

DECISION of the FEI TRIBUNAL

dated 12 July 2023

in the matter of

Mr. Jorge Eduardo VARGAS JENKINS (APR)

FEI Tribunal Hearing Panel: Mr Martin Gibbs

FEI Case Numbers: 2022/FT22 CRISTAL & 2022/FT28 DIAMANTE [2022/ATF05]

FEI Tribunal Reference: C23-0006

Case: 2022/FT22

Horse/Passport: CRISTAL/107AU78/CRC

Person Responsible/ID/NF: Jorge Eduardo VARGAS CALVO/10073423/CRC

Trainer/ID/NF: Jorge Eduardo VARGAS JENKINS/10113504/CRC

Event/ID: CE1* 100 - Liberia (CRC), 18-20.03.2022, 2022_CI_1301_E_S_03

Date of sample collection: 19.03.2022

Prohibited Substance(s): Flunixin

Bar Code Nos.: 5611940

Case: 2022/FT28 (2022/ATF05):

Horse/Passport: DIAMANTE/105YK72/CRC

Person Responsible/ID/NF: Luis Emilio ALVARADO LOPEZ/10114936/CRC

Trainer/ID/NF: Jorge Eduardo VARGAS JENKINS/10113504/CRC

Event/ID: CE1* 100 - Liberia (CRC), 18-20.03.2022, 2022_CI_1301_E_S_03

Date of sample collection: 19.03.2022

Prohibited Substance(s): Caffeine

Bar Code Nos.: 5611941

I. Introduction

1. This Settlement Agreement pertains to the FEI cases 2022/FT22 CRISTAL & 2022/FT28 DIAMANTE [2022/ATF05]. In respect of these cases, the FEI notified Mr. Jorge Eduardo VARGAS JENKINS that a violation of Article 2.1 of the Equine Controlled Medication Rules - the Presence of a Controlled Medication Substance and/or its Metabolites or Markers in the Horses' Samples and Article 2.2 (Use of a Controlled Medication Substance and/or Controlled Medication Method) had occurred. The FEI notified Mr. Jenkins of the respective charges in his capacity as the Additional Person Responsible (the **APR**) for the cases entitled 2022/FT22 CRISTAL & 2022/FT28 DIAMANTE [2022/ATF05].

2. Applicable Rule Provisions:

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

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

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

FEI Equine Anti-Doping and Controlled Medication Regulations, 3rd edition, effective 1 January 2021 (the **EADCMRs**). As only the FEI Equine Controlled Medication Rules (**ECMRs**) apply in the present case, reference will be made hereinafter only to this second chapter of the EADCMRs.

II. Factual background

3. Mr Jorge Eduardo VARGAS JENKINS (FEI ID 10113504) is a Trainer in the discipline of Endurance for Costa Rica, who was the registered Trainer of the two Horses, CRISTAL/107AU78/CRC (the **Horse 1**) and DIAMANTE/105YK72/CRC (the **Horse 2**) in the CEI1* 100 - Liberia (CRC), 18-20.03.2022, 2022_CI_1301_E_S_03, on 18-20 March 2022 (the **Event**). In his capacity as registered Trainer he is the APR for the two Horses, in accordance with Article 118.3 of the FEI General Regulations.
4. Mr. Jorge Eduardo VARGAS CALVO (FEI ID 1007342) is the Person Responsible (the PR) in case 2022/FT22 as he competed with Horse 1 at the Event. Mr. Luis Emilio ALVARADO LOPEZ, (FEI ID 10114936) is the PR in case 2022/FT28 as he competed with Horse 2 at the Event. On 30 November 2022 and 30 May 2022 respectively, the PRs opted to have their cases processed under the "Administrative Procedure" pursuant to Article 8.3 of the ECMRs. Each PR accepted the following consequences:

- Disqualification from the whole Event and forfeiture of all prizes and prize money won at the Event with their respective Horse ;
 - Fine of 1,500 CHF;
 - Costs of 1,000 CHF.
5. The Fédération Equestre Internationale (the **FEI**) 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 and Para-Equestrian).
 6. The APR and the FEI will be jointly referred to as the Parties where applicable.
 7. The APR is a member of the Equestrian Federation of Costa Rica (the **CRC-NF**), the latter being a member of the FEI, thus the APR was bound by the EADCMRs.¹
 8. Horse 1 and Horse 2 were selected for Sample Collection on 19 March 2022. Urine and blood samples were collected from Horse 1 and Horse 2 and sent to the FEI approved Laboratory, the LGC Newmarket Road Laboratory (the **LGC**), in Fordham, Cambridgeshire, UK, (the **Laboratory**) for analysis.
 9. The analysis of both Horses' A samples reported adverse analytical findings for Flunixin in the blood sample from the Horse 1 and Caffeine in the urine sample from the Horse 2. Flunixin is an anti-inflammatory drug used as analgesic and classified as a Controlled Medication Substance under the 2022 FEI Equine Prohibited Substances List. Caffeine is a stimulant that affects the central nervous system and is classified as a Specified Substance and a Controlled Medication Substance under the 2022 FEI Equine Prohibited Substances List. Controlled Medication Substances are substances that are prohibited in-competition only.
 10. The positive finding of Flunixin in the sample from Horse 1 and Caffeine in the sample from Horse's 2 gave rise to the Controlled Medication Rule Violations of Article 2.1 of the ECMRs. In addition, the Use of Controlled Medication Substances at an Event without a valid veterinary form constituted violations of Article 2.2 of the ECMRs.
 11. By Notification Letters dated 28 April 2022 and 17 May 2022, the FEI informed the APR, through the CRC-NF of an alleged violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) and Article 2.2 (*the Use of a Controlled Medication Substance and/or Controlled*

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

Medication Method) of the ECMRs based on the Laboratory's adverse analytical findings of Flunixin and Caffeine respectively in the two Horses' Samples collected at the Event.

12. In accordance with Article 7.4.1 of the ECMRs the APR was not provisionally suspended as the Rule Violation involved only one Controlled Medication Substance (in each Horse's sample).
13. The APR was also provided with the right to request the B Sample analysis of the positive samples. The APR did not exercise his right to request B-samples analyses. According to Art. 7.1.4 (c) of the ECMRs, the right to promptly request the B samples analyses was given and by failing such request the B samples analyses was deemed as waived.
14. Moreover, by way of the Notification Letters, the APR was informed of his right to either admit the violations and accept the consequences proposed by the FEI (a period of ineligibility of three months and a fine of CHF 2,500) or to provide an explanation for the Controlled Medication Substances found in Horses 1 and 2 within 20 days of notification of each of these letters.
15. On 6 June 2022, the APR informed the FEI of his refusal to accept the consequences proposed until then for the case of Horse 1. No explicit refusal was received for the case involving Horse 2.
16. On 27 June 2022, the FEI charged the APR with infringements of Articles 2.1 and 2.2 of the ECMRs in his capacity as APR of Horses 1 and 2. The APR was given another opportunity (based on Article 10.8.1 of the ECMRs) to accept the following consequences within 20 days of notification of the Rule Violations charge:
 - Period of Ineligibility of three (3) months commencing from the date of the Final Decision by the FEI Tribunal;
 - Fine of 2'500 CHF; and
 - No legal costs.
17. Furthermore, since the Rule Violations occurred on the same day, the FEI was not able to notify the APR of the first Rule Violation before the second Rule Violation occurred. Therefore, the violations shall be considered together as one single first violation, and the sanction imposed shall be based on the violation that carries the more severe sanction, in accordance with Article 10.9.3.1 of the ECMRs.

18. The Tribunal understands that no reply or formal response was received from the APR but that discussions between the APR and the FEI then led to this Agreement.

III. Procedural background in front of the FEI Tribunal

19. By email dated 13 February 2023, the FEI submitted the Settlement Agreement to the FEI Tribunal (the **Tribunal**) signed by the APR on 10 February 2023. The Tribunal understands that this Settlement Agreement was reached on the basis of Article 10.8.2 of the ECMRs following further exchanges between the Parties after the charge letter of 27 June 2022 was sent. The FEI requested for the Tribunal to issue confirmation of the Settlement Agreement imposed on the APR.
20. On 7 March 2023, the Parties were informed of the nominated Hearing Panel appointed to address this case and afforded the opportunity to submit objections to the constitution of the named panel by 10 March 2022.
21. On 10 March 2023, the APR confirmed he had no objections to the composition of the Hearing Panel. The FEI did not inform the Tribunal of any objection to the constitution of the hearing panel. Therefore, by not responding within the deadline, it was deemed the FEI also agreed to the constitution of the hearing panel.

IV. The Parties' Submissions:

a) The Submissions of the APR:

22. Following the FEI's Notification Letters dated 28 April and 17 May 2022, the APR provided his written submissions wherein he explained how the Prohibited Substances entered Horse 1 and Horse 2.²
23. On 7 May 2022, the APR submitted that Horse 1 began to present metabolic symptoms 10 minutes after the final veterinary inspection at the Event. Once the APR became aware of Horse 1's worrying condition he located the Permitted Treating Veterinarian (the **PTV**) to request his permission to enter into the treating area. After several minutes, when the APR located the PTV, he explained that Horse 1 was already in the treating area and badly needed treatment. The APR understood that the response from the PTV was for the APR to treat Horse 1 himself.
24. Thereafter the APR understood that he was authorised by the PTV to treat Horse 1 and the APR administered 10 litres of liquids to Horse 1 in the treating area. The APR noticed that Horse 1 showed serious symptoms of decompensation and

² FEI Settlement Agreement- Exhibits 3a and 7 (Submissions of the APR).

required fluids urgently, so he decided to begin a second treatment and administer 5 more litres of liquids. Despite over 30 years of equine experience, the APR stated that he felt helpless and even after the administration of 15 litres of liquids that Horse 1 continued getting worse. Therefore, since no PTV was present, the APR decided to administer one of the treating area's products called Flunixin.

25. After this, the President of the Veterinary Commission (the **PVC**) arrived and observed Horse 1's declining condition and administered emergency calcium and potassium. The PVC and the APR informed the PTV about Horse 1's poor condition and the PTV suggested to treat Horse 1 with Flunixin. The APR confirmed that he had already administered Flunixin to Horse 1 based on the understanding that the PTV had authorized him to treat Horse 1 when he first informed the PTV of the situation. Since the PTV had not provided any authorisation to the APR, he requested that Horse 1 be target tested. The APR argued that Flunixin was only administered in an emergency situation and with the PTV's permission, as per the rules and after the Horse 1 satisfactorily concluded the final veterinary inspection referred to in Article 1059 of the VRs (Treatments Before and During FEI Events).
26. The APR also admitted that due to his poor English a miscommunication may have occurred between him and the PTV, which created the confusion, and his actions were only taken in order to help Horse 1 in a medical crisis.
27. In relation to the case of the Horse 2, the APR and the PR submitted on 3 May 2022 that, after finishing in second place in the Event, the Horse 2 was also "decompensating" (as explained at paragraph 24), appeared strange and would not eat.³ The PR decided to administer calcium and fluids (which was the normal treatment for such condition) to Horse 2 and sought veterinary authorisation for these actions (Veterinary Form B was approved by the Veterinary Delegate at that stage).
28. Before administering the treatment, the PR noticed he had no calcium supplement left and borrowed another competitor's calcium product (i.e., a supplement named Calfos) without checking the ingredients mentioned on the product label. The APR confirmed that after receiving the Notice from the FEI of the Atypical Finding, he discovered that the supplement "Calfos" contained caffeine anhydrous. Caffeine anhydrous is a highly concentrated caffeine powder made from the seeds and leaves of coffee plants. The Prohibited Substance was listed on the label of product of the injectable supplement administered.

³ FEI Settlement Agreement- Exhibits 3b (Submissions of the PR & APR).

29. The APR also submitted that despite the official FEI records, he was not the actual trainer of Horse 2, and the PR took this action without consulting him, since the PR was the *de facto* Trainer of Horse 2 at the Event. In addition, the APR confirmed that he was pre-occupied with Horse 1 who was undergoing emergency treatment and, as such, he was never consulted on the administration of the supplement to Horse 2.

b) The Submissions of the FEI:

30. The FEI acknowledged that after the Event, Horse 1 and Horse 2 showed metabolic signs normally requiring fluids for recovery. However, in both cases the fluids were not enough, and both Horse 1 and 2 displayed colic pain and were in critical condition.
31. The FEI referred to the explanations provided by the APR/PR and accepted the reasons provided for the Caffeine administration in Horse 2 i.e., a mistaken administration by the PR without checking the label of a borrowed Calcium supplement. Nevertheless, the FEI agreed that given the urgency of the situation for Horse 2, the PR's negligence was not significant.
32. In addition, the FEI noted that the APR was busy attending Horse 1, who also needed emergency treatment, and as such the APR was not involved nor consulted in relation to the Calcium supplement that was used by the PR on Horse 2. Furthermore, the FEI compared these circumstances to other similar cases and agreed that they amounted to no significant fault and negligence in relation to the Caffeine administration. The period of ineligibility for such administration was in the range of three (3) months.
33. The FEI also confirmed that it accepted the explanation provided for the administration of Flunixin in respect of Horse 1. The FEI further stated that taking into account that Horse 1 almost passed away due to its condition, there are certain mitigating factors to be considered for this case:
- notwithstanding the prohibition in the rules to administer a Controlled Medication during an event, the APR had attempted to do the right thing to save the life of Horse 1;
 - the APR believed Horse 1 was already out of competition, yet as he wanted to ensure things were done correctly, he asked for approval from the Permitted Treating Veterinary (the PTV). However, the APR misunderstood the PTV's permission and proceeded to treat Horse 1 in the treating box;

- the APR also telephoned his private veterinarian and asked his advice on treating a horse in this serious condition;
 - a significant misunderstanding occurred between the APR and the PTV, which led to the administration being carried out by the APR himself.
34. Under normal circumstances, the FEI stated it would not have accepted such action resulting in a breach of the rules. However, there was a clear state of emergency as demonstrated by the critical condition of Horse 1 which only survived due to urgent action taken by the PTV.
35. In addition, the FEI considered as a mitigating factor the lack of treating veterinarians at the Event to support both Horses in their critical conditions at the same time. If more treating veterinarians had been available, the APR would most likely have left the treatment solely to the PTV.
36. Taking into account the totality of circumstances , the FEI accepted that the APR had, on a balance of probabilities, established that he bears no significant fault or negligence for the Rule Violations in accordance with Article 10.6 of the ECMRs. Consequently, the otherwise applicable Period of Ineligibility of six (6) months shall be reduced to three (3) months.
37. The FEI respectfully submitted that fairness does not dictate that no fine be levied in this case and duly requested that a fine be imposed on the APR.
38. Based on the Guidelines for fines and contributions towards legal costs, the FEI was satisfied with the PR being ordered to pay a 1'000 CHF fine. As the case is concluded with a Settlement Agreement the FEI did not request any contribution to the legal costs.

V. **The Agreement between the Parties:**

39. The Parties reached the following Agreement:

*****Quote*****

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

In the matter of the APR Mr. Jorge Eduardo Vargas Jenkins and the Adverse Analytical Findings related to the two samples, which were collected from the APR's Horses CRISTAL and DIAMANTE at the CEI1* 100 in Liberia in CRC, on 19 March 2022, the APR and the FEI agree in accordance with 10.8.2 ECM Rules on the following:

- a) The APR admits the violations of Article 2.1 (The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample); and 2.2 (The Use or Attempted Use of a Controlled Medication Substance or a Controlled Medication Method) of the ECM Rules;
- b) The APR established on a balance of probabilities how Flunixin and Caffeine entered the Horses' systems;
- c) The APR bears no significant fault or negligence for the Rule Violations in accordance with Art. 10.6 of the ECM Rules and the applicable period of Ineligibility shall be three (3) months, commencing as of the date of the final FEI Tribunal decision;
- d) The APR shall pay a fine of 1'000 CHF;
- e) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- f) No other Sanctions will apply in this case;
- g) This violation of the ECM Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.9 of the ECM Rules.

This agreement is made in accordance with Article 10.8.2 of the ECM Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. The agreement is not subject to appeal under Article 13 of the ECM Rules.

The parties acknowledge and agree that pursuant to Article 13.3 of the ECM Rules, the Decision will be made public by the FEI. The terms set out in this agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

*** End Quote***

VI. Jurisdiction

40. The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ECMRs, as well as Article 18 of the IRs.
41. The APR is a member of the Equestrian Federation of Costa Rica, and as such he is subject to the ECMRs.
42. Article 10.8.2 of the ECMRs provides for agreements to be reached between parties.
43. As a result, the Tribunal has the necessary jurisdiction to approve the Settlement Agreement and issue this Decision.

VII. Approval of the Agreement

44. Having reviewed the case summary, the full reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI has agreed that the APR has established – on a balance of probability – how Flunixin and Caffeine were present in the samples of Horse 1 and Horse 2.
45. The Tribunal acknowledges that the APR and the FEI have agreed on terms for the closure of proceedings in accordance with 10.8.2 of the ECMRs as detailed at Section V of this Decision.
46. To conclude, the Tribunal finds that the Agreement between the Parties is considered as within the consequences that are mandated by the ECMRs.
47. Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present cases 2022/FT22 CRISTAL & 2022/FT28 [2022/ATF05] DIAMANTE.

VIII. Decision

48. The Tribunal rules that the Agreement reached between the FEI and the APR, Mr. Jorge Eduardo VARGAS JENKINS concerning the cases 2022/FT22 CRISTAL & 2022/FT28 [2022/ATF05] DIAMANTE is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Section V above, which are incorporated into this Decision.
49. The Decision by the FEI to enter or not enter into a case resolution agreement, and the amount of the reduction to, and the starting date of, the period of Ineligibility and the confirmation of the case resolution agreement by the FEI Tribunal are not subject to appeal under Article 13 of the ECMRs.
50. This Decision shall be notified to the APR, to the Secretary General of the CRC-NF of the APR, and to the FEI.
51. This Decision shall be published in accordance with Article 13.3 of the ECMRs.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes
- b. The Secretary General of the NF of the person sanctioned: Yes
- c. Any other: No

FOR THE FEI TRIBUNAL



Mr. Martin Gibbs, One-Member Panel