

DECISION of the FEI TRIBUNAL

dated 8 September 2023

in the matter of

Mr Osama Almuhana (APR; Ref. C23-0034)

(FEI Case number: FEI 2023/CM05 – SAHM II)

FEI Tribunal Hearing Panel: Mr Philip Cornegé (NZL)

FEI Tribunal Reference: C23-0034 [FEI 2023/CM05 – Osama ALMUHANA]

Person Responsible/ID/NF: Abdulaziz ALZAAGI/10184362/KSA

Additional Person Responsible/ID/NF: Osama ALMUHANA/10150023/KSA

Horse/Passport/NF: SAHM II/106HM14/KSA

Event/ID: CEI2* 120 - Al Ula (KSA), 3-4.03.2023, 2023_CI_0328_E_S_01

Date of Event: 03.03.2023

Prohibited Substance(s): Betamethasone, Flunixin, Triamcinolone acetonide

Bar Code No.: 5621652

I. Introduction

1. This case pertains to FEI Case with reference 2023/CM05 SAHM II. In the present matter, the FEI notified Mr Osama ALMUHANA that a violation of Article 2.1 of the Equine Controlled Medication Rules (“**the ECM Rules**”) – The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in the Horse’s Samples – had occurred. The FEI notified Mr ALMUHANA of the respective charges in his capacity as the Additional Person Responsible (the “**APR**”).
2. **Applicable Rules Provisions:**
 - Statutes 24th edition, effective 17 November 2021 (“**Statutes**”).
 - General Regulations, 24th edition, 1 January 2020, updates effective 4 April 2023 (“**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, updates effective 1 January 2023 (“**EADCM Rules**”).
 - FEI’s Endurance Rules, 11th Edition, effective 1 July 2020, updates effective 1 January 2023 (“**FEI Endurance Rules**”).
 - The World Anti-Doping Code - International Standard – Prohibited List – effective 1 January 2023 (“**WADA Prohibited List**”).

II. Factual background

3. Mr Osama ALMUHANA (FEI ID 10150023), the additional Person Responsible (the “**APR**”), was the registered Trainer of the Horse SAHM II (the “**Horse**”), which competed with its rider Mr. Abdulaziz ALZAAGI (the Person responsible or the “**PR**”) at the CEI2* 120 in Al Ula, Kingdom of Saudi Arabia, on 3rd and 4th March 2023 (the “**Event**”).
4. The Fédération Équestre Internationale (the “**FEI**” together with 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, and Para-Equestrian).

5. Blood samples were collected from the Horse during the Event and returned a positive result for Betamethasone, Flunixin and Triamcinolone acetonide.
6. Betamethasone and Triamcinolone acetonide are corticosteroid drugs with anti-inflammatory effects. Flunixin is an anti-inflammatory drug with analgesic effect. The aforementioned substances are “**Prohibited Substances**” under the FEI Equine Prohibited Substances List that are therefore classified as “**Controlled Medication Substances**” under the FEI Equine Anti-Doping and Controlled Medication Regulations (“**EADCMRs**”).
7. Furthermore, and as no Veterinary Form was submitted for the use of Betamethasone, Flunixin and Triamcinolone acetonide, 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.
8. The PR in this case decided to sign the Acceptance of Consequences Form and benefit from an automatic 3-months reduction in the otherwise applicable period of ineligibility, the case against him was therefore handled separately.

III. Procedural background

9. By way of a notification letter dated 17 April 2023, the FEI informed 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*) of the ECM Rules.
10. In accordance with Art. 7.4.1. ECMR, the FEI provisionally suspended the APR as of the date of the notification letter dated 17 April 2023 since the Horse’s Sample was tested positive to three (3) Controlled Medication Substances.
11. By way of a Notice of Charge dated 23 May 2023, the FEI formally notified the APR, through his National Federation, of the alleged CM Rule Violation. The APR was given a deadline of 20 days to either admit the asserted violation and accept the proposed Consequences or challenge in writing the asserted violation and/or the proposed Consequences.
12. On 23 May 2023, the Saudi Arabian National Federation (the “**KSA-NF**”) confirmed to the FEI that the APR was informed about the FEI Charge Letter notified on the same day.

13. Despite reminders sent on 6 June 2023 and 12 June 2023 by the FEI, the APR did not submit any position in the context of the FEI proceedings.
14. Therefore, by email dated 20 June 2023, the FEI submitted the case files to the Tribunal for adjudication. The APR's NF, the KSA-NF, was copied to the FEI's correspondence.
15. On 7 July 2023, 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 10 July 2023. Furthermore, the Tribunal Chair granted the APR with the opportunity to respond to the FEI's allegations about the Prohibited Substances discovered in the Horse's system, by providing a statement of defence and any supporting evidence by 27 July 2023. The Tribunal Chair further informed 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.
16. On 10 July 2023, the FEI informed the Tribunal that it did not have any objections to the constitution of the hearing panel.
17. The APR did not submit any statement of defence within the prescribed deadline.
18. Neither party requested a hearing.

IV. The Parties' Submissions:

A. Submissions by the APR

19. The APR did not submit any position in the context of the proceedings in front of the FEI, despite confirmation received from KSA-NF that the Charge Letter had been delivered to him. Similarly, the APR did not submit any position in the context of the proceedings in front of the Tribunal.

B. Submissions by the FEI:

20. On 20 June 2023, the FEI submitted, together with the case file, its Response to the Tribunal.

21. The FEI submitted that:
- 21.1 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 (...).'
 - 21.2 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. In vaulting, the lunger shall be an additional Person Responsible. In endurance, the Trainer shall be the additional Person Responsible.
 - 21.3 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 2023).
 - 21.4 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.
 - 21.5 In addition to Article 118.3 of the GRs, the APR was 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 the 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.
 - 21.6 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.

- 21.7 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 Betamethasone, Flunixin and Triamcinolone, 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 APR violated Article 2.1 of the ECM Rules.
- 21.8 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 APR fails to do so, the six (6) months period of Ineligibility applies.
- 21.9 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 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 APR for the presence of the Prohibited Substance in the Horse.
- 21.10 In this case, the APR did not provide any explanation regarding the source of the Controlled Medications in the Horse’s Sample.
- 21.11 Considering the above, the FEI does not have at its disposal any information, on how the Controlled Medication Substances entered the Horse’s body from other sources.
- 21.12 The FEI submitted therefore that the APR did not discharge his burden of proof of establishing how Betamethasone, Flunixin and Triamcinolone acetonide entered the body of the Horse and the “threshold requirement” has not been fulfilled in this case.
- 21.13 It is not possible to evaluate the APR’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.

- 21.14 To the contrary, the FEI notes that the Horse's Sample showed a presence of three (3) different Controlled Medication Substances and for which no explanation was submitted. Consequently, the FEI finds that the Aggravating Circumstances are present in the current matter which warrant imposition of a period of Ineligibility greater than the standard sanction provided for in Art. 10.4 of the ECM Rules.
- 21.15 In view of the above, the FEI respectfully submits that the applicable period of Ineligibility imposed on the APR shall be seven (7) months in accordance with Article 10.2 and 10.4 of the ECM Rules.
- 21.16 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.
- 21.17 The FEI duly requests that a fine of five thousand Swiss Francs (5'000 CHF) be imposed on the APR 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).
- 21.18 The FEI requested the following prayers for relief against the APR:
- (i) *upholding the charge that the APR has violated Article 2.1 of the ECM Rules;*
 - (ii) *imposing a period of Ineligibility of seven (7) months on the APR, commencing from the date of the Final Decision;*
 - (iii) *fining the APR in the amount of five thousand (5'000) CHF; and*
 - (iv) *ordering the APR to pay the legal costs of two thousands (2'000) CHF that the FEI has incurred in these proceedings.*

V. Legal Analysis

A. Jurisdiction

22. 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 APR is a member of the KSA-NF, which is a member of the FEI; therefore, the APR is bound by the ECM Rules.

B. Legal Discussion

23. 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 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.

2. 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 Betamethasone, Flunixin and Triamcinolone acetonide in the A Sample taken from the Horse at the Event. Betamethasone, Flunixin and Triamcinolone acetonide 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 sample, is six (6) months, subject to a potential reduction or suspension pursuant to Articles 10.5 or 10.6 of the ECM Rules.
28. According to Article 10.4 of the ECM Rules, if the FEI establishes in an individual case involving an ECM Rule violation other than violations under 2.5 (Administration or Attempted Administration) or 2.4. (Complicity) that Aggravating Circumstances are

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 C22-0016 dated 16 June 2022.

present which justify the imposition of a period of Ineligibility greater than the standard sanction, then the period of Ineligibility otherwise applicable shall be increased by an additional period of up to six (6) months depending on the seriousness of the violation and the nature of the Aggravating Circumstances, unless the Person Responsible, member of the Support Personnel or other Person can establish that they did not knowingly commit the ECM Rule violation.

29. The presence of three (3) different Controlled Medication Substances, for which no explanation was submitted to the FEI, represents an Aggravating Circumstance which warrant imposition of a period of Ineligibility greater than the standard sanction, that is one more month.
30. 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.
31. In order for Articles 10.5 and 10.6 of the ECM Rules to be applicable, the APR must establish as a threshold requirement how the Prohibited Substances entered the Horse's system.
32. The APR did not submit any position, which in itself does not need any further explanations.
33. 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 the APR is not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.5 and 10.6 of the ECM Rules.
34. To the contrary, and considering the Aggravating Circumstance of the presence of three Prohibited Substances, The Tribunal finds that the applicable period of Ineligibility should indeed amount to seven (7) months pursuant to Article 10.4 of the ECM Rules.
35. The Tribunal finds the FEI's request for fine of CHF 5'000.- and costs of CHF 2'000.- is reasonable and in keeping with the *FEI Guidelines for Fines and Contributions towards Legal Costs*.

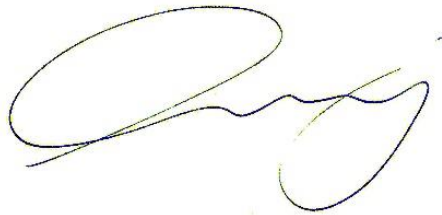
VI. Terms of the Decision

36. As a result, the Tribunal makes the following decision and imposes the following sanctions in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
- a) The APR violated Article 2.1 of the ECM Rules.
 - b) The APR shall be suspended for a period of seven (7) months. The period of the Ineligibility will be effective from the day of the final decision and the Provisional Suspension served by the APR will be credited against the ordered period of Ineligibility.
 - 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 two thousand Swiss francs (CHF 2 000).
 - e) This Decision shall be notified to the APR, Mr Osama ALMUHANA, to his National Federation, the KSA-NF, and to the FEI.
37. The APR may not, 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).
38. If the APR 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).
39. According to Article 170 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

VII. Legal Action

40. 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

A handwritten signature in blue ink, appearing to read 'Philip Cornegé', written over a horizontal line.

Mr Philip Cornegé, One-Member Panel