. The Tribunal considers that, even though the Grand Prix and the Grand Prix Freestyle to Music are interconnected given they are part of the same Event, they are two separate competitions. The competitors are not the same, the prize money awarded is different, and one grants World Cup points while the other does not. Further, and more importantly, the qualification criteria are different from one competition to the other, which should allow for people to be able to lodge protests before the start of each of the two competitions. If the Tribunal were to follow the FEI's argument, circumstances that might arise between the end of the first competition and the start of the second competition, which would affect the eligibility of an athlete for the latter competition, could not be protested against, since the first competition would have already taken place. This would be unfair and against the principles of fair play and level playing field.

33. The Appellant protested against the participation of Ms Merrald in the Grand Prix Freestyle to Music. The protest was filed more than five hours before the start of the Grand Prix Freestyle to Music and, therefore, it was lodged on time.
34. The other conditions for a protest to be validly submitted are not disputed by the Parties and will therefore not be analysed by the Tribunal.
35. While the FEI is correct in stating that the Ground Jury must first consider whether it has jurisdiction before considering or commenting on the merits of the protest, the FEI did not mention that, when and if this situation happens, the Ground Jury must render a decision on jurisdiction prior to considering the merits of the protest (Art. 161.14 of the GRs; emphasis added). The Ground Jury cannot simply choose to not render a decision when a protest is submitted. If the Ground Jury considers the protest to be inadmissible, it must render a decision in this respect, explaining the reasons for its decision so that the party who lodged its protest may appeal such decision to the Tribunal. Otherwise, by ignoring protests, the Ground Juries would avoid scrutiny by the Tribunal. This contravenes the general principles of due process and fairness and is inconsistent with the spirit of the GRs (and the rest of the FEI's regulatory framework).
36. In any event, the Tribunal is of the view that the Ground Jury was competent to decide on the protest and it should have therefore analysed the protest on the merits.
37. It follows from the above that even if the Ground Jury elected not to pass a decision regarding the protest, the Appellant had the right to lodge an appeal (in this case, against the lack of decision by the Ground Jury).
38. Since the other requirements (14-days deadline to submit the Appeal to the Tribunal and CHF 500.- deposit fee paid to the FEI) are met, the Appeal is therefore admissible.

### *Merits*

39. The Appellant's protest was against Ms Merrald's eligibility for the Grand Prix Freestyle to Music, although the focus on the arguments was on whether Ms Merrald was eligible to compete in the earlier Grand Prix

40. The first question the Tribunal must consider is whether, based on the absence of a protest filed, it should *ex officio* analyse whether Ms Merrald was eligible and entitled to compete in the Grand Prix.
41. The Tribunal is of the view that it does not have such power. The GRs do not provide any lawful basis for the Tribunal or Ground Jury to rule outside the bounds of the Appeal/Protest submitted to it. In this case, exercising power outside the confines of the deadlines under Art. 161.3 of the GRs would enable future protests that are filed out of time to be considered. In these circumstances, this is unjust. The Tribunal agrees with the FEI that the deadlines of Art. 161.3 of the GRs must be respected. The GRs provide that any protest concerning the eligibility of an athlete or horse for a specific event must be lodged within thirty minutes before the start of that Competition.
42. It follows from the above that so long as the Tribunal is satisfied that Ms Merrald was eligible to compete in the Grand Prix Freestyle to Music on 15 January 2023, there is no need to analyse whether Ms Merrald was eligible to compete in the Grand Prix on 14 January 2023.
43. As discussed below, there is an issue as to which rules apply to determine Ms Merrald's eligibility: the 2023 Dressage Rules or the 2022/2023 FEI Dressage World Cup Rules (coupled with the 2022 FEI Dressage Rules). However, the Tribunal concludes that whichever rules apply, Ms Merrald was eligible to compete.
44. The respective rules provide no guidance as to which is to take precedence. In the Preamble of the 2022/2023 FEI Dressage World Cup Rules, it states that those rules are *to read in conjunction with the pertinent FEI Statutes, FEI General Regulations, FEI Dressage Rules and FEI Veterinary Regulations*. In the Preamble of the 2023 FEI Dressage Rules, it states that these rules *must be read in conjunction with the Statutes, the General Regulations, the Veterinary Regulations and all other FEI Rules and Regulations*.
45. However, given this was a World Cup Event, the better view is that the World Cup Rules – being the rules specific to the particular competition – apply. If that is the case, then Ms Merrald was eligible to compete in both the Grand Prix and the Grand Prix Freestyle to Music based on article 3 of the 2022/2023 FEI Dressage World Cup Rules and article 422.3.1 of the 2022 FEI Dressage Rules.
46. Even had there been a purported change to the eligibility criteria, that would not affect this analysis. Art 1.3 of the World Cup Rules provides that *[a]ny changes regarding League Qualification Procedure and guidelines have to be approved by FEI HQ the year before they are to*

*become effective (deadline for submission to the FEI: end March).* This is obviously intended to prevent the very situation that arose here – with allegations that riders were ineligible based on changes made mid-season.

47. However, even if the 2023 Dressage Rules Apply, Ms Merrald was eligible to compete in the Grand Prix Freestyle to Music.
48. Under the 2023 Dressage Rules, Ms Merrald was eligible to compete in the Grand Prix Freestyle to Music, since she finished in the top-15 of the Grand Prix and earned at least 65% in the first competition. Those were the sole criteria for participation in the Grand Prix Freestyle to Music. Whether Ms Merrald was eligible under the Dressage Rules to compete in the earlier Grand Prix is irrelevant – there was no protest against her participation in that competition.
49. Ultimately, the result is the same whichever set of rules applies.
50. However, for the sake of completeness, the Tribunal concludes that even if the Dressage Rules applied, Ms Merrald was likely eligible to compete in the earlier Grand Prix – and therefore plainly eligible to compete in the Grand Prix Freestyle to Music.
51. The Preamble of the 2023 Dressage Rules says that the *present Rules for Dressage Events are the 26<sup>th</sup> edition, effective 1<sup>st</sup> January 2023. All other rules covering the same subject matter (other editions and all other official documents) issued previously are superseded.* This potentially suggests that this version of the rules was unconditionally in force as of 1 January 2023.
52. However, there is no obvious reason why the General Assembly would have changed the applicable eligibility rules mid-season. As the FEI correctly pointed out, January 2023 is only the mid-dressage season, and there would be no reason to change the rules mid-season. In the absence of some clearly stated reason, it would be wrong to conclude that this is what the General Assembly intended.
53. Arts. 1.3 and 1.5 of the 2022/2023 FEI Dressage World Cup Rules are consistent with this. Art 1.3 is set out above, and is self-explanatory.
54. Art. 1.5 provides that *if an athlete changes nationality during a FEI Dressage World Cup™ season, they must continue to qualify under the system in which they had started the season subject to Art. 1.4 above. The FEI reserves the right to judge each case individually.* While not directly applicable, the Tribunal considers this provision to be an indicator of the spirit of the rules, i.e. that there should be no changes to the eligibility criteria during the sportive season.

55. The Sole Panel Member concludes that the Appellant's protest should have been dismissed on the merits as Ms Merrald was duly eligible to compete at the Grand Prix Freestyle to Music. Consequently, the Appeal of the AUT-NF is dismissed on the merits.
56. No deposit will be returned to the Appellant and each party shall be required to pay their own procedural costs.
57. All other prayers for relief are dismissed.

## DECISION

58. The Tribunal decides as follows:
  1. The Appeal is admissible.
  2. The Appeal is dismissed.
  3. No deposit shall be returned to the Appellant.
  4. Each party shall pay their own costs in these proceedings.
59. According to Art. 165 of the GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.
60. According to Art. 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 handwritten signature in blue ink, appearing to read 'Phillip Cornegé', written over a horizontal line.

Phillip Cornegé (NZL), Sole Panel Member