

DECISION of the FEI TRIBUNAL

Dated 8 January 2024

(Reference No. FEI Tribunal: A23-0005)

In the matter of

Royal Spanish Equestrian Federation (the ESP-NF or the Appellant)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the Respondent or the FEI)

together, the Parties

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Dr Armand Leone (USA), Panel Chair

INTRODUCTION

1. The Appellant submitted this Appeal against a decision (the **Decision**) taken by the President of the Ground Jury (the **PGJ**) at the Endurance World Championship for Young Riders in Castelsagrat (France) on 2 September 2023 against a protest lodged by the Spanish Chef d'equipe (the **Protest**).

Applicable Rule Provisions:

Statutes 24th edition, effective 19 November 2019 (the **Statutes**), Art. 38.1.

General Regulations 24th edition, updates effective 1 January 2023 (the **GRs**), Art. 161, Art. 162, Art. 165, Art. 171.

FEI Endurance Rules, 11th Edition, effective 1 July 2020, updates effective 1 January 2023 (the **Endurance Rules**), Art. 810, Art. 820, Art. 822.

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

FACTUAL BACKGROUND

2. The Spanish team was one of the participants in the FEI Endurance World Championships for Young Riders (the **Event**), which took place in Castelsagrat (France) on 2 September 2023. At this occasion, Clara Latorre Sala (FEI ID 10216064, the **Rider**) competed with the horse Eryvan (FEI ID 106131489, the **Horse**) as part of the Spanish team.
3. During the first phase of the Event, the Rider fell from the Horse at a guarded road crossing and the Horse left without the Rider.
4. After some research, the Horse was ultimately found a couple of hours later. The Horse then returned to the veterinarian gate in the competition area, was checked by a veterinarian and was deemed fit to compete.
5. At this point, the PGJ offered the Rider to go back to the point where the Horse had fallen and to continue from there, but counting the elapsed time (i.e. more than two hours). The Rider and the Appellant refused this proposal, as they considered that the Rider-Horse combination should have restarted from the veterinarian gate, where it had been taken without the PR and the Appellant's consent.

6. Since the PGJ refused the Appellant's and the Rider's request, the Appellant lodged a Protest against the PGJ's decision. The PGJ later dismissed the Protest.
7. On 15 September 2023, the Appellant lodged an Appeal with the FEI Tribunal against the decision of the PGJ rejecting their Protest.

PROCEDURAL BACKGROUND

8. On 15 September 2023, the Appellant, via Ms Flores, Deputy Secretary General within the Spanish NF, submitted a "Notice of Appeal / Appeal Brief" to the FEI Tribunal contesting the Decision issued by the PGJ rejecting their Protest and asking the FEI Tribunal, "(a) *To Dismiss the Decision issued by Sharon Duplessis, President of the Ground Jury of the FEI Endurance World Championship 2023 on 2 September 2023 (Exhibit II), for the protest lodged by the Spanish Chef d'equipe (in the procedure, the appellant). (Exhibit III). (b) to Oblige the International Equestrian Federation to pay to the Royal Spanish Equestrian Federation the amount of One thousand Euros (1000€) for the damages caused to the Spanish Team due to the negligence of the competition officials and the Organizing Committee. Proof of payment of the Spanish Team Entries for the Championship (Exhibit 4). (c) To Initiate the appropriate investigations to clarify the responsibilities that may be appropriate for the removal of the horse from the field of play without the consent of the person responsible.*
9. On the same day, the FEI Tribunal Clerk acknowledged receipt to the Appellant, for which the Appellant thanked in return.
10. On 20 September 2023, the FEI Tribunal Chair (the "**Chair**") acknowledged receipt of the Appellants' Notice of Appeal. The Chair informed the Parties of the nomination of a Sole Panel Member to handle the present matter, informing them that they had a deadline to object to his nomination where applicable, and gave the FEI, as Respondent, a deadline until 10 October 2023 to file their Answer, pursuant to Art. 44 par. 1 of the IRs.
11. On 20 September 2023, the FEI indicated having no objection to the constitution of the Panel in this case.
12. On 5 October 2023, the FEI requested the Tribunal to first rule on its own jurisdiction, as the FEI considered that the matter is non-appealable pursuant to Art. 162.2 and Art. 161.2 of the GRs. Further, it was the FEI's position that the Tribunal has no jurisdiction to adjudicate the matter, which is a clear field of play decision.

13. On 13 October 2023, the Sole Panel Member acknowledged receipt of the FEI's submission dated 5 October 2023, and informed the parties that he was of the view that he should first determine, as a preliminary matter, whether the Tribunal has jurisdiction to hear and determine the substantive appeal, pursuant to Art. 23 al. 1 let. b of the IRs. The Appellant was provided with a deadline until 27 October 2023 to file written submissions in response to the FEI's submission. Furthermore, the Sole Panel Member indicated that the matter could be determined on the papers, and if any party would disagree, they should advise the Tribunal urgently.
14. No additional written submission was received from the Appellant within the stated deadline.
15. Accordingly, on 30 October 2023, the FEI Tribunal Clerk informed the parties that the Sole Panel Member would issue a decision on the admissibility of the Appeal based on the file at his disposal, and that such decision would be notified to the parties in due course.

THE PARTIES' SUBMISSIONS

16. 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

17. The Appellant submitted the following in their written submission:
 - (i) The Appellant appeals the PGJ Decision issued on 2 September 2023⁴ in the context of the Endurance World Championships.
 - (ii) The Appellant considers that the Tribunal's jurisdiction emanates from Art. 162.1 and Art. 161.2 of the GRs, in particular since it is not included in the cases listed under Art. 161.2 of the GRs.
 - (iii) The Appellant is contesting the decision to eliminate the Horse for not having accepted the solution offered by the PGJ, while said solution was offered to solve the negligent action of both the Jury and the Organizing Committee, which decided to

remove the Horse from the field of play without informing the Appellant or the Rider, nor receiving their consent.

- (iv) Once the Rider fell off the Horse, and the Horse got lost, several team officials from the Spanish-NF started looking after the Horse, with the intention to return the Horse to the competition, for the Rider to continue the competition from where she had fallen.
- (v) At some point, someone from the Organizing Committee found the Horse, and was given the order to take it directly to the competition clinic at the main venue, thereafter, leaving the field of play without informing the PR. The Horse was therefore also transported without the PR's consent, with the risks that this could imply for the Horse.
- (vi) The Horse was deemed fit to continue competing, but the Spanish-NF lodged a protest in order to guarantee that the Rider could continue the competition in a fair and competitive manner, since the abovementioned events affected the entire team (which had to invest human resources to locate the Horse) and the Spanish-NF strategies and possibilities to compete fairly.
- (vii) The Jury offered the Appellant and the Rider to take the Horse back to the competition and continue where the Rider had fallen, solution which was not accepted by the Appellant, since this would have created a big disadvantage for the Rider and Horse combination, which would have lost 2 hours in the meanwhile.
- (viii) The Appellant's proposal was that the Rider continue with the last of the competitors, from the vet gate, and complete therefore the missing kilometers at the final phase of the competition. It was refused since it is not allowed by the rules.
- (ix) The Appellant however claims that the rules also do not permit to remove a Horse from the field of play without the authorization from the PR, and also from the Ground Jury and Veterinarian Commission.
- (x) The Protest was solved only several hours after it had been lodged, when there was no longer any viable solution for the Appellant and the Rider.
- (xi) Pursuant to Art. 118.5 of the GRs, the Rider is the Person Responsible for the Horse. In this respect, she is responsible for any act performed in the stables. These rights

and obligations were however taken away from the Rider, since the Horse was removed from the field of play without her consent.

- (xii) Furthermore, pursuant to Art. 801.2.4 of the ERs, the owner of the horse consent to treatment and transport of the horse to the designated facility should it be necessary. This rule was also not respected in this case, since the Horse was removed and transported without the PR's consent or knowledge.
- (xiii) Pursuant to Art. 100 of the GRs, National Federations may compete against each other under fair and equal conditions, which was not the case here since the Spanish-NF had to invest time and resources to locate the Horse, which resulted in the team being unjustly disadvantaged.
- (xiv) The request for an affordable and viable solution for the team was entirely coherent, and yet was rejected by the PGJ. The Appellant understands that by contesting a decision from the PGJ, it is not viable since the competition is over, due to the doctrine on the invariability of competition results. This is why the Appellant requests financial compensation for the damages caused to the Rider, which could be quantified as the competition fee.
- (xv) Furthermore, the Appellant highlights that the facts at stake constitute a failure to observe the rules and common principles of behaviour and fairness, and requests therefore that an investigation is conducted to clarify the responsibilities that may be appropriate for the removal of the Horse from the field of play without the consent of the PR.

Submissions by and on behalf of the FEI

18. The FEI submitted the following in its written submission:

- (i) The FEI requested the Tribunal to first rule on its jurisdiction and on the admissibility of the Appeal, since it considers the matter to be non-appealable in accordance with Art. 162.2 and Art. 161.2 of the GRs.
- (ii) After the Rider had fallen and the Horse got lost, it was found about two hours later by the ambulance personnel, which brought it to the treatment area at the venue to check its welfare. Since the Horse was deemed fit to compete, the PGJ offered the PR to go back to the point where the PR had fallen, and to resume the course from

there. The Appellant and the PR did not accept this proposal, and requested to start over from the vet gate, since the Horse had been removed without their consent.

- (iii) The PGJ informed the Appellant and the Rider that this solution was not feasible, and that therefore the Horse would have an elimination code assigned, i.e. “FTC – Fail to Complete”, which was the code assigned to the Horse, as evidenced in the FEI database.
- (iv) The decision to apply Art. 820.1 (*A Combination must complete the entire course in the correct order and direction as marked on the course plan/map. Subject to Article 820.2, if a Combination fails to do so, it will be Disqualified*) and Art. 820.2 (*If a Combination makes an error on the course, the Ground Jury may (if it considers it feasible to do so) allow that Combination to correct the error by returning to the place where the error started. If the Combination fails to do so, it will be Disqualified*) of the ERs, and to assign the elimination code “FTC” to the Horse, including all resulting consequences, is a field of play decision, which is immune from any further challenge.
- (v) The Field of Play doctrine is not only well established in CAS jurisprudence, but is also enshrined in the GRs, in particular at Art 161.2 and 162.2, which state that the decisions of the Ground Jury arising from the field of play are final and binding and not subject to appeal.
- (vi) It follows from the above, that the PGJ was the equivalent of a referee, who, by signing the results of the Event, and decide to designate the Horse as “FTC”, issued a decision which could be referred to, in football or rugby, to give a penalty.
- (vii) The Protest is lodged against a clear Field of Play decision, i.e. the decision to remove the Horse, which was taken by the Ground Jury, in full compliance with their rights and responsibilities. The FEI Officials are at an Event to safeguard the welfare of the horses, and to ensure a fair competition. In this sense, the decision to take a horse for a veterinary inspection after it had disappeared for two hours is only natural.
- (viii) After the veterinary inspection, and once the Horse was deemed fit to compete, the PGJ offered to the PR and the Appellant that the PR and Horse combination restart from where the PR had fallen, which was a possibility provided for by the rules. The Appellant and the PR rejected that offer, and instead requested to restart from the vet gate, which was not an option provided for by the rules.

- (ix) In addition, the Appellant should have filed another protest on site within 30 minutes after the announcement of the results of the relevant competition, as specifically provided for in the GRs, either against the results of the competition or in relation to an “irregularity” or incident during the competition. The Appellant failed to do so, resulting in the PGJ’s decision to be final.
- (x) It is clear, from Art, 820.1, 820.2 and 822.4.2 (b) of the ERs, that the imposition of the code “FTC” was the correct one, since the Horse and PR combination simply did not complete the course. Similarly, pursuant to Art 810.1 of the ERs, when a Horse has been removed from the Competition, it must be presented for Horse Inspection and be assigned a code.
- (xi) The argument raised by the Appellant, i.e. that the protest was admissible because it was not included on the list in Art. 161.2 of the GRs, is incorrect, since the rule itself state that *“there is no appeal against Decisions of the Ground Jury arising from the field of play, which are final and binding, such as, but not limited to...”*, the latter part evidencing that the list is not exhaustive, and merely provides for examples of field of play decisions.
- (xii) In addition, there is a right to appeal certain decisions of the GJ, according to Art 161.19 GRs *“Decisions of the Ground Jury arising from a Protest may be appealed to the FEI Tribunal according to the process set out in Article 162.3”*. However, this rule also noticeably states that *“Decisions covered by Article 161.2 are final and may not be appealed to the FEI Tribunal”*, which is the kind of Decision that is appealed.
- (xiii) For avoidance of doubt, the FEI also highlight that in accordance with Art 171.1 GRs, by registering with the FEI, submitting an entry and/or participating in any FEI Event, each person agrees to waive all claims of any kind, nature and description, for themselves and for their executors, administrators, heirs and personal representatives, including past, present and future claims, against the FEI (and its designees), for any injuries, losses or damages sustained while participating in any FEI Event.
- (xiv) This is further clarified in the Schedule of the Event, under 1.1.2 and 1.2.1, where it clearly indicates that *“The FEI and the Organiser will NOT be responsible for any damage caused to third parties by you, your employees, Support Personnel, your agents or your Horses”*, and that every participant, athletes and owners should ensure they have a personal property insurance and also a third liability insurance. Therefore, the

Appellant's request for the FEI to pay damages of 1 000 CHF due to the negligence of the officials, is contested by the FEI.

- (xv) The FEI therefore requests the Tribunal to consider the Appeal inadmissible.

LEGAL DISCUSSION

19. As a preliminary matter, the Tribunal wishes to clarify that the Tribunal has jurisdiction to issue a decision on jurisdiction prior to determining the merits of the case (if any). Pursuant to Article 23.1 (a) of the IRs, the Tribunal has the power, either on the application of a party or of its own motion, to order that certain potential dispositive issues be heard and determined in advance of any other issues in the matter. Therefore, it does not matter whether or not the Parties agreed for the Tribunal to hear jurisdiction first.
20. Furthermore, and pursuant to Article 23.1 (b) of the IRs, the Tribunal has the power *to rule finally (subject only to any right of appeal to CAS) on its own jurisdiction to hear and determine proceedings brought before it either in a preliminary decision or in the Decision on the merits. When an objection to FEI Tribunal jurisdiction is raised, the Hearing Panel shall invite the opposing party (parties) to file written submissions on the matter of the FEI Tribunal's jurisdiction.*
21. The Panel must determine whether it has jurisdiction to hear the present matter, respectively whether the matter at hand is appealable. This leads to an analysis of whether the decision under appeal, i.e. the PGJ decision, is a Field of Play decision.
22. Pursuant to Art. 162.2 (a) of the FEI GRs, *An Appeal is not admissible against Decisions by the Ground Jury in cases covered by Article 161.2. Art. 161.2 of the GRs states the following: There is no Protest against (a) Decisions of the Ground Jury arising from the field of play, which are final and binding, such as, but not limited to: (i) where the Decision is based on a factual observation of performance during a Competition or the awarding of marks for performance; (ii) whether an obstacle was knocked down; whether a Horse was disobedient; whether a Horse refused at an obstacle or knocked it down while jumping; (iii) whether an Athlete or Horse has fallen; (iv) whether a Horse circled in a combination or refused to ran out; (v) the time taken for the round; (vi) whether an obstacle was jumped within the time and/or whether, the particular track followed by an Athlete caused the Athlete to incur a penalty under the applicable Sport Rules (b) The Elimination or Disqualification of a Horse for veterinary reasons, including non-acceptance of a Horse at a Horse Inspection unless otherwise specified.*

23. In the present matter, it is not disputed or contested by both parties that the Horse disappeared, and was only found by people (unrelated to the Appellant or the PR) on site, after almost two hours. Following the Horse's inspection, where it was deemed fit to compete, the Ground Jury offered, as per the regulations (in particular Art. 820.1, 820,2 and 822.4.2 (b) of the ERs), for the Horse and PR combination to restart where the PR had fallen.
24. The Appellant did not accept this proposal, even though it clearly seemed to be the only one applicable under the regulations. Instead, it requested for the PR to restart from the vet gate, even though it clearly acknowledged that this was not provided for under the FEI rules and regulations (cf. Appeal Brief, F.1, 12 and 13). The Appellant tried therefore to have a different solution than the one provided for by the Ground Jury. Since their solution could not be accepted, the Horse had to be disqualified, and to get an elimination code "FTC", as provided for under Art 810.1 of the ERs.
25. However, the Sole Panel Member concurs with the FEI, in the finding that the decision to remove and disqualify the Horse combination was a clear field of play decision. This decision was taken by the FEI Officials on site, i.e. the PGJ, under her prerogatives as such, and was directly related to the competition, as it was a decision that had to be taken following circumstances that occurred in the field of play.
26. In the FEI Database, the Vet Code indicates clearly the mention "FTC", which, as indicated above, stands for "Failed To Complete". As indicated by the FEI, the Horse was therefore designated "FTQ" (Failure to Qualify) at the Vet Gate
27. In view of the above, the Sole Panel Member rules that the Ground Jury's decision to eliminate and disqualify the Horse is, as stated in the GRs, a "Field of Play" decision, not subject to Appeal. Indeed, Art, 161.2 of the GRs state that there is no appeal against decisions of the Ground Jury arising from the field of play, which are final and binding. While the Appellant is correct in indicating that the present case is not listed in the list of Art. 161.2 of the GRs, the text of the provision is very clear, when it states that the decisions of the Ground Jury arising from the field of play are "not limited to" the list which follows below. In the Sole Panel Member's view, this clearly indicates that the list is non-exhaustive, and that what really matters is to determine whether the decision from the Ground Jury is a decision from the field of play, in which case it is then non-appealable, and final and binding.
28. It follows that, while the Decision under appeal is indeed not listed in Art. 161.2 of the GRs, it is nonetheless a clear Field of Play decision, and therefore is also not appealable in front of the Tribunal. The Appellant acknowledges the horse was removed from the field of play

after being caught, hence a field of play decision and, furthermore, the decision is not appealable, since the Appellant did not contest the results of the competition by lodging a protest within 30 minutes after the announcement of the results. Rather, the Appellant seeks monetary compensation as a result of the removal of the Horse.

29. The non-appealable nature of the Field of Play decision is further restated by Art. 162.2 of the GRs, which provides that an appeal is not admissible against decisions of the Ground Jury in cases covered by Art. 161.2, i.e. Field of Play decisions.

30. Accordingly, the Tribunal is therefore not in a position to hear the present matter, which is to be considered non-appealable. The Appeal will therefore be declared inadmissible, and the Appellant will be required to pay the proceeding costs, which can be reduced to CHF 500.- considering the matter, and which will be satisfied by the deposit paid by the Appellant. All other prayers for relief are dismissed.

DECISION

31. The Tribunal decides as follows:

1. The Appeal is not admissible.
2. All other requests are dismissed.
3. No Deposit shall be returned to the Appellant.
4. Each party shall pay their own costs in these proceedings.

32. According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected Party or Parties.

33. According to Articles 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

Dr Armand Leone (USA), Sole Panel Member