

DECISION of the FEI TRIBUNAL

dated 2 November 2023

in the matter of

Mr Faisal ALOSAIMI (PR; Ref. C23-0045)

And

Mr Majed ALHARTHI (APR; Ref. C23-0045)

(FEI Case number: FEI 2023/FT24 – DIFF LOOK)

FEI Tribunal Hearing Panel: Ms Constance Popineau (FRA)

FEI Tribunal Reference: C23-0045 [FEI 2023/FT24 – Faisal ALOSAIMI & Majed ALHARTHI]

Person Responsible/ID/NF: Faisal ALOSAIMI/10203729/KSA

Additional Person Responsible/ID/NF: Majed ALHARTHI/10203840/KSA

Horse/Passport/NF: DIFF-LOOK/107ZQ81/KSA

Event/Date: CEI1*100 - Riyadh (KSA), 17-18.03.2023, 2023_CI_0329_E_S_03_01

Prohibited Substance(s): Flunixin

Bar Code No.: 5618966

I. Introduction

1. This case pertains to FEI Case with reference 2023/FT24 DIFF LOOK. In the present matter, the FEI notified Mr ALOSAIMI & Mr ALHARTHI 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 ALOSAIMI & Mr ALHARTHI of the respective charges in their capacity as the Person Responsible (the “**PR**”) for Mr ALOSAIMI and the Additional Person Responsible (the “**APR**”) for Mr ALHARTHI.
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 Majed ALHARTHI (FEI ID 10203840), the additional Person Responsible (the “**APR**”), was the registered Trainer of the Horse DIFF-LOOF (the “**Horse**”), which competed with its rider Mr. Faisal ALOSAIMI (the Person responsible or the “**PR**”) at the CEI1* 100 in Riyadh, Kingdom of Saudi Arabia, on 18 March 2023 (the “**Event**”).
4. The Fédération Équestre Internationale (the “**FEI**” together with the PR and the APR, the “**Parties**”), is the sole IOC recognised international federation for equestrian

sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, and Para-Equestrian).

5. Blood samples were collected from the Horse during the Event and returned a positive result for Flunixin.
6. Flunixin is an anti-inflammatory medication with analgesic effects, and is a **"Prohibited Substance"** 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 Flunixin, 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.

III. Procedural background

8. By way of a notification letter dated 21 April 2023, the FEI informed the PR and the APR of a possible violation of Article 2.1 (*The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse's Sample*) of the ECM Rules.
9. In accordance with Art. 7.4.1. ECMR, the FEI did not provisionally suspend the PR and the APR since only one (1) Controlled Medication Substance was found in the Horse's sample.
10. The proceedings against the PR were initiated under the Administrative Procedure (or "Fast-Track"), but the PR did not accept the Administrative sanctions offered to him.
11. The proceedings against the APR were initiated under the standard Controlled Medication Procedure, since Trainers are not eligible for the Administrative Procedure. The APR did not accept the consequences in said procedure.
12. By way of a Notice of Charge dated 12 June 2023, the FEI formally notified the PR and the APR, through their National Federation, of the alleged CM Rule Violation. The PR and the APR were 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.

13. On 24 May 2023, the Saudi Arabian National Federation (the “KSA-NF”) confirmed to the FEI that both the PR and the APR had duly received all emails and documents which were sent from the FEI.
14. Despite reminders sent by the FEI, the PR and APR did not submit any position in the context of the FEI proceedings.
15. Therefore, by email dated 14 August 2023, the FEI submitted the case files to the Tribunal for adjudication. The PR’s and the APR’s NF, the KSA-NF, was copied to the FEI’s correspondence.
16. On 27 September 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 2 October 2023. Furthermore, the Tribunal Chair granted the PR and 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 17 October 2023. The Tribunal Chair further informed the PR and the APR that should they fail to respond within the deadline, the Tribunal hearing panel would decide this case using the file material in its possession. Moreover, the Tribunal Chair noted that the FEI only requested that the FEI Tribunal upholds the charge that the PR had violated Art. 2.1 of the ECM Rules, but not the APR. The FEI was therefore requested to clarify, by 2 October 2023, whether they also request for the FEI Tribunal to uphold the charge that the APR has violated Art. 2.1 of the ECM Rules. Finally, the Tribunal Chair informed the Parties of their right to request an oral hearing.
17. On the same day, the APR responded, via two similar emails (one from his own email address, and one from the PR’s email address), to the FEI Tribunal’s 27 September 2023 letter by apologizing for any misunderstanding, and indicated being willing, together with the PR, to pay the fine.
18. On 28 September 2023, the APR wrote again the same email, but copied this time the FEI to his correspondence.
19. On 28 September 2023, the FEI informed the Tribunal that they did not have any objections to the constitution of the hearing panel. The FEI further confirmed that the request in their last paragraph was also meant to include the APR as well, and therefore confirmed that the FEI request that the FEI Tribunal upholds the charge that also the APR has violated Art. 2.1 of the ECM Rules.

20. Neither party requested a hearing.

IV. The Parties' Submissions:

A. Submissions by the PR

21. The PR did not submit any position in the context of the proceedings in front of the FEI, despite confirmation received from KSA-NF that he had duly received all emails and documents which were sent from the FEI. In the context of the FEI Tribunal proceedings, the PR responded, by way of the APR's emails, stating that they were both willing to pay the fine, and apologized for any misunderstanding.

B. Submissions by the APR

22. 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 he had duly received all emails and documents which were sent from the FEI. In the context of the FEI Tribunal proceedings, the APR responded, by way of three different emails, stating that they were both willing to pay the fine, and apologized for any misunderstanding.

C. Submissions by the FEI:

23. On 14 August 2023, the FEI submitted, together with the case file, its Response to the Tribunal.

24. The FEI submitted that:

24.1 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 (...).'

24.2 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.

- 24.3 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).
- 24.4 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.
- 24.5 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.
- 24.6 The elements of Article 2.1 of an ECM Rule violation are straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead, it is a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the A sample analysis confirmed the presence of Flunixin, and constituted sufficient proof of the violation of Article 2.1 of the ECM Rules. Therefore, the FEI submitted that it has discharged its burden of establishing that the PR and the APR violated Article 2.1 of the ECM Rules.
- 24.7 Article 10.2 of the ECM Rules provides that a Person Responsible or Additional Person Responsible with no previous doping and/or Controlled Medication offences, but who violates Article 2.1 of the ECM Rules, is subject to a period of Ineligibility of six (6) months, unless he can rebut the presumption of fault on a balance of probability (Article 3.1 of the ECM Rules). If the PR and/or the APR fail to do so, the six (6) months period of Ineligibility applies.
- 24.8 To rebut the presumption of fault, the ECM Rules stipulate, and the jurisprudence of the FEI Tribunal and CAS is very clear: it is a strict threshold requirement that the PR and/or 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

PR and/or the APR for the presence of the Prohibited Substance in the Horse.

- 24.9 In this case, neither the PR, nor the APR provided any explanation regarding the source of the Controlled Medications in the Horse's Sample.
- 24.10 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.
- 24.11 The FEI submitted therefore that the PR and the APR did not discharge their burden of proof of establishing how Flunixin entered the body of the Horse and the "threshold requirement" has not been fulfilled in this case.
- 24.12 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.
- 24.13 In view of the above, the FEI respectfully submits that the applicable period of Ineligibility imposed on the PR and the APR shall be six (6) months in accordance with Article 10.2 of the ECM Rules.
- 24.14 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.
- 24.15 The FEI duly requests that a fine of three thousand five hundred Swiss Francs (3'500 CHF) be imposed on the PR and the APR respectively, and that the PR and 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) each.
- 24.16 The FEI requested the following prayers for relief (completed by way of their 28 September 2023 email):
- (i) *upholding the charge that the PR has violated Article 2.1 of the ECM Rules;*
 - (ii) *upholding the charge that the APR has violated Article 2.1 of the ECM Rules;*
 - (iii) *disqualifying the result of the PR and Horse combination obtained in the Event, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 and 10.1.2 of the ECM Rules;*
 - (iv) *imposing a period of Ineligibility of six (6) months on the PR, commencing from the date of the Final Decision*

- (v) *imposing a period of Ineligibility of six (6) months on the APR, commencing from the date of the Final Decision;*
- (vi) *fining the PR and the APR in the amount of 3 500 CHF respectively;*
- (vii) *ordering the PR and APR to pay the legal costs of 2 000 CHF respectively, that the FEI has incurred in these proceedings.*

V. Legal Analysis

A. Jurisdiction

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

B. Legal Discussion

26. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, it only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. The Person Responsible

27. The Rider, as the *Athlete who rides the Horse during an Event*, is the Person Responsible for the Horse pursuant to Article 118 par. 3 of the GRs.

2. The Additional Person Responsible

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

3. Considering

29. The Horse's sample confirmed the presence of a Controlled Medication Substance. 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

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.

Tribunal is satisfied that the report relating to the A-sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is further satisfied that the test results evidence the presence of Flunixin in the A Sample taken from the Horse at the Event. Flunixin is a Controlled Medication Substance, 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.

30. 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.
31. 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.
32. 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.
33. In order for Articles 10.5 and 10.6 of the ECM Rules to be applicable, the PR and the APR must establish as a threshold requirement how the Prohibited Substances entered the Horse's system.
34. The PR and the APR did not submit any position in the context of the FEI proceedings. With respect to the proceedings in front of the FEI Tribunal, their very concise position was limited to an acceptance (and willingness) to pay the fine, and an apology for the misunderstandings. It follows from the above that neither the PR nor the APR were able to prove how the prohibited substance entered the Horse's body.
35. 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 and the APR's degree of Fault or Negligence. Therefore, the Tribunal finds that the PR and the APR are not entitled to any reduction of the otherwise applicable period of Ineligibility under Articles 10.5 and 10.6 of the ECM Rules.

36. Therefore, the Tribunal concurs with the FEI that a period of Ineligibility of six (6) months shall be imposed on each of the PR and the APR.
37. The Tribunal finds the FEI's request for a fine of CHF 3'500.- (to both the PR and the APR) and costs of CHF 2'000.- (to both the PR and the APR) to be reasonable and in keeping with the *FEI Guidelines for Fines and Contributions towards Legal Costs*.

VI. Terms of the Decision

38. 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:

For the PR:

- a) The PR violated Article 2.1 of the ECM Rules.
- b) The results of the PR and Horse combination obtained in the Event are disqualified, and consequently all medals, points, prize money, etc. won are forfeited, pursuant to Art. 9 and 10.1.2 of the ECM Rules.
- c) The PR shall be suspended for a period of six (6) months. The period of the Ineligibility will be effective from the day of the Final Decision.
- d) The PR is fined three thousand five hundred Swiss Francs (CHF 3 500).
- e) The PR shall pay his part of the costs of these proceedings in the amount of two thousand Swiss francs (CHF 2 000).
- f) This Decision shall be notified to the PR, Mr Faisal ALOSAIMI, to his National Federation, the KSA-NF, and to the FEI.

For the APR:

- a) The APR violated Article 2.1 of the ECM Rules.
- b) The APR shall be suspended for a period of six (6) months. The period of the Ineligibility will be effective from the day of the Final Decision.

- c) The APR is fined three thousand five hundred Swiss Francs (CHF 3 500).
 - 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 Majed ALHARTHI, to his National Federation, the KSA-NF, and to the FEI.
39. The PR and 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).
40. If the PR and/or the APR violate any of the conditions in the previous paragraph during Ineligibility, the results of any such participation will be disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility will be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.13.3 of the ECM Rules).
41. According to Article 170 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

VII. Legal Action

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

FOR THE TRIBUNAL



Ms Constance Popineau, One-Member Panel