DECISION of the FEI TRIBUNAL

14 June 2024

(Ref. no. FEI Tribunal: A23-0013 Kate Rocher–Smith v FEI)

In the matter of

Kate Rocher–Smith (the "Appellant")

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (the "FEI" or the "Respondent")

together the "Parties"

COMPOSITION OF THE FEI TRIBUNAL PANEL:

Mr César Torrente (COL), Sole Panel Member

I. INTRODUCTION

1. The Appellant submitted this appeal (the "Appeal") to the FEI Tribunal (the "Tribunal") against a decision (the "Decision 1") on an alleged incorrect recording of the Appellant's penalty score at the Pau CCI5*-L cross country track on 28 October 2023 (the "Event") and against the email sent by the FEI Championships, Rules, Schedules & Results Administrator (the "FEI Administrator") dated 28 November 2023 informing about the refusal to correct the score (the "Decision 2").

Applicable Rule Provisions:

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

General Regulations 24th edition, updates effective 4 April 2023 (the "FEI 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 Eventing Rules, 26th Edition, effective 1 January 2023 ("Eventing Rules"), Art. 515, Art. 548.

II. FACTUAL BACKGROUND

2. On 28 October 2023, the Appellant participated in the Event riding HHS Dassett Class (the "Horse").

3. At fence 13b, according to the Fence Report published on the official Event website on 28 October 2023 at 17:44, the Appellant had two refusals and one activated MIM clip. At this moment, the Appellant retired from the competition as she knocked her head on the Horse's neck during the jump, which lead to a concussion.

4. On 6 November 2023, the Appellant checked the Horse's record on the British Eventing website and discovered that a penalty score of 71 had been recorded for her participation with the Horse at the Event.

5. On the same day, the Appellant contacted the FEI by e-mail and requested the correction of the Horse's results on the FEI database.

6. On 17 November 2023, the FEI Administrator acknowledged receipt of the Appellant's request and informed her that the FEI was reviewing the situation.

7. On 28 November 2023, the FEI Administrator confirmed by e-mail that it had contacted the Technical Delegates as well as the scorer of the Event and informed the Appellant that there had been some confusion about the penalties of the Horse. The FEI however informed the Appellant that any protest concerning the result of the competition should have been lodged within the time limit specified in article 161.3 of the FEI GRs.

8. On the same day, the Appellant wrote to the FEI Administrator that she could not have lodged a complaint as she was completely unaware of the penalties awarded to her given that the Fence Judge told her to continue the course.

9. On 29 November 2023, the FEI Administrator informed the Appellant that no exception to the rules could be granted. In particular, the Appellant was reminded that she could have controlled the results (including the penalties) once they had been published after the Event.

10. On the same day, the Appellant made further inquiries by e-mail about the awarding of penalties with the FEI Administrator.

11. On the same day, the FEI Administrator sent an e-mail clarifying that the final results produced by the result management are signed off by the Technical Director. Those results are the ones that could be queried up and updated within 30 minutes after publication. After that deadline, no changes may be made. The rules must be applied strictly for all FEI disciplines.

12. On the same day, the Appellant sent an e-mail indicating that she would get advice on how to take the issue further and make a formal complaint.

13. On 7 December 2023, the FEI Administrator sent an e-mail offering to provide the Appellant with an official letter explaining what happened in her case, confirming that the official results as they appear on the FEI Database/Event website are incorrect and that she should have only received 31 penalties (rather than 71), which she could then provide to potential customers.

14. On the same day, the Appellant declined such an offer and informed the FEI Administrator that she would make a formal complaint.

15. On the same date, the FEI Deputy Legal Director contacted the Appellant by e-mail and explained to her that the matter she described is not an "administrative mistake" or "typo" since the Officials on site formally awarded her 71 penalties as it was their understanding at that time that she had made two refusals and 1 MIM activation. Consequently, the official results signed off by the Officials on site attributed her 71 penalties, in accordance with the FEI GRs and Eventing Rules. Hence what was uploaded to the FEI Database was perfectly aligned with the Fence Report. Only when the FEI Eventing Department went back to the Organiser and Officials, it emerged from reviewing the video footage at the fence in question that the correct penalties should have been 31 (one refusal and one MIM activation). The FEI Deputy Legal Director further indicated that in case she would have wanted to challenge the Official Results, she should have had filed a protest within 30 minutes of the publication of the results, which she never did. Lastly, for sake of transparency, the FEI Deputy Legal Director indicated to the Appellant that based on the *Field of Play doctrine* if she would proceed with an appeal (as previously announced), the FEI would oppose the FEI Tribunal's jurisdiction.

16. Upon receiving the information from the FEI Deputy Legal Director, the Appellant indicated that she would move forward with her formal complaint.

17. On 8 December 2023, the FEI Deputy Legal Director offered to hold a phone call with her (legal) advisor to explain the FEI's position. Furthermore, the FEI Deputy Legal Director informed the Appellant that the 21-day deadline to appeal would have elapsed already, but that the FEI Headquarter (the "FEI HQ") was willing to consider 28 November 2023 to be the starting date from which the 21 days deadline runs. However, a clear caveat was made that the FEI Tribunal is an independent body, and the FEI HQ would have no control over how it would interpret the 21-day deadline rule.

18. On 13 December 2023, the FEI Deputy Legal Director informed the father of the Appellant about the proceedings before the FEI Tribunal and indicated that the FEI would not object to her submitting a Notice of Appeal by the deadline of 19 December 2023, with the full Appeal Brief to follow at a later stage.

III. PROCEDURAL BACKGROUND

19. On 19 December 2023, the Appellant filed a Notice of Appeal.

20. On 26 December 2023, the FEI Tribunal Chair (the "Chair") acknowledged receipt of the Appellant's Notice of Appeal. However, the annexes referred to in the Appeal Brief were missing, and the Chair requested the Appellant to submit them. The Appellant did so on 28 December 2023.

21. The Chair nominated a Sole Panel Member to handle the matter and informed the Parties that they had until 29 December 2023 to object to his nomination. None of the Parties objected to the Sole Panel Member's nomination.

22. Furthermore, the Chair requested the FEI to present its comments by 3 January 2024 on the Appellant's request to file an Appeal Brief by 29 February 2024.

23. On 27 December 2023, the FEI requested a deadline extension to file its comments until 10 January 2024. The Chair granted said request.

24. On 10 January 2024, the FEI did not object to the request of the Appellant to file an Appeal Brief until 29 February 2024. The FEI however informed the Sole Panel that, as already indicated to the Appellant, it intended to challenge the admissibility of the Appeal on the basis that field of play decisions are not appealable.

25. On 11 January 2024, the Sole Panel Member partially granted the request of the Appellant and ordered her to file an Appeal Brief by 31 January 2024.

26. On 28 January 2024, the Appellant filed a deadline extension request until 14 February 2024 due to the illness of the solicitor of the Appellant.

27. On 30 January 2024, the Sole Panel Member partially granted the deadline extension request until 7 February 2024.

28. On 5 February 2024, the Appellant submitted an Appeal Brief to the FEI Tribunal, challenging Decision 1 and Decision 2.

29. On 8 February 2024, the Sole Panel Member provided the Appeal Brief and the annexes to the FEI. The Sole Panel Member set a deadline until 28 February 2024 for the FEI to answer

to the Appeal Brief (the "Answer"). The Parties were given a deadline until 4 March 2024 to indicate whether they requested an oral hearing.

30. On 27 February 2024, the FEI filed its Answer.

31. On 29 February 2024, the Appellant requested authorization to file a second round of submissions.

32. On 5 March 2024, the Sole Panel Member rejected the request to file a second round of submissions.

33. Since none of the parties requested a hearing, on 20 March 2024 the Sole Panel Member confirmed that he would pass a decision based on the Parties' written submissions.

IV. THE PARTIES' SUBMISSIONS

34. Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions and documentary evidence presented during these proceedings. Although the Sole Panel Member has fully considered all the facts, allegations, legal arguments and evidence in this Appeal, the Sole Panel Member will only refer to the submissions and evidence it considers necessary to explain its reasoning in this decision.

i. Submission of the Appellant:

35. The Appellant submitted the following in her written submission:

a) Admissibility

(i) The appeal is against a decision of "any other person or body" (i.e. a FEI Official) in the sense of art. 162.1 (a) of the FEI GRs. None of the matters that are the subject of the appeal have previously been referred to –or determined by– a Ground Jury and therefore do not fall under the exceptions of inadmissible appeals as per art. 162.2 of the FEI GRs.

(ii) Art. 162 of the FEI GRs does not render inadmissible all appeals to the FEI Tribunal against decisions of the Ground Jury, but only against those decisions covered by art. 161.2 of the same regulations. Art. 162.2 (b) states that there is no second appeal

(to the CAS) against a decision of the FEI Tribunal in respect of a decision of the Ground Jury, which makes it clear that the FEI Tribunal is entitled to hear appeals of Ground Jury (field of play) decisions not expressly rendered inadmissible by art. 161.2 of the FEI GRs.

(iii) In the present case, art. 161.2 of the FEI GRs is not engaged on the present appeal as there is no relevant decision of the Ground Jury and subparagraphs (b) to (d) are likewise not applicable.

(iv) The Appellant did not need to file a Protest under art. 161.3 of the FEI GRs as the relevant provision deals with Protests to the Ground Jury, which the Appellant did not and is not seeking to make.

(v) The Appellant therefore asked the Tribunal to accept her appeal against Decision 1 and Decision 2.

b) The Scoring Issue

(vi) According to the Appellant, the Fence Judge communicated to her that she had a refusal on her first attempt at Fence 13b, and that she activated the MIM clip on her second attempt. She claimed that there was no third attempt, and that the Fence Judge told her to continue around the course after the second attempt.

(vii) In accordance with art. 548.1 of the Eventing Rules the Appellant had two faults, i.e. a first refusal (20 points) and activating a frangible device (11 points). The penalty score was therefore 31 points. This was confirmed by the Fence Judge in his on-field communications with the Appellant and the FEI Administrator after reviewing the video footage of the Appellant on the track.

c) The art. 161.3 of the FEI GRs Issue

(viii) According to the Appellant, in the e-mail of 7 December 2023, the FEI Deputy Legal Director:

i. Accepted that, insofar as the scoring issue is the result of a clerical error, it can and should be corrected on the FEI database. In particular, it was stated in the

e-mail: "*I note that you have described this matter as an "administrative mistake" or "typo". If that were the case, we would of course correct the result* […]".

ii. Recognized that the organizer and officials confirmed (after having reviewed video footage of the fence in question) that the correct penalties should have been 31 (i.e., one refusal and the MIM activation).

iii. Stated that the Appellant should have filed a protest within 30 of minutes of publication of the results, which she had not done.

(ix) In reply to those statements, the Appellant argued that protests are dealt with in art. 161.3 of the FEI GRs, which refers to challenging results of a Competition. However, the Appellant does not seek to challenge the "results" of a Competition and therefore art. 161.3 of the FEI GRs does not apply.

(x) First, there is no good reason to differentiate between a clerical / typographical error made by the on-site officials and a similar error made at a later stage of the process. Art. 161.3 of the FEI GRs does not clarify whether it refers to "written results" or an oral decision of the Fence Judge. In this case, the oral decision should prevail as this is the true field of play decision. The Fence Report itself is only completed at a later time and can contain clerical / typographical errors, which are the ones that the Appellant seeks to have corrected.

(xi) Second, the FEI has failed to explain when it considers that the results were "announced", so that time started running. The inaccurate results were seen by the Appellant for the first time on 6 November 2023, when she checked the British Eventing Website.

(xii) Third, the refusal of the FEI to correct the results in the FEI database ignores the purpose of the *Field of Play doctrine*, as the Sole Panel Member still has jurisdiction to overturn a legal error or prejudice against the Appellant on appeal. Refusing to correct the error in the FEI database is contrary to procedural fairness and undermines both the authority of the official FEI results and the integrity of the competition.

ii. Submission of the FEI

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

a) Admissibility

(i) The deadline to appeal against Decision 1 started to run as of 29 October 2023, i.e. the date the results were signed/published. The deadline to appeal therefore expired on 19 November 2023, but the notice of appeal was only filed on 19 December 2023. Consequently, the appeal against Decision 1 is time barred and inadmissible.

(ii) While it is true that the FEI informed the Appellant that it would be prepared to consider 28 November 2023 as the date from which the 21-days deadline to appeal runs, it did make a caveat that the FEI Tribunal is an independent body and is not bound to interpret the 21-days deadline rule in accordance with art. 162.5 of the FEI GRs in the same way. Therefore, the question of admissibility of the appeal is left to the discretion of the Tribunal.

(iii) The alleged Decision 2 is not a decision in the sense of the FEI Statutes. as an administrator in the FEI Department does not have the authority to issue an authoritative determination. Only the Technical Delegate has the authority and responsibility to sign off the final results of the Competition. The FEI Headquarters do not have such responsibility. This was explained to the Appellant when she asked the FEI Headquarters to intervene. Hence, the e-mail of the FEI Headquarters cannot be categorized as a "Decision", as an administrator of the FEI Headquarters does not have the authority to issue a determination on behalf of the FEI. To categorize the e-mail of the FEI Headquarters as a "Decision" would open up an avenue of appeal which is permitted under the General Rules and Eventing Rules and would run contrary to the *Field of Play doctrine*.

(iv) The appeal shall be deemed inadmissible for another reason as well. That Appellant seeks to overturn the automatic consequences of a field of play decision, which is inadmissible. In the alternative, the appeal shall be dismissed for the same reasons.

b) Field of play decision

(v) Article 161.2 (a) of the FEI GRs explicitly outlines that decisions arising from the field of play are deemed final and binding, leaving no room for protest. These decisions include factual observations of performance or the allocation of marks during a

competition, determination of whether an obstacle was knocked down, if a Horse was disobedient, refused at an obstacle, or circled in a combination, or refused or ran out during a jump.

(vi) In the case at hand there was a "factual observation of performance" by the Fence Judge, where he assessed/decided that the Appellant had two refusals and activated one MIM device. There was also a decision on "whether the Horse refused at an obstacle", which the Fence Judge did by declaring that the Appellant had refused Fence 13b twice.

(vii) If such field of play decisions are immune from Protest, it must follow that such category of decision is also immune from appeal.

(viii) The *Field of Play doctrine* of CAS emphasizes the importance of sporting principles, such as finality and respect for the authority of referees and match officials. Decisions made during sports events should primarily be left to the field officials who are trained for the specific sport and are present onsite to resolve any related issues. This approach is supported by factors including the officials' expertise, the subjective nature of decisions, the need to prevent constant interruptions in competitions, and the potential complications of altering records and results retroactively. The FEI submits that such doctrine shall be applied in the present matter and lead to the inadmissibility/dismissal of the appeal.

(ix) The Fence Judge recorded that the Appellant had refused Fence 13b twice and activated one MIM device. Since this is possible under the FEI Eventing Rules, the question of legal error does not arise. A Fence Judge making an error of judgement does not render a field of play decision invalid.

(x) The decision of the Fence Judge was not a clerical or typographical error either since the Fence Judge entered two refusals and one activated MIM device at Fence 13b. This report was later validated on site by the relevant officials, in particular the Technical Delegate who signed off the results as per the Eventing Rules.

(xi) In order to overturn a field of play decision, the Appellant would have had to demonstrate evidence of preference for, or prejudice against it. The Appellant did not allege, nor prove, that there was any bad faith or arbitrariness on the part of the

Fence Judge or the wider officiating team at the Event.

(xii) The Fence Report showing the two refusals and one activated MIM device was published on the British Eventing Website on 28 October 2023 at 17:44. The Fence Report showed that the Fence Judge recorded "RRM", which stands for "Refusal, Refusal, MIMS- Breakable Device". While the Fence Report did not show a specific penalty to the recorded faults, there was only one possible penalty total that can arise from "RRM", i.e. 71 penalties.

(xiii) The Appellant only claimed that the 71 penalties would harm the value of the horse, without having submitted any evidence in this respect. Consequently, such harm must be considered as speculative in nature. The Appellant did not have any sporting impact as she retired from the Competition.

V. LEGAL DISCUSSION

37. In view of the arguments raised by both Parties on the admissibility of the appeal, the Sole Panel Member will first analyse this point.

38. Only if the appeal is considered admissible, will the Sole Panel Member analyse the other arguments on the merits of the dispute.

i. Admissibility of the Appeal

39. To determine the admissibility of the Appeal, the Sole Panel Member will first analyse, whether the appeal had been duly filed by the Appellant and, second, for the sake of completeness, whether the decision under appeal is a field of play decision.

a) Timeliness of the Appeal against Decision 1

40. Pursuant to Art. 161.6 of the FEI GRs, *Appeals to the FEI Tribunal against other FEI Decisions (i.e. other than an Appeal against a Decision arising from a Protest) must be dispatched to the FEI Tribunal (fei.tribunal@fei.org) and signed by the appellant or their authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a*

designated hearing and must reach the FEI Tribunal within twenty one (21) days of the date on which the notification of the earlier Decision was sent.

41. Art. 24.5 of the IRs states: *Upon application on justified grounds and after consultation with the other party (or parties), either the Chair of the Hearing Panel or, if the Hearing Panel has not yet been appointed, the FEI Tribunal Chair, may extend the time limits provided in these Internal Regulations of the FEI Tribunal, with the exception of the time limit for the filing of an Appeal, if the circumstances so warrant and provided that the initial time limit has not already expired.*

42. The results of the Event were published on the British Eventing Website on 28 October 2023 at 17:44 pm. According to the Fences Report, the Appellant's run was marked with "RRM", which stands for "Refusal, Refusal, MIMS – Breakable Device".

43. Pursuant to Art. 548.1 of the Eventing Rules, the first refusal is awarded 20 penalties and the second refusal at the same obstacle is awarded 40 penalties. Activating a frangible device where the dimension of the fence is modified (i.e. MIMs) is awarded 11 penalties.

44. Accordingly, the Appellant knew or should have known from the publication of the Fence Report that her Horse had been awarded a penalty of 71 points. Consequently, the 21-day deadline to appeal Decision 1, would have started on 29 October 2023.

45. The Appellant filed her Notice of Appeal on 19 December 2023, i.e. 52 days after the start of the deadline to file an appeal.

46. While the Sole Panel Member acknowledges that the FEI indicated to the Appellant that it would be prepared to consider 28 November 2023 as the *dies a quo*, the Sole Panel Member notes that the FEI (rightfully) included a caveat that the Tribunal is an independent body and is not bound by this interpretation.

47. On this point, the Sole Panel Member recalls that neither the FEI Legal department nor the FEI Tribunal are entitled to modify the clear rules in place governing the deadline to appeal. Otherwise, the whole legal system of the FEI would be put at risk, compromising the most basic rules of due process that must be applied to all stakeholders in an equal manner. For this reason, the Panel recalls that no one is allowed to offer unauthorized extensions or to accept an interpretation that is clearly not aligned with the literal meaning of the rules.

48. The Sole Panel Member considers that the starting date of the time limit to appeal must be an objective moment in time that applies equally to all participants. Therefore, the

publication of the results must be considered as the day of notification of the decision referred to in Art. 161.6 of the FEI GRs. Any other interpretation would contravene the applicable rules and would put at risk the FEI's legal system.

49. Even though the Sole Panel Member has sympathy for the Appellant's reliance on the FEI's information, he is bound to apply the FEI GRs which are clear and available to all participants. The time limit to appeal of Art. 162.5 of the FEI GRs is an expiry period (or preclusive time limit). In addition, according to Art. 24.5 of the IRs the time limit to appeal cannot be extended.

50. For these reasons, which are in line with the existing case law[1], the appeal against Decision 1 must be deemed inadmissible, regardless of whether such decision can be appealed against or not based on the *Field of Play doctrine* (as analyzed in section V.i.b). below).

51. For sake of completeness and fairness, the Sole Panel Member would not have arrived at a different conclusion if he were to consider the date of notification of Decision 1 to be 6 November 2023 (i.e. the date when the Appellant states that she learned about the penalties awarded to the Horse). The time limit of 21-days would have still not been met when she filed her Notice of Appeal on 19 December 2023. In addition, the Panel finds that it cannot accept this *dies a quo* because there is a legal presumption that the stakeholders will check the competition results within the deadline established to lodge a protest (as they are also presumed to be aware of the legal framework in which they operate). The entire appeal process contained in the FEI's legal system is based on this presumption which must therefore be upheld.

52. On the other hand, the appeal against Decision 2 was filed 21 days after it was issued. However, for the Panel the FEI's e-mails rejecting the Appellant's requests to change her penalties in the Event cannot be considered a decision (i.e., *an authoritative determination reached or pronounced after consideration of facts and/or law*[2]). In particular, because the FEI's administration does not have the capacity to overrule decisions taken by the officials. Accepting any other interpretation, would also endanger the viability and credibility of the FEI's legal system. Consequently, even if the Appellant was of the impression that there was an offering to amend those results, no legitimate expectations could have been created since the FEI's administration does not have such power and could have not legally made such an offer.

[1] *See* A20-0001 Eketoft v. FEI, A22-0004 Osterreichischer Pferdesportverband v. FEI and the subsequent award CAS 2022/A/9284.
[2] Definition contained in the FEI Statutes.

53. Regardless of this conclusion, the appeal must anyways be declared inadmissible for another reason that will be explained in the following section.

b) Field of Play decision

54. Firstly, the Sole Panel Member acknowledges that neither the Tribunal nor CAS panels have settled whether the discussion surrounding the possibility of challenging field of play decisions is a matter of jurisdiction of the Tribunal or of admissibility of the appeal. In particular, several FEI panels have considered in their explanations that this is a matter of jurisdiction to then declare the appeal inadmissible.[3] CAS panels have also reached diverging solutions.

55. The Sole Panel Member finds, in line with previous CAS panels[4], that both positions are arguable. However, since the discussion is purely academic and the same material outcome would be reached at this stage regardless of the conclusion that the Sole Panel Member may reach on this point, this matter does not have to be solved in order to decide on the appeal.

56. Moreover, the FEI has primarily referred to the issue of admissibility of the appeal in its submission. Therefore, the Sole Panel Member will focus on the question whether the present appeal is admissible or not.

57. 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.*

[3] A20-0004 Twomey v. FEI of 18 June 2020, A22-0002 UAEERF & Mohd v. FEI of 27 June 2022, A22-0003 RETB v. FEI, of 24 August 2022, A23-0005 ESP NF v. FEI of 8 January 2024.
[4] CAS 2019/A/6677 Markus Kattner v. FIFA.

58. In the present matter, the Fence Judge noted in the Fence Report two refusals and one activated MIM at Fence 13b. However, upon review of video footage after the Event, the FEI recognized that the Horse had one Refusal and one activated MIM at Fence 13b and only 31 penalties should have been awarded to the Appellant.

59. It is furthermore not disputed that the Fence Judge's decision (be it orally during the Event or in writing via the Fence Report) is a Ground Jury decision and hence is a field of play decision.

60. In view of the *Field of Play doctrine* – to which the Sole Panel Member adheres –, the matter at hand revolves around the question whether the decision of the Fence Judge was the result of bad faith, fraud, arbitrariness or corruption, which could then open the door to being reviewed. This doctrine is based on the premise that a judicial body "*is not prepared to interfere with the application of the rules governing the play of the particular game, which is to be left to field officials, who are specifically trained to officiate the particular sport and are best placed, being on-site, to settle any question regarding it.*" [5]

61. The Panel agrees that "*this places a high hurdle that must be cleared by any Applicant seeking to review a field of play decision. However, if the hurdle were to be lower, the flood-gates would be opened and any dissatisfied participant would be able to seek the review of a field of play decision.*"[6]

62. For this reason, the Sole Panel Member does not consider that committing a "legal error" or incurring in a "clerical and/or typographical error" – as the Appellant contends – may open the door to reviewing a field of play decision.

63. The Appellant did not make any further claims as to why any of the Decisions could be reviewed under the *Field of Play doctrine*. She neither indicated nor provided any evidence that the Fence Judge made his decision in bad faith.

64. The Sole Panel Member confirms that it was within the Fence Judge's discretion under the Eventing Rules to decide that the Horse had refused Fence 13b twice as he noted in his report.

[5] CAS 2008/A/1641 Netherlands Antilles Olympic Committee v. International Association of Athletics Federations & United States Olympic Committee.
[6] CAS OG 02/2007 Korean Olympic Committee v. International Skating Union.

65. The Sole Panel Member cannot change a decision made by the Officials, since awarding two refusals for one Fence is legally permitted under the Eventing Rules.

66. The fact that afterwards, upon review of video footage, it became evident that the Horse only refused Fence 13b once, does not change this outcome. It is exactly the nature of the *Field of Play doctrine* that honest mistakes by a referee may not be reviewed and amended via legal proceedings other than the system for protests explicitly foreseen for such situations.

67. In view of the above, the Sole Panel Member rules that the Fence Judge's decision to award two refusals and one activated MIM device at Fence 13b for the Horse (i.e., Decision 1) is, as stated in the FEI GRs, a "field of play" decision, not subject to appeal. Indeed, Art. 161.2 of the FEI GRs states that there is no appeal against decisions of the Ground Jury arising from the field of play, which are final and binding.

68. 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 of the FEI GRs, i.e. whether a Horse refused an obstacle.

69. Furthermore, the appeal against Decision 2 cannot be admitted either simply because it stems directly from a request to reconsider a non-appealable Decision 1. If the Sole Panel Member would rule otherwise, he would be accepting that a field of play decision could be artificially challenged – circumventing article Art. 161.2 of the FEI GRs – merely by sending written requests to the FEI.

70. Accordingly, the Sole Panel Member is not able to hear the present matter, which is to be considered non-appealable. The Appeal is therefore declared inadmissible, and the Appellant is 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.

71. All other prayers for relief are dismissed.

VI. DECISION

72. The Tribunal decides as follows:

    (i) The Appeal is not admissible.

    (ii) All other requests are dismissed

    (iii) No deposit shall be returned to the Appellant.

    (iv) Each Party shall bear its own costs in these proceedings.

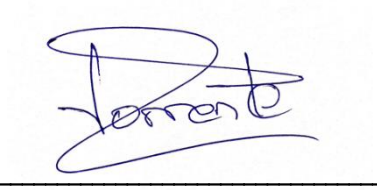
73. According to Art. 165 of the FEI GRs, this decision is effective from the date of oral or written notification to the affected Parties.

74. 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



César Torrente (COL), Sole Panel Member