



DECISION of the FEI TRIBUNAL

Dated 3 March 2009

Positive Medication Case No.: 2008/33

Horse: IRNAS

FEI Passport No: USA08695

Rider: Ms Jessica Blackmon, USA

Event: North American Junior & Young Rider Championships, USA
30 July to 3 August 2008

Prohibited Substance: Phenylbutazone

1. COMPOSITION OF PANEL

Mr. Jens Adolphsen
Mr. Erik Elstad
Mr. Alberto Hernán Méndez Cañas

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR):

The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR, as well as all testimonies, submissions and documents presented prior to the oral hearing.

2.3 Oral hearing: On 10 February 2009, by means of a conference call.

Present: The FEI Tribunal Panel

For the FEI:

Ms Carolin Fischer, Legal Counsel FEI

For the PR:

Ms Jessica Blackmon

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:

Statutes 22nd edition, effective 15 April 2007 ("**Statutes**"), Arts. 1.4, 34 and 37.

General Regulations ("**GR**"), 22nd edition, effective 1 June 2007, Arts. 142, 146.1 and 174.

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

The Equine Anti-Doping and Medication Control Rules ("**EADMCR**"), 1st edition 1 June 2006, updated with modifications by the General Assembly, effective 1 June 2007 and with modifications approved by the Bureau, effective 10 April 2008.

Veterinary Regulations ("**VR**"), 10th edition, effective 1st June 2006, Art. 1013 and seq. and Annex III (the Equine Prohibited List).

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Ms Jessica Blackmon

3.3 Justification for sanction:

GR Art. 146.1: *"The use of any substance or method that has the potential to harm the horse or to enhance its performance is forbidden. The precise rules concerning Prohibited Substances and Medication Control are laid down in the EADMCRs."*

EADMCR Art. 2.1.1: *"It is each Person Responsible's personal duty to ensure that no Prohibited Substance is present in his or her Horse's body during an Event. Persons Responsible are responsible for any Prohibited Substance found to be present in their Horse's bodily Samples. Accordingly, it is not necessary that intent, fault, negligence or knowing Use on the Person Responsible's part be demonstrated in order to establish an anti-doping rule or medication control violation under Article 2.1."*

4. DECISION

4.1 Factual Background

1. IRNAS (the "**Horse**") participated at the North American Junior & Young Rider Championships, Parker, CO, 2008, United States of America, from 30 July to 3 August 2008 (the "**Event**"), in the discipline of Dressage. The Horse was ridden by Ms Jessica Blackmon (the "**Rider**").

2. The Horse was selected for sampling on 2 August 2008.
3. Analysis of the urine and blood sample no. FEI- G23747 taken from the Horse, performed by the approved FEI laboratory, the US Equestrian Federation Equine Drug Testing and Research Laboratory ("**E.D.T.R.L.**"), under the supervision of Thomas F. Lomangino, Laboratory Director, revealed the presence of Phenylbutazone (Test Report dated 15 August 2008).
4. The Prohibited Substance detected is Phenylbutazone, which is a non-steroidal anti-inflammatory drug (NSAID) and is classified as a "Prohibited Substance" under the Equine Prohibited List (VR Annex III, the "**Equine Prohibited List**"), in the class of "Medication A" .
5. No request had been made for the use of Phenylbutazone on the Horse, and no medication form had been supplied for this substance.

4.2 The Preliminary Hearing

6. The presence of the Prohibited Substance, the possible rule violation and the consequences involved were duly notified to the PR on 29 October 2008.
7. The notification of 29 October 2008 included a notice that the Rider was provisionally suspended and granted the opportunity to be heard at a preliminary hearing before the FEI Tribunal.
8. The PR confirmed that she wished the preliminary hearing to be held.
9. The preliminary hearing took place on 31 October 2008. Concerning the presence of the Prohibited Substance, the PR stated in the course of the Preliminary Hearing that she had not used any prohibited substances herself. She further claimed that the horse that had been stabled next to her horse during the event in question, Watussi, had been withdrawn from the competition on the first day of the competition because of an inflammation. And that despite the withdrawal, Watussi had been kept in the stable next to the Horse and had been treated with various medications. The PR is of the opinion that the Prohibited Substance found in her Horse results from a contamination with the treatment of the horse Watussi.
10. The preliminary decision was rendered and communicated to the PR on 4 November 2008. The PR was informed that the preliminary panel had decided to maintain the provisional suspension until 28 November 2008.

11. In its preliminary decision, the preliminary panel stated that the Test Report from the E.D.T.R.L. showed a positive test result for the Prohibited Substance Phenylbutazone.
12. The preliminary panel stressed that it is a FEI policy to impose a provisional suspension following a positive A-Sample in the course of major events, such as the Event.
13. In light of the above, and considering that the FEI policy is to impose provisional suspension in doping and in Medication A cases at major events, the preliminary panel maintained the provisional suspension. The PR was granted the possibility to provide the Panel within one month as of communication of the Preliminary Decision with further explanations regarding the alleged contamination, in particular witness statements of the neighbor stable mate and/or his veterinary. The FEI was asked to provide the Foreign Judge Report, the Chief Steward Report and the Veterinary Report of the Event.

4.3 The B-Sample Analysis

14. Together with the notification of 29 October 2008, the PR also received notice that the B-Sample analysis would, upon request by the PR, be carried out at the E.D.T.R.L. ("Confirmatory Analysis Request"). The PR was informed of her right to attend or be represented at the identification and opening of the B-sample.
15. The PR did not request a B-Sample analysis.

4.4 The Procedure up to and the Final Hearing

16. On 10 November 2008, the FEI submitted the Foreign Judge Report, the Chief Steward Report and the Veterinary Report of the Event to the NF of the PR. According to the Veterinary Report, page 4/5, Watussi had been unable to compete due to trauma injury.
17. On 28 November 2008, the provisional suspension of the PR came to an end.
18. On 1 December 2008, and, upon request by the FEI Legal Department of 2 December 2008, on 9 December 2008, the PR submitted two Witness Statements by Mrs. Mystere Alexa Moyes (referred to as "WS Moyes"). In her Witness Statements, Mrs. Moyes explains that her horse Watussi and IRNAS had been stabled next to each other during the Event and had been able to groom each other over the stall fronts. That they had shared a tack stall/feed room throughout the competition. Further, that Watussi, on 2 August 2008, had been administered a DMSO/Furazone sweat wrap and one gram of Phenylbutazone

twice a day by the FEI veterinary, but had not been removed from the competition barn. And that on 1 August 2008, the Region's Nine's grooms without permission, had fed the two horses and could have possibly mixed the two horses feed. Further, that when Watussi was taken out of her stall, the grooms had put IRNAS in Watussi's stall, forgetting to remove her feed.

19. On 9 December 2008, the PR also submitted a Veterinary Statement by the treating veterinary of IRNAS dated 2 December 2008 (referred to as "Veterinary Statement"). According to this Veterinary Statement, the Horse had been examined prior to the Event and did not need any kind of treatment and no treatment had been prescribed.

20. The final hearing was held on 10 February 2009, by means of a telephone conference. Due to technical problems and upon approval of the PR, during the first half of the telephone conference, only two of the three designated Tribunal members participated in the telephone conference. After this, the third Tribunal panel member joined the conference call. The PR confirmed the facts provided so far and stated further that she had not given approval that the Horse would be switched to Watussi's stall. The PR stated that she was 20 years old at the time of the Event.

21. The Tribunal accepted all the evidence and briefs filed in this case, including the items filed at the day of the hearing. The Tribunal considered that the parties worked diligently and in an expedited manner to gather and provide evidence and briefs and was of the opinion that the filing made by the PR at the day of the hearing did not prejudice the FEI.

4.5 Jurisdiction

22. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GR and EADMCR.

4.6 The Person Responsible

23. The Rider is the person responsible for the Horse, GR Art. 142 (the "PR").

4.7 The Decision

24. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were accurately performed in an acceptable method and that the findings of E.D.T.R.L are accurate. The FEI Tribunal is satisfied that the test results evidence the presence of Phenylbutazone, a Prohibited Substance.

25. According to EADMCR Art. 3.2.1, FEI-listed laboratories "are presumed to have conducted Sample analysis and custodial procedures in accordance with the FEI Standard for Laboratories". The PR may rebut this presumption by establishing that a departure from the FEI Standard for Laboratories occurred. The PR has not contested the analysis in this case.
26. The FEI has thus sufficiently proven the objective elements of an offence in accordance with EADMCR Art. 3. The Prohibited Substance is a "Medication A" class substance.
27. In doping and medication cases there is a strict liability as described in EADMCR Art. 2.1.1. When a positive case has been proven by the FEI, the PR has the burden of proof to show that she bears No Fault and No Negligence for the violation, EADMCR Art. 10.5.1, or No Significant Fault or No Significant Negligence, EADMCR Art. 10.5.2. The Panel considers that the positive result is sufficient to establish that, on the basis of the explanations given, the PR was negligent by not having ensured that her Horse was competing drug-free at the Event. It is the PR's duty to secure that only grooms look after the horse that are duly informed about doping and medication policy and that a neighbored horse, that needs veterinarian treatment, is immediately separated from her own horse.
28. According to EADMCR Art. 9, disqualification of individual results from the event is automatic when there is a positive finding.
29. In deciding the sanctions, the FEI Tribunal considered, on the one hand, the level of the Event, the medication violation and the type of substance involved, and, on the other hand, the age of the PR and her "amateur" status.
30. According to Art. 173.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

4.8 Disqualification

31. As a result of the forgoing, the Tribunal decides to disqualify the Horse and the Rider from the Event, and that all medals, points and prize money won at the Event must be forfeited, in accordance with Art. 9 EADMCRs.

4.9 Sanctions

32. As a consequence of the foregoing, the FEI Tribunal decides to impose on the PR the following sanctions, in accordance with Art. 174 of the GRs and Art. 10 EADMCRs:

- 1) The Rider shall be suspended for a period of **Two months**

(namely, 60 days) to start immediately and without further notice as of the day of the written notification of this decision. The period of Provisional Suspension shall be credited against the period of ineligibility imposed in this decision.

2) The PR is fined **CHF 1,000.-**.

3) The PR shall contribute **CHF 1,000.-** towards the legal costs of the judicial procedure.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

5.2 The President of the NF of the person sanctioned: Yes

5.3 The President of the Organizing Committee: Yes

5.4 Any other: No

FOR THE PANEL



THE CHAIRMAN Prof Dr Jens Adolphsen