CAS 2022/A/9018 UAE Equestrian and Racing Federation & Ismail Mohd v. Fédération Equestre Internationale (FEI)

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Jacques Radoux, Référendaire at the Court of Justice of the European Union, Luxembourg

Arbitrators: Mr João Nogueira da Rocha, Attorney-at-Law in Lisbon, Portugal

Ms Carine Dupeyron, Attorney-at-Law in Paris, France

in the arbitration between

UAE Equestrian and Racing Federation, Abu Dhabi, United Arab Emirates

First Appellant

and

Ismail Mohd,United Arab Emirates

Second Appellant

Both represented by Mr Lukas Stocker and Mr Emanuel Cortada, Attorneys-at-Law at Bär & Karrer, Zurich, Switzerland

and

Fédération Equestre Internationale (FEI), Lausanne, Switzerland
Represented by Ms Áine Power, FEI Deputy Legal Director, and Ms. Ana Kricej, FEI Legal Counsel

Respondent

I. PARTIES

1. UAA Equestrian and Racing Federation (the "First Appellant" or the "UAEERF"),

2. Mr Ismail Mohd (the "Second Appellant" or the "Trainer") is an FEI registered trainer in Endurance for the United Arab Emirates.

3. The Fédération Equestre Internationale (the "Respondent" or the "FEI") is a Swiss law association established in accordance with Articles 60 et seq. of the Swiss Civil Code, headquartered in Lausanne, Switzerland. It is the sole IOC recognized international governing body for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining and para-equestrian. Its members are the National Federations of the sport.

4. The First and Second Appellant (the "Appellants") and the Respondent are together referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 13 May 2022, a FEI CEI 1* 100 km Endurance Event was held in Windsor, United-Kingdom (the "Event"). During the Event, Mr Manohar Singh Sang Singh (the "Rider") competed with the horse Gheeruula Galaxy (the "Horse"). The Second Appellant was the Horse's trainer at the occasion of the Event.

7. At the end of the last loop and shortly before the finish line, the Horse allegedly accidently tripped and injured itself (the "Incident"). This injury resulted in the Horse's disqualification and the allocation, by the Ground Jury, of the code "SI-MUSCU". This disqualification then led to the infliction of 80 (eighty) penalty points on the Trainer pursuant to Article 864 of the FEI Endurance regulations (the "ERs").

8. On 17 May 2022, the Trainer received an automatic email from the FEI informing him that he had been suspended for two months for having reached the maximum number of penalty points set out in Article 866 of the ERs.

B. Procedural Background

9. On 27 May 2022, the Appellants submitted an appeal brief/request for reconsideration to the FEI Tribunal contesting the decision imposing 80 penalty points on the Trainer and asking the FEI Tribunal to set aside that decision and (i) to remove the penalty points imposed on the Trainer during the Event; (ii) to lift any and all suspensions and restrictions of participation associated with the decision; (iii) to order the FEI to bear the costs of the proceedings and contribute to the legal fees incurred by the Appellants.

10. On 2 June 2022, the FEI requested the FEI Tribunal to first rule on its own jurisdiction, as the FEI considered that the matter was non-appealable pursuant to Article 162.2 and Article 161.2 of the FEI General Rules (the ("GRs"). Further, the FEI argued that the FEI Tribunal had no jurisdiction to adjudicate the matter, which would be a clear field of play decision.

11. On 3 June 2022, the FEI Tribunal requested the Parties to provide some additional information and to answer four questions, in order for the FEI Tribunal to rule on its own jurisdiction.

12. On 8 June 2022, the Parties submitted the requested information and answers.

13. On 13 June 2022, the FEI Tribunal issued the operative part of its decision, declaring the appeal inadmissible.

14. On 27 June 2022, the FEI Tribunal rendered its reasoned decision (the "Appealed Decision"), the operative part of which reads as follows:

    "*1) The Appeal is not admissible.*

    2) All other requests are dismissed.

    3) No Deposit shall be returned to the Appellants.

    4) Each party shall pay their own costs in these proceedings."

15. In the Appealed Decision, the FEI Tribunal, *inter alia*, held that, in the present matter, it was "*not disputed or contested by both parties that the Horse combination was eliminated and disqualified by the Ground Jury for veterinary reasons. In particular, the Appellants admitted having received the Ground Jury decision disqualifying them, and further admitted having not contested said decision - and are still not contesting it in the present Appeal*". Consequently, the FEI Tribunal ruled that the "*Ground Jury's decision to eliminate and disqualify the Horse for veterinary reasons is, as stated in the GRs, a 'Field of Play' decision, not subject to Appeal*".

16. The FEI Tribunal further noted that the "*the Penalty Points are imposed in an automatic manner, depending on the qualification of the incident. It is not a*

decision taken by a disciplinary body, subject to appeal. It is not the Tribunal's role to determine the pertinence of this automatic sanction. It however applies equally to all Athletes and Trainers in Endurance. [...]".

17. The FEI Tribunal went on to consider that while "*the application of [Article 864.1 of the ERs] might be seen unfair by the Appellants in the present matter, it is not the Tribunal's role to evaluate the fairness of a provision in the rules that is automatically applied. The fairness of the provision is a matter for the FEI to evaluate, via its legislative power, with input from the NFs, riders and trainers*" and noted that, on 20 May 2022, the FEI Endurance Director had indicated that the FEI had "*learned from this incident and will consider it for [its] rules revision*".

III. SUMMARY OF THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 11 July 2022, in accordance with Article R47 of the Code of Sports-related Arbitration (the "Code") (2021 edition) as well as Article 162.1 lit b. and Article 162.7 of the GRs, the Appellants filed their Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision. In their Statement of Appeal, the Appellants nominated Mr Dolf Segaar, Attorney-at-Law in Loosdrecht, The Netherlands, as arbitrator.

19. On 13 July 2022, the CAS Court Office acknowledged receipt of the Statement of Appeal, informed the Respondent of the initiation of the present appeals proceedings against it and invited it to nominate an arbitrator within ten (10) days.

20. On 22 July 2022, the Respondent nominated Ms Carine Dupeyron, Attorney-at-Law in Paris, France, as arbitrator and raised an objection as regards Mr Segaar's nomination by the Appellants.

21. On 27 July 2022, the CAS Court Office acknowledged receipt, the same day, by email and via e-Filing, of the Appel Brief and, pursuant to Article R55 of the Code, invited the Respondent to file its Answer within twenty (20) days.

22. On 3 August 2022, Mr Segaar informed the CAS Court Office of his decision to decline his nomination in the present matter.

23. On 4 August 2022, the CAS Court Office invited the Appellants to nominate another arbitrator within ten (10) days.

24. On 8 August 2022, the Appellants nominated Mr João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal, as arbitrator.

25. The same day, the Respondent requested and was granted an extension of ten (10) days to file its Answer.

26. On 29 August 2022, the CAS Court Office acknowledged receipt, on the same day, by email and via e-Filing of the Answer. The Parties were further informed that

unless they agree or the President of the Panel orders otherwise on the basis of exceptional circumstances, Article R56 of Code, provides that the Parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer. The Parties were also invited to state whether they would prefer a hearing to be held in the present matter.

27. On 31 August 2022, the Respondent informed the CAS Court Office of its preference for the Panel to issue an award based solely on the Parties' written submissions.

28. On 5 September 2022, the Appellants informed the CAS Court Office that, given the complexity of the case and the assertions raised by the Respondent in its Answer, they preferred a hearing to be held.

29. On 15 September 2022, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:

President:	Mr Jacques Radoux, Référendaire, Court of Justice of the European Union, Luxembourg
Arbitrators:	Mr João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal
	Ms Carine Dupeyron, Attorney-at-Law in Paris, France

30. On 10 October 2022, the CAS Court Office, on behalf of the Panel, informed the Parties that the Panel had decided to hold a hearing in the present matter.

31. On 23 November 2022, the CAS Court Office sent an Order of Procedure to the Parties, requesting them to return a signed copy of it to the CAS Court Office. On 23 November 2022, the Respondent transmitted its signed copy of the Order of Procedure. The Appellants signed the Order of Procedure on 28 November 2022.

32. On 2 December 2022, a hearing was held via Cisco-Webex. The Panel was assisted by Ms Sophie Roud, Counsel at the CAS. The Panel was joined by the following participants:

For the Appellants:

Mr Lucas Stocker, counsel of Appellants;
Mr Jonás Gürtler, counsel of Appellants;
M. Mia Baric, counsel of Appellants;
Mr Ismail Mohd, Second Appellant;
Mr. Mohammed Essa Al Adhab, representative of First Appellant;
Mr Mahmoud Zyoud, representative of First Appellant, and
Mr Brian Colin Dunn, witness.

For the Respondent:

Ms Áine Power, deputy legal director of the FEI;
Ms Christina Abu-Dayyeh, witness, and
Ms Victoria Ryborn, witness.

33. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel.

34. The Panel heard evidence from the witnesses called by the Parties, who were all invited by the President of the Panel to tell the truth subject to the sanctions of perjury under Swiss law.

35. Following the witnesses' examinations, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard was provided and fully respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellants' submissions

36. The Appellants submit that the jurisdiction of the CAS to hear the present appeal follows from Article R47 of Code read in conjunction with Article 162.1 lit b. of the GRs.

37. As to the applicable law, they maintain that pursuant to Article 39.4 of the FEI Statutes, the Panel shall apply the FEI Regulations and Swiss Law.

38. Regarding the admissibility of their appeal before the CAS, the Appellants submit that the Statement of Appeal was filed within the twenty-one (21) day period set out in Article 162.7 of the GRs. Further, they maintain that they have a current and actual legal interest in the present appeal. First, the decision of the FEI to impose a considerable amount of penalty points on the Trainer would have a highly detrimental effect on the latter's professional career and his good reputation within the equestrian sport. According to constant CAS jurisprudence, an appellant can avail himself of a legal interest to rehabilitate his or her reputation if that reputation is tarnished by the appealed decision or if an appellant considers that he or she has been "wrongly convicted". In the present case, the effect on the Trainer's reputation has been increased by the fact that the Appealed Decision was published on the FEI website without redaction. Second, the Appellants, in their quality of members of the FEI would have a virtual legal interest ("virtuelle Betroffenheit") which, according to the jurisprudence of the Swiss Federal Tribunal (SFT) would suffice to request an abstract judicial review of the compliance of the rule at stake with

mandatory law. Third, as no change of the rule at stake was announced by the FEI in the latest revision process, the First Appellant's membership rights with the FEI are affected, in case FEI regulations are enacted and applied, respectively, in violation of the statutes and/or applicable laws (article 75 of the Swiss Civil Code).

39. Concerning the admissibility of their request for reconsideration before the FEI Tribunal, the Appellants consider that the latter was wrong in holding that the matter in dispute was non appealable as it was a "field of play" decision. The Appellants do not dispute that the decision to eliminate and disqualify the Horse for veterinary reasons was a field of play decision according to Article 162.2 lit. a) of the GRs and they do not challenge that decision. They argue that the subsequent decisions (i) to impose 80 penalty points on the Trainer and (ii) to suspend the latter, and all the horses he is responsible for, for a period of two months, were taken and notified to the Appellants after the end of the Competition and, thus, could not have been protested against within the 30 minutes deadline set out in Article 161.3 of the GRs. Hence, if an appeal against these decisions were inadmissible, the Trainer would be left without any possibility to question the sanction which was a consequence of the decision to eliminate and disqualify the Horse. However, the term "decision" should be, according to CAS jurisprudence, interpreted in a broad manner in order to avoid any restraint regarding the relief available to affected persons. Moreover, and in any event, the decision to impose 80 penalty points on the Trainer and to suspend him would be null and void due to the severity of the defects affecting it. Thus, no contestation period would apply to that decision.

40. As to the scope of the Appeal, the Appellants maintain that although the FEI Tribunal decided that the Appellants' request for reconsideration was inadmissible, this would not, according to Article R57 of the Code, limit the Panel's power to fully review the facts and the law. In the interest of procedural fairness, and in accordance with the principle of speedy resolutions of a proceeding, the Panel should not limit its findings to the procedural aspects of this case and render a new decision also solving the merits of the case.

41. Regarding these merits, the Appellants submit that the decision of the FEI to sanction the Trainer and the underlying FEI regulations stipulating this sanction entirely disregard fundamental legal principles as recognised by standing CAS jurisprudence as well as Swiss law and, thus, cannot be upheld or applied in the present matter. In this regard, the Appellants put forward, *inter alia*, the following arguments:

- the sanction disregards the principle of proportionality which applies, according to CAS jurisprudence, as a general principle to sporting rules and sanctions. In disciplinary matters, each situation should be evaluated on a case-by-case basis and interests at stake should be balanced in respect of the principle of proportionality. Account should further be taken of the seriousness of the facts and other related circumstances as well as of the damage that the penalised conduct entails for the parties involved, for the federation in question and for its sport. All of this to determine a "just and equitable sanction". Hence, a sport governing body cannot

bypass the assessment of the proportionality of a penalty by a mere reference to the wording of the rules. The remark of the FEI Endurance Director in her correspondence dated 20 May 2022, stating that "*unfortunately, rules do not grant us the right to cancel penalty points, despite the circumstances*", would thus not constitute a valid reason. In the present case, there would be a flagrant imbalance between the interests of the FEI to sanction a behaviour that would or could endanger the welfare of the horses and the interest of the Trainer to pursue his employment activity. Given the witness statements of the President of the Ground Jury and the rider, it would be undisputed that the Incident could not have been avoided by the Trainer. This would raise the question on whether the disciplinary sanction is so disproportionate to the penalized behaviour that the rights of the affected parties and thereby also the *ordre public* under Swiss law are infringed;

- the scope of the disciplinary sanction is blatantly excessive as it is not only directed against the Trainer, who was not involved in the Incident, but also covers all other horses he's training as well as their respective athletes, who are affected by the suspension of the Trainer, for at least 30 days, pursuant to Article 828.3 of the ERs. Thus, 42 horses were affected by the decision of the FEI to sanction the Trainer. However, it would be excessive to hold a trainer responsible for the conduct of 42 horses and their respective riders and suspend him or her every time a horse accidentally trips. Furthermore, it would be evident that the nature of the sanction is blatantly excessive as it indirectly affects entirely uninvolved parties. Finally, it would be unclear which behaviour by the Trainer is being penalized. There would simply be no misconduct, for which the Trainer could be disciplined. Equally, the underlying interest in the FEI to prevent horse-abuse would, in the present case, be non-existent as the injury was a "totally normal injury", which happen in this sport and is accepted by all involved parties;

- the Trainer was suspended despite the fact that he bears no fault whatsoever for the Incident. The decision to sanction and suspend the Trainer would thus be unfair and unlawful. Indeed, as confirmed by the witness statement of the President of the Ground Jury, it would be undisputed that the Trainer was without fault in the Incident. An approach to sanction an uninvolved party would totally contradict the notion of fairness and would be unheard of in sports regulations in general and in Swiss law. The liability of the Trainer under Article 864.1 of the ERs in connection to the mechanism of the FEI's automatic suspensions under Article 866.1 of the ERs would completely omit to safeguard the principle of fault regarding the Trainer as well as all other indirectly sanctioned parties. This approach would encompass a high risk of arbitrary decisions for the stakeholders under the jurisdiction of the FEI. Given the strong contradiction between the principle that no sanction can be imposed without fault and the nature of the imposed sanction in the present case, the Appealed Decision cannot not be upheld, and the sanction must be considered void in its entirety. In any event, the relevant provisions cannot be applied without considering the proportionality of the sanction and the degree of fault of the sanctioned party. Finally, in the present case, there would be no valid justification to apply the "strict liability principle" as all parties (rider, trainer etc.) are subject

to disciplinary proceedings before the FEI in order to protect the welfare of the horses;

- the Appealed Decision as well as the underlying decisions of the FEI are violating not only the prohibition of collective punishment but also the right to be heard of the Trainer and the other uninvolved parties, *i.e.* the owners of the other horses as well as the other athletes. These uninvolved parties were not granted a right to be heard before the FEI Tribunal or the CAS. The current system would thus severely infringe the right of the uninvolved and indirectly sanctioned parties to a due process and their respective right to be heard. The application of Articles 864 and 866 of the ERs should thus be restricted;

- there is no legal basis for the imposition of the sanction. On one hand, according to CAS jurisprudence, it would be necessary to determine the spirit of the rule in order to assess its application and effects. In the present matter, the *ratio legis* was to prevent horse abuse. However, it would be obvious from the facts that, in the present case, there is absolutely no connection to any kind of horse abuse. Thus, there would be no legal basis for the Appealed Decision and the sanction imposed therein. On the other hand, contrary to what the CAS has held in its constant jurisprudence, the rule would not be clear as to what is prohibited and what is not. Article 864.1 of the ERs would not allow a trainer to know how he or she needs to adjust his/her behaviour in order to avoid the sanction set out in that rule. This would constitute a violation of the principles of legality and predictability and would be contrary to the constant jurisprudence of CAS in disciplinary matters. Thus, the pertinent provision could not be applied to the present case, rendering the imposed sanction without any legal basis;

- in deciding to impose penalty points and a suspension on the Trainer, the FEI engaged in a surprising application of the law, which, in its arbitrariness, neglects the principle of Equal Treatment as no other trainers were imposed penalty points and suspended under the same circumstances.

42. The Appellants add that the entirely unjustified suspension of the Trainer has led to significant expenses of the First Appellant to become useless. The First Appellant therefore reserves all its rights in this respect, notably, to claim for damage compensation in a later proceeding.

43. In their Appeal Brief, the Appellants request the Panel to issue an award and to:

"*1. Accept the present Appeal and set aside the Appealed Decision in its entirety.*

2. Order that the appeal to the FEI Tribunal was admissible.

3. Order that the FEI wrongly imposed the penalty points and subsequent sanction on Mr. Ismail Mohd for the incident occurred during the CEI 1 100 km ride held in Windsor (UK) on 13th May 2022 and to delete any corresponding information from the FEI databases.*

4. Order the FEI to remove the already published Appealed Decision from the FEI website and issue an official letter declaring that the Trainer has received an unjustified suspension for 2 (two) months. The letter may either be published publicly or alternatively dispatched to the Trainer by electronic mail as deemed appropriate by the CAS.

5. Rule that articles 864 and 866 of the FEI Endurance Rules 2022, or any of its later versions containing the same provisions, cannot be applied by the FEI in towards a trainer, without taking into account the degree of fault and the principle of proportionality.

6. In any event, to charge all costs of these proceedings to the Respondent and to grant a contribution to the legal fees of the Appellants."

B. The Respondent's submissions

44. As a preliminary point, the Respondent stresses that the welfare of the horse is paramount to the FEI and explains that Endurance riding is a very challenging discipline, the horses being ridden across courses of 100-160km over one to three days. Varied terrain and climate conditions would add to the challenge. To protect the welfare of the horses featuring in endurance events, the courses are divided into loops, and before the first loop and at the end of each loop, the horses must be rested and undergo stringent veterinary inspections at the "vet gate". The horses are only allowed to continue the competition if they successfully pass the veterinary inspections. If a horse fails an inspection, it is classified as "Failed to qualify" (FTQ). Endurance riding would therefore be all about good horsemanship, and the ability to navigate a horse successfully over a challenging course while ensuring that it remains fit to complete the course and pass all the required veterinary inspections. Performance would be dependent not only on the performance on the day and the skills of the athlete but also on how the horse has been prepared for the ride by its trainer in terms of its training load, rest period and the trainer's knowledge of the horse's capability and condition.

45. Hence, the ERs that were approved in 2019 and came into force in 2020 highlighted the key role the trainer plays in the discipline of Endurance. The ERs would place significant emphasis on the role of the trainer in recognition of the fact that, unlike the FEI's other disciplines, it is the trainer, rather than the athlete, who has primary care of the Horse in the period prior to and post competition and who is almost solely responsible for the preparation of the horse for the Competition. Quite often, the athlete would only ride the horse at the competition and would not ride it again until the next competition. The special responsibilities attributed to the trainers would be reflected in Articles 800.4 and 800.5 of the ERs. As stated by the FEI during the hearing, in 2019, the extension of the penalty point system trainers was made further to the proposal of the Endurance Temporary Committee in order to ensure that there would be consequences for trainers "*if horses that they trained were eliminated from competitions, thereby discouraging them from training practices that might lead to serious injury (such over training, high speeds,*

insufficient rest periods), which had been identified as a significant cause of serious injuries to Endurance horses".

46. The FEI further highlights that the UAEERF was strongly opposed to the reform of the ERs in 2019 and, in particular, to the proposed rule change to Article 866, arguing that the threshold for penalty points to trigger a two months suspension for a trainer should be set at 300 penalty points rather than 100 penalty points.

47. As regards the jurisdiction of the CAS to hear the present appeal, the FEI does not contest that jurisdiction.

48. However, the FEI points out that this does not mean that the present appeal is admissible. Indeed, as the Appeal seeks to overturn the automatic consequences of a field of play decision, *i.e.* the decision of the Ground Jury that the Horse failed to qualify (FTQ) and to attribute the code "SI-MUSCU", the Appeal should be dismissed. According to the "field of play" doctrine, which would be enshrined in the GRs (Article 161.2 and 162.2 of the GRs), the decisions of the Ground Jury arising from the field of play are final and binding and would not be subject to appeal. A protest against the decision of the President of the Ground Jury, who signed the results of the Event, was possible within thirty (30) minutes of the announcement of the results. However, the Appellants did not file such protest and thereby effectively waived their right to challenge the decision, and the related consequences, to designate the horse as "FTQ-SI-MUSCU". Given that there were no further decisions by the FEI to impose the 80 penalty points or to suspend the trainer, these consequences having automatically resulted from the elimination for "FTQ-SI-MUSCU", these resulting consequences would equally be immune from challenge in an appeal procedure before the FEI Tribunal or the CAS. The FEI IT/Results system would include many automated functions as it would simply not be possible for FEI Headquarters to manually manage each aspect/consequence arising from the results of the competitions at the five thousand (5000) FEI events that are being held each year. The automated nature of the penalty point and two months suspension system would be confirmed by the FEI's Head of Service and Support in the Sport and Technology Department. Moreover, according to the definition set out in the FEI Statutes, a "decision" would be an "*authoritative determination reached or pronounced after consideration of facts and/or law*". Neither the automatic application of the 80 penalty points nor the automatic suspension the Trainer once he reached 100 penalty points could reasonably be said to come within the parameters of that definition.

49. In case the Panel were not to follow this main line of argumentation, *i.e.* that the Appeal is inadmissible, the FEI argues, *inter alia*, that:

- the Appellants' submissions on how the Horse sustained the injury are irrelevant insofar as they are contrary to the intention of the drafters of the ERs. Indeed, neither Article 864 of the ERs nor the definition of "Serious Injury" in the ERs would make any reference to the relevance of how such injury is caused. However, according to constant CAS jurisprudence, a panel "*must interpret the rules in*

keeping with the perceived intention of the rule maker, and not in a way that frustrates it" (CAS 2001/A/354 & 355). An interpretation of Article 864 of the ERs according to which its provisions would only apply where the officials of the FEI can establish that the athlete/trainer is at fault for the particular injury or that the injury was non-accidental, would frustrate the intention of the FEI's rule maker and would run contrary to the clearly drafted provisions of that Article. If the drafters of the rules had intended for there to be an analysis of the cause of every musculoskeletal injury before penalty points could be applied, then the rules would have provided an appropriate processes or mechanism for officials to establish the cause of the injury. However, no such process or mechanism is included in the ERs;

- in any event, there isn't any real evidence that would prove, to any reasonable standard of proof, how the Horse suffered the injury. Indeed, there would be no photograph of the alleged "rabbit hole" nor a veterinary report confirming that the injury suffered is consistent with the "rabbit hole" explanation. There would be no measurements of the alleged "rabbit hole" and no other horses have encountered a problem with the alleged "rabbit hole". The witness statement and the testimony of the President of the Ground Jury have a reduced evidentiary weight as the President did not himself witness the Incident but was informed of the Incident by someone else. Moreover, the credibility of this witness would be doubtful. Further, there would be no evidence that would exclude the possibility that, earlier during the ride, the Horse might already have sustained a related injury that contributed to the later serious injury, nor have the Appellants excluded the possibility that the Horse was (over)trained in such a way that meant that it was potentially fatigued and therefore not able to cope with a change in footing that the presence of a "rabbit hole" or similar change in footing/terrain might cause. There would also be no evidence as to the non-responsibility of the Trainer in the injury of the Horse. Indeed, the FEI would have no way of knowing whether the training methods of the Trainer might have contributed to the injury because the actual cause of the injury has not been established, not even by the Appellants themselves. In Endurance sport, the assumption must be that the horses should be trained and ridden in such a way as to be able to cope with challenging terrains that can change throughout the ride. Finally, the system proposed by the Appellants, *i.e.* in which penalty points can only be imposed where the injury is non-accidental, would not be workable in practice as it would be very difficult to prove the cause of a musculoskeletal injury. This would be why the ERs do not link the cause of the injury with the consequences in terms of penalty points, elimination etc. The mere fact that the injury occurred is sufficient. Otherwise, Officials would end up spending a significant portion of their time trying to establish how and why an injury occurred; lawyers and veterinarians would inevitably be called in with the consequence that it could take weeks or even months to finalise the results of a competition. In view of all of these elements, one must conclude that as the Appellants have failed to demonstrate, to any reasonable standard of proof, how the injury occurred, their arguments in relation to fault, disproportionality, strict liability and *nemo pro casu tenetur* fall;

- Articles 864 and 866 of the ERs, were validly approved and accepted by the FEI General Assembly in 2019 and this by a vast majority. Even the UAEERF did not express any opposition to the concept of the expansion of the penalty point system to also apply to trainers. Nor did the UAEERF comment on or oppose the proposed rule change that would apply 80 penalty points on a trainer of a horse who suffered musculoskeletal injury. The UAEERF did however oppose the change to Article 866 and argued that the threshold for a suspension to apply should be 300 penalty points and not 100 penalty points. However, as mentioned, a vast majority of National Federation supported the rule change. Since the FEI General Assembly in 2019, with the exception of the UAEERF's recent request, not a single National Federation has requested the FEI to amend the new rules, despite having had the opportunity to do so via the 2020, 2021 and 2022 rule revision processes;

- the FEI General Assembly is the only body with the authority to adopt and approve Sports Rule changes. However, the Appellants would try, with their appeal, to usurp the statutory power of National Federations to make changes to the Sports Rules by requesting the Panel to effectively amend Articles 864 and 866 without the need to go through the full consultation process with other National Federations as required under the FEI rules revision process and without giving the National Federations the right to approve the proposed change. By doing so, the Appellants would blatantly ignore the membership rights of their fellow National Federations, as per the Swiss Civil Code, to approve rule changes;

- given that the Trainer's suspension had already expired by the time that the Appellants filed their Appeal to the CAS and given that the Trainer has not demonstrated the allegedly suffered harm, the Trainer's claims for relief are moot. Moreover, the FEI points out that it never stated that the injury suffered by the Horse was due to horse abuse on part of the Trainer. Indeed, the rules set out in Articles 864 and 866 were aiming at preventing injuries in Endurance riding and not "horse abuse" as such. The FEI would have a separate and distinct set of rules to deal with cases of "horse abuse". It would thus also be wrong to state, as the Appellants do, that the "*Trainer is stigmatized as an abuser*". Regarding the claim that the publication of the Appealed Decision on the FEI website caused further damage to the Trainer's reputation, the FEI points out that the publication of FEI Tribunal's decisions is mandated by the Internal Regulations of the FEI Tribunal and that none of the Appellants made a request to the FEI Tribunal to not publish the Appealed Decision or to redact parts of it. Thus, this argument would not be well founded;

- the Appellants' prayers for relief are not well founded insofar as the appeal before the FEI Tribunal was indeed inadmissible, as the automatic sanctions applied were required by validly approved rules, as the publishing of the Appealed Decision was in full compliance with the Internal Regulations of the FEI Tribunal and as the Trainer was not suspended for "unjustified" reasons but because he had exceeded 100 penalty points. As regards the Appellants' request for a ruling from the Panel that Articles 864 and 866 of the ERs cannot be applied by the FEI towards a trainer, without considering the degree of fault and the principle of proportionality, the FEI

argues that only the FEI General Assembly, as the supreme authority of the FEI has authority to amend the ERs. To rule otherwise would be contrary to the Swiss Civil Code. This request for relief would thus be beyond the remit of the Panel to grant.

50. In view of all the above considerations, the Respondent asks the Panel to:

"*Dismiss the Appeal in its entirety; and*

Order the Appellants to pay a contribution towards the FEI's legal fees and other expenses incurred in connection with these proceedings, in accordance with Article 159.4 of the FEI General Regulations and the FEI Guidelines for Fines and Contributions towards Legal Costs."

V. JURISDICTION

51. Article R47 of the Code provides, *inter alia*, as follows:

"*An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*"

52. Article 39.1 of the FEI Statutes (2021) provides that the CAS "*shall judge all Appeals properly submitted to it against Decisions of the FEI Tribunal, as provided in the Statutes and General Regulations*".

53. Pursuant to Article 162.1 lit b. of the GRs (2021), an "*Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided It is admissible (see Article 162.2 below): [...] (b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department*".

54. In the present matter, the Appealed Decision was rendered by the FEI Tribunal acting as a final instance within the FEI.

55. In the light of the foregoing, the Panel finds that the CAS has jurisdiction to hear the present appeal. The jurisdiction of the CAS is also confirmed by the Parties' signature of the Order of Procedure.

VI. ADMISSIBILITY

56. First, as regards the admissibility of the Appeal, the Panel recalls that Article R49 of the Code provides as follows:

> "*In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.*"

57. According to Article 162.7 of the GRs, "*[a]ppeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the [Code] so as to reach the CAS within twenty-one (21) days of the date on which the notification of the FEI Tribunal Decision was sent to the National Federation of the Person Responsible*".

58. In the present matter, it is uncontested that the Appellants were notified of the Appealed Decision on 27 June 2022. They subsequently filed their appeal on 11 July 2022.

59. This appeal, therefore, was filed on a timely basis and is, as regards the deadline within in which it was filed, admissible.

60. Next, concerning the Respondent's submission that the Appeal is inadmissible as the automatic consequences at the heart of the present matter arise directly from a field of play decision, *i.e.* the decision of the Ground Jury to attribute the Horse the code "FTQ-SI-MUSCU", and therefore enjoy the same immunity from challenge as that field of play decision, the Panel observes that it follows from the legal authorities submitted by the Respondent in support of its submission that the qualified immunity of field of play decisions is not unlimited and that a distinction must be made between the "Rules of the Game" and their application, on the one hand, and the "Rules of law", on the other hand (The Field of play, Michael J Beloff QC and Ruppert Beloff, Halsbury's Laws of England, Centenary Essays, p. 147). As pointed out in that article, the "*rules of law are of a different nature. They are proper statutory sanctions that can affect the judicial interests of the person upon whom a sanction has been imposed other than in the course of the game or competition. For this reason, they have to be subject to judicial review*".

61. Further, as is apparent form the award in CAS 2010/A/2090, also relied upon by the Respondent, according to constant CAS jurisprudence, "*there are a number of exceptions to the principle of the non-reviewability of 'decisions on the rules of the*

game', and [...] the boundaries between the scope for action, which is not regulated by the law, and the scope for action, which is limited by the law, are not very clear and are often a matter of controversy in legal literature [...]. This is so, for instance, if the federation's internal measure causes an immediate effect beyond the playing field and has an adverse effect on the party concerned either in terms of his rights of personality or directly in terms of his assets (ATF 118 II 12, 16 sq. 120 II 139, 370 seq.) or if the rule of the game was applied completely arbitrarily and therefore there was no substantive relation between the application of the rule of the game and the game itself (ATF 118 II 12, 16; 108 II 15, 21)".

62. As one author has observed with reference to the jurisprudence of the Swiss Federal Tribunal, "*la jurisprudence semble réduire progressivement le champ d'application de la règle de jeu au profit de celui de la règle de droit*" [free translation: "the jurisprudence seems to progressively reduce the scope of application of the rule of the game in favour of that of the rule of law"] (Droit du Sport, Piermarco Zen-Ruffinen, Schulthess, 2002, p. 479). This conclusion is particularly correct in view of the Swiss Federal Tribunal's judgement in case ATF 120 II (369, 371) (consid 2.) where it made a distinction between a sanction falling in the scope of the rule of law and a sanction falling in the scope of the rule of the game ("*la sanction ressortit au droit, et non au jeu*") when considering that the sanction at hand, which was a suspension of a trainer, went way beyond a simple sanction aiming to insure the correct running of a game ("*la suspension infligée à l'intimé [...] va bien au-délà d'une simple sanction destinée à assurer le déroulement correct d'un jeu*").

63. In any event, still according to the Swiss Federal Tribunal, the distinction between rules of the game and rules of law is devoid of pertinence in case of adverse effect of a party's rights of personality ("*la distinction entre règles de jeu et règles de droit est dénuée de pertinence en cas d'atteinte aux droits de la personnalité*", ATF 120 II 369, 371).

64. In the present case, the Panel shares the Parties' position that the decision of the Ground Jury to attribute the Horse the Code "FTQ-SI-MUSCU" qualifies as a "field of play decision" in the sense of the above-mentioned CAS jurisprudence.

65. However, in light of that same jurisprudence and the jurisprudence of the SFT, the Panel finds that a clear distinction must be drawn between the Ground Jury's decision and, as the Respondent calls it, the "automatic consequences", *i.e.* the "automatic nature of the penalty point and 2 months suspension system", that followed that field of play decision. Indeed, in the present matter, it is manifest that the attribution of the penalty points and the suspension of the Trainer for having reached the mark of 100 penalty points did not aim at securing a proper and correct running of the competition at which the Horse competed and during which it was disqualified. As argued by the Respondent, these consequences aim at holding a trainer responsible for the appropriate physical and mental preparation of the horses he/she trains. Further, as is apparent from the heading of the Chapter IX of the ERs in which Articles 864 and 866 are included, *i.e.* "Disciplinary", these provisions are

of a "disciplinary" nature. They start and continue to produce their effects only after the end of the competition or event during which the occurrence that triggered the imposition of the penalty points in question.

66. Moreover, and in any event, as it is undisputed that the consequences set out in Article 866 of the ERs and applied in the present case affected, *inter alia*, the Trainer's rights of personality as the two months suspension he had to serve had an impact on his economic/professional activity, the question whether or not these consequences are part of the field of play decision is, pursuant to the jurisprudence of the SFT, irrelevant for the determination of the admissibility of the Appeal insofar as the FEI Statutes and regulations, in particular Articles 38 and 39 of the FEI Statutes, do not attribute exclusive jurisdiction to the competent civil courts in Lausanne, Switzerland, to hear the present matter/appeal.

67. In view of the above, the Panel finds that the "automatic consequences" against which the Appeal is directed cannot be considered as integral part of the field of play decision rendered by the Ground Jury and that the Appeal is, thus, admissible *ratio materiae*.

68. Lastly, concerning the Respondent's submissions according to which neither of the Appellants has a sufficient and actual legal interest in the outcome of the present proceedings, the Panel refers to the award in CAS 2016/A/4602 in which the panel held that in "*principle, a request is inadmissible, if it lacks legal interest ('Rechtsschutzinteresse', 'interet à agir'). This condition of admissibility is explicitly provided for in Art. 59 (2) lit. a of the Swiss Code of Civil Procedure [...]. Thus, a reasonable legal interest is a condition for access to justice. A court shall only be bothered to decide the merits of a request, if the applicant has a sufficient legal interest in the outcome of the decision. If – on the contrary – the request is not helpful in pursuing the applicant's final goals, the scarce judicial resources shall not be wasted on such matter. The condition of sufficient legal interest serves first and foremost public interests, i.e. to restrict the case load for the courts by striking 'purposeless' claims from the court's registry. This public interest is clearly evidenced by the fact that the courts examine this (procedural) condition sua sponte (Art. 62 CCP). Even if aspects of public interest before state courts are not easily transferable mutatis mutandis to arbitration proceedings (cf. GIRSBERGER/VOSER, International Arbitration, 3rd ed. 2016, no. 1194), this Panel holds that a claim shall be deemed inadmissible if it clearly does not serve the purpose of the Appellant*".

69. In another CAS case, the sole arbitrator considered that "*since the requirement of a legal interest determines if in a given case whether a claimant has access to justice, the bar must be set with prudence and – in any respect – not too high. […] In principle, the Sole Arbitrator finds that the threshold for a legal interest must be set low before an arbitral tribunal. The prerequisite of a legal interest is designed to protect the courts from being deadlocked with needless disputes. The prerequisite, thus, helps to manage the work load of the courts and to protect scarce public resources. The answer to the question, however, what disputes shall be considered*

'needless' is very different in cases in which the state provides and pays for courts that adjudicate a dispute compared to cases where the parties mandate and pay (in full) a private institution to adjudicate the matter. In the latter case, a legal interest should only be denied if there is no benefit for the party whatsoever in obtaining a judgement in this matter in his or her favour" (CAS 2017/A/5054).

70. In the present matter, the Panel considers that independently of which of the above-mentioned CAS jurisprudence it follows, and contrary to what the Respondent argues, both Appellants have each a sufficient and actual legal interest in the outcome of the Appeal.

71. On the one hand, the UAEERF, as a member of the FEI who has not voted in favour of the adoption of the relevant provisions, has, as such, a sufficient legal interest in assuring that these provisions are not only conform to Swiss law but are applied to its own members in a way that is conform with Swiss law. This finding is not affected by the argument according to which the First Appellant has not validly challenged the FEI General Assembly's decision to adopt the relevant rules within the twenty-one (21) day deadline set out in that regard. Indeed, the Panel shares the First Appellant's view that it was reasonably entitled to believe that the provisions in question would not be applied in the way there were in a case like the one at hand. Although the wording of Article 864 does not exclude an application like the one at hand, there is room to argue that it could have been reasonably expected that in case it is obvious that a horse suffered an injury by pure accident, a trainer or even an athlete could be allowed to ask for a reconsideration of the sanction, *i.e.* the imposition of penalty points set out in that provision. The First Appellant's argument that the application of Article 864 of the ERs to a trainer in case of accidental injury of a horse came as a surprise is not invalidated by the Respondent's claim according to which that provision has, since it entered into force, been applied to eight (8) trainers as the figures advanced by the respondent do not allow to make any inference as to the origin of the injury that led to the imposition of the penalty points on those trainers. In view of these considerations, the Panel finds that the First Appellant has a sufficient legal interest in the present Appeal.

72. On the other hand, given that the Second Appellant has been directly affected by the Appealed Decision upholding his automatic suspension, it is manifest that he had a legal interest to see that Appealed Decision overturned. The Panel considers that that interest has not disappeared with the end of the Trainer's two (2) months suspension as it is undisputed that the provisions the application of which led to said sanction are still in force today and that, consequently, they might be applied to the Trainer in the same way at any moment. According to the jurisprudence of the CAS, in these circumstances the condition according to which the legal interest of the appellant must exist at the moment of the filing of the appeal as well as at the moment the judgment is being rendered does not apply ("*La jurisprudence fait exceptionnellement abstraction de l'exigence de l'intérêt actuel lorsque la contestation peut se reproduire en tout temps dans des circonstances analogues, que sa durée brève empêcherait systématiquement à l'autorité de vérifier la légalité*

de la solution, et qu'en raison de sa portée de principe, il existe un intérêt public suffisamment important à trancher de la question litigieuse […]") (TAS 2014/A/3745). In light of the above, the Panel finds that the Second Appellant manifestly has a sufficient legal interest in obtaining a judgement in this matter according to his requests.

73. In view of the above considerations, the Panel finds that the Appeal is admissible.

VII. APPLICABLE LAW

74. Article R58 of the Code provides as follows:

"*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*."

75. Thus, the applicable law according to which the Panel has to decide the Appeal are the FEI Statutes and regulations, in particular the GRs and the ERs.

76. According to Article 39.4 of the FEI Statutes (2021), the "*parties concerned acknowledge and agree that the seat of the CAS is in Lausanne, Switzerland, and that proceedings before the CAS are governed by Swiss law*".

77. Further, pursuant to Article 167.2 of the GRs (2020), "*[t]ese FEI General Regulations and any dispute arising out of or in connection with them (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed in accordance with Swiss law.*"

78. The Panel will therefore apply the FEI Statutes and Regulations and, subsidiarily, Swiss law.

VIII. PRELIMINARY PROCEDURAL ISSUES

A. Respondent's request to file additional evidence

79. As a first preliminary point, concerning the Respondent's request, raised during the hearing, to file supplementary evidence, *i.e.* an email exchange involving Mr Brian Colin Dunn, the President of the Ground Jury at the Event, called as a witness by the Appellants, the Panel, in view of the Appellants' objection and in absence of any exceptional circumstances in the sense of Article R56 of the Code, held, during the hearing, that that request must be rejected. Indeed, the Respondent was in possession of the relevant email exchange well in advance of the hearing and could have produced that email exchange when it became obvious from the hearing

schedule agreed upon by the Parties, i.e. 23 November 2022, that Mr Dunn was supposed to appear as a witness during the hearing. The timely filing of this supplementary evidence would not have negatively affected its evidentiary weight as its aim was mainly to put into doubt the credibility of that witness. Thus, the Panel decided to not admit that supplementary evidence.

B. CAS scope of review

80. As a second preliminary point, the Panel notes that Article R57 para. 1 of the Code provides as follows: "*The Panel has full power to review the facts and the law*".

81. Article R57 para. 1 of the Code generally grants CAS panels the power to review the appealed decision *de novo*. However, this power of the panels may be limited to the scope of the dispute of the previous instance. In other words, if, according to Article R57 para. 1 of the Code, the present Panel has full power to review the facts and the law, it is clear from constant CAS case law, that these powers are limited to the matter in dispute before it and cannot go further than what was at dispute before the previous instance (CAS 2010/A/2090 and CAS 2019/A/6483).

82. Against this background, the Panel observes that although the Appealed Decision declared the Appellants' appeal/request for reconsideration inadmissible because it considered the present matter to be "*non-appealable*", this does not mean that the dispute brought before the FEI Tribunal by the Appellants was limited to the question of the admissibility of their appeal/request for reconsideration.

83. In such a case, according to CAS jurisprudence, a "*panel's full power of review is not limited by the fact that the first instance adjudicator decided that it did not have jurisdiction. The Panel, ex Art. R57 of the [Code] can chose between a new decision that replaces the previous decision (a decision stating that the Single Judge did have jurisdiction and solving on the merits does precisely that) or referring the case back to the previous instance. No limits are imposed on this choice*" (CAS 2014/A/3962).

84. Furthermore, all Parties have accepted the application of Article R57 of the Code, providing the Panel with a full power of review over the case.

85. In light of the above, and in consideration of the fact that the Panel has found that the "automatic consequences" against which the Appeal is directed cannot be considered as integral part of the field of play decision rendered by the Ground Jury, hence that the Appeal is admissible *ratio materiae*, as well as of the fact that a quick and final resolution of the present dispute is in the interest of all Parties, the Panel decides to review the case on its merits.

IX. MERITS

86. In order to address the Appellants' argument according to which the sanctions set out in articles 864 and 866 of the ERs and imposed on the Trainer are infringing the principle of proportionality, the Panel recalls, first, that Swiss law, which is applicable in the present proceedings, requires that a sanction comply with the principle of proportionality (TAS 2007/O/1381, CAS 2013/A/3297).

87. For a sanction to comply with this principle of proportionality, there must be a reasonable balance between the kind of the misconduct and the sanction (BK-Riemer, CAS 2005/C/976 & 986, CAS 2013/A/3297). Further, according to constant CAS jurisprudence, in "*administrative law, the principle of proportionality requires that (i) the individual sanction must be capable of achieving the envisaged goal, (ii) the individual sanction is necessary to reach the envisaged goal and (iii) the constraints which the affected person will suffer as a consequence of the sanction are justified by the overall interest in achieving the envisaged goal. A long series of CAS decisions have developed the principle of proportionality in sports cases. This principle provides that the severity of a sanction must be proportionate to the offense committed. To be proportionate, the sanction must not exceed that which is reasonably required in the search of the justifiable aim*" (amongst many, CAS 2010/A/2268, CAS 2013/A/3297 and 2019/A/6541).

88. Hence, in order to examine the proportionality of the sanction, the Panel must first determine what "misconduct" the provisions are aiming to prevent. In this regard, according to consistent CAS case law, "*for a sanction to be imposed, a sports regulation must prescribe the misconduct with which the subject is charged, i.e., nulla poena sine lege (principle of legality), and the rule must be clear and precise, i.e., nulla poene sine lege clara (principle of predictability)*" (see, for example, CAS 2019/A/6226 and CAS 2017/A/5086).

89. Indeed, as stated in another CAS award:

> "*The purpose of disciplinary sanctions is to influence the behaviour of its members, in particular to encourage them not to engage in certain unwanted activity by threatening to sanction them. In order to achieve this goal, there must be clarity for all stakeholders on what constitutes misconduct. Furthermore, equal treatment of all members is only possible if there is legal certainty with respect to the contents of the rule. In order to protect the aforementioned interests, criminal law follows tire principles of nullum crimen, nulla poena sine lege scripta et certa, pursuant to which no sanction may be imposed unless there is an express provision describing in sufficient clarity and specificity, not only the misconduct but also the applicable sanction*" (CAS 2017/A/5272 and CAS 2020/A/7019 & 7035).

90. The Panel shares the view of the panels in CAS 2017/A/5272 and CAS 2020/A/7019 & 7035, according to which the above-mentioned "*principle is applicable by analogy to disciplinary proceedings, although not the same high*

criminal law standards. It suffices that the misconduct covered by the respective rule and the sanction applicable to such misconduct be determinable by interpretation".

91. If, in the present matter, it is not contested that there are rules setting out the disciplinary sanction, *i.e.* Articles 864 and 866 of the ERs, which are found in Chapter IX of these ERs entitled "*Disciplinary*". However, the "misconduct" that the sanctions aim to prevent is not expressly mentioned in those rules.

92. In this regard, the Panel notes that, in its written submission, the FEI stated that its rules aim at discouraging "*training practices that might lead to serious injury (such as over training, high speeds, insufficient rest periods), which had been identified as a significant cause of serious injuries to endurance horses*". Similarly, in its closing statements, the FEI argued that the "*legitimate aim of the rule is to prevent these injuries from ever occurring in the first place. We're trying to change behaviour on the part, particularly of the trainers, [...] acknowledging the role of the trainer in the preparation of horses for endurance events. It's the only discipline in the FEI rule book that the trainer can be directly sanctioned from incidents that happen in competition and that's because reality is, in many regions, and often the athlete sometimes only meets the horse the day of the ride, they are not involved in the actual preparation of the ride at all and the studies [...] show that injuries are more likely to happen due to overtraining. That's why we needed to bring the trainer into the loop of this and make them subject to potential sanctions in order [...] to change behaviour, to modify training practices so that their horses are less likely to incur these kinds of injuries*."

93. It is clear from the above that the "misconduct" or "wrongful act" that the FEI intended to sanction is the bad training practices that, according to the studies referred to by the FEI, are likely to lead to serious injuries or at least are increasing the risk of those serious injuries to occur in endurance sport. The Panel considers that such an aim is, given the paramount importance that the FEI Statutes attribute to the welfare of the horses, certainly a legitimate aim and observes that the legitimacy of this aim as well as the fact that bad training practices leading to serious injuries should be fought and considered as misconduct are not contested by the Appellants.

94. As explained by the FEI during the hearing, given that it would be materially very difficult for the FEI to establish that a serious injury like the one at hand, *i.e.* SI-MUSCU, occurred because of bad training practices imposed by the trainer, the FEI chose to link the sanction of the misconduct it aims to prevent to the consequences that would, according to the studies it referred to, derive thereof, *i.e.* the injury of the horse. By shifting the emphasis from the reprehensive misconduct or wrongful act to its consequences and by holding the trainers liable without attributing any consideration to their level of guilt, the relevant ERs provisions establish, as the Appellants maintained, a "strict liability" rule comparable to the one existing in the anti-doping regulations.

95. The question, indirectly raised by the Appellants, whether such a system of strict liability is justified in Endurance Riding is, in the Panel's view, irrelevant to the outcome of the present matter. Indeed, the Panel considers this is a question for the legislator, in this case the FEI General Assembly, to decide. In the present proceedings, the Panel's task solely resides in assessing whether or not the imposed sanctions are legally sound.

96. Regarding a strict liability rule, the Panel shares the opinion of the panel in CAS 98/222 which observed that "*in the context of law in general, the effect of any rule of law imposing strict liability is merely to render obsolete the proof of guilt on the part of the person subjected to the regime of strict liability, while on the other hand such rule does not eliminate the need to establish the wrongful act itself and the causal link between the wrongful act and its consequences*".

97. Concerning the shift of emphasis that sports federations have done, for example in doping matters, from the wrongful act to its consequences, the panel in CAS 98/222 noted:

> "23. *While – from the point of view of sports federations – such a shift is easily understandable and could be explained by similar policy considerations as quoted above in the context of the discussion of the strict liability rule, and namely by the requirement of efficient fight against doping [...], it is equally true that this shift from the wrongful act to its consequences is capable to have significant impact on the legal situation of the accused athlete and on his right of defence. It is therefore appropriate to scrutinize such regulatory practices and its implementation in practice also from the aspect of general principles of law and the requirements of fair trial.*
>
> *24. In the opinion of this Panel, a rule of law penalizing a forbidden consequence instead of a wrongful act can be justified -when observed from the aspect of general principles of law – only as long as there is no doubt whatsoever that the incriminated consequence has occurred can occur exclusively as a result of the wrongful act against which the rule is directed.*
>
> *25. In other words, if – for practical reasons related to enforceability – the governing body chooses to penalize a consequence (presence of forbidden substances) instead of the wrongful itself (application of such substances), the causal link between the latter and the former must be absolutely clear and indisputable*".
>
> *26. In civil (tort) law, there is no general presumption of causal link between the wrongful act and its consequences. Even in cases of strict liability, where no proof of guilt is required, the causal link between the latter and the former still remains an issue to be proved by the part invoking such liability. Having in mind the specific disciplinary ('quasi-penal')*

> *character of the anti-doping investigations and sanctions, it seems to be hardly acceptable to interpret the rule on strict liability against the person submitted to such liability even more severely than in civil law in which this concept has its roots. The existence of a causal link between a wrongful act and its consequence therefore remains to be an item to be proven by the party whose arguments are based on such consequence*".

98. The Panel considers that the above reasoning is, by analogy, transferable to the provisions of the ERs at the centre of the present dispute, as they establish a strict liability system in which the emphasis is placed on the consequence, *i.e.* the serious injury of a horse, attributed to the misconduct or wrongful act, *i.e.* the bad training practices of its trainer, the two elements being linked by the presumption, resulting from the scientific studies on the risk factors in endurance riding relied upon by the FEI, that bad training practices lead to injuries in the horses participating in endurance events.

99. The present Panel shares the view of the panel in CAS 98/222 according to which such a "scientific presumption" may justify the legal rule sanctioning a consequence of the wrongful act and not the act itself, under the condition that science leaves no doubt that this "*consequence can occur only in one single manner, i.e. by the wrongful act*". However, if the scientific presumption at the basis of such a system leaves some room for other causes or acts to have led to the sanctioned consequence, the party relying on such presumption will have to establish that the consequence (the serious injury of the horse) has indeed occurred as a consequence of the misconduct or wrongful act (bad training practices) and a rule, like the one at stake, sanctioning the serious injury of a horse and allowing no discussion of the real cause of such injury, would, according to the Panel, not be justified (CAS 98/222).

100. In the present case, it is not contested that horses may suffer serious injuries due to bad training practices of their trainers. However, the Panel finds that there is no scientific proof that a serious injury like the one suffered by the Horse could only occur due to bad training practices imposed by the Trainer. […] According to the Panel, incidents/accidents do happen and all athletes, might they be the best trained and supported athletes in the world, suffer occasionally injuries whilst training or competing. There is no proof that this would not apply to horses or other animals.

101. The Panel considers that, in view of the above, rules, like the ones set out in Articles 864 and 866 of the ERs, which try to impose strict liability must, if the sanctioned consequence may have another cause than the misconduct or wrongful act these rules try to prevent, leave some room for a defence by the person submitted to such liability. Indeed, without the existence of an "established" causal link between the consequence and the misconduct, there is no possibility whatsoever for a disciplinary body and/or a panel to assess, as requested by the principle of proportionality, whether there is a reasonable balance between this misconduct and the sanction and/or whether the sanction does not exceed that which is reasonably required in the search of the justifiable aim.

102. Admittedly, as the panel in CAS 98/222 has observed, when determining which party has to prove the existence or inexistence of the causal link between the misconduct or wrongful act and the sanctioned consequence, legal and policy considerations should be taken into consideration. This Panel considers that in a situation like the present, where there are uncertainties as to the scientific cause of the injury, an absolute presumption concerning the causal connexion between the sanctioned misconduct and the injury cannot be upheld. In such a scenario, the burden of proof should be distributed in a legally justified and equitable manner (CAS 98/222) and the person submitted to the liability should in any event have the right to provide evidence rebutting any presumption laid down by the rule of law.

103. In the present matter, first, although it is not scientifically established that an injury like the one at hand can only occur due to bad training practices of a trainer, Article 864 of the ERs does not provide a trainer with any right to rebut the non-scientific presumption according to which the injury was due to bad training practices and does not oblige nor allow the FEI provide additional evidence supporting the presumption on which it relies. In these circumstances, the Panel considers that the causal link between the sanctioned consequence and the misconduct Article 864 tries to prevent is not established. However, without such causal link, the misconduct is not established and, consequently, no sanction can be imposed without violating the principle of proportionality.

104. Second, given the clear wording of the relevant provision and in light of the explanations provided by the FEI regarding its genesis, the Panel considers that, in the absence of any alternative procedural mechanism set out in the ERs or the FEI's Statutes and regulations allowing the Panel, in a case like the present, to examine whether or not the misconduct, which Articles 864 and 866 of the ERs aim to prevent, has effectively occurred or whether such misconduct may be validly presumed, it cannot cure this violation of the principle of proportionality by applying a procedure or a sanction not set out by the relevant rules without violating the principles of *nulla poene sine lege* and *nulla poane sine lege clara.*

105. Thus, in the present case, the questions whether or not the alleged rabbit hole existed and whether or not the Horse suffered the injury as a consequence of an accidental trip into that hole can, in the view of the Panel, be left unanswered. The simple fact that the applicable rules do not provide the possibility to examine the potential causes of injury invoked by the Appellants prevents the Panel from determining whether the sanction set out in the rules, which is a fixed sanction (*i.e.* 80 penalty points), is proportionate to the misconduct the ERs try to prevent. Thus, Articles 864 and 866 of the ERs cannot be applied in the present case.

106. For the sake of completeness, the Panel notes that, in any event, even if it were to examine the matter at hand on basis of the factual evidence provided by the Parties, it would come to the conclusion that no sanction could be applied to the Trainer on basis of Article 864 of the ERs.

107. Indeed, given that, as held above, the FEI cannot rely on a scientific presumption regarding the causal link between the sanctioned consequence (serious injury of the horse) and the misconduct Article 864 of the ERs tries to prevent (bad training practices), the FEI would have had to establish the existence of this causal link.

108. The Panel is well aware that, as pointed out by the FEI during the hearing, to bring the proof of this causal link can be very challenging. In this regard, the Panel shares the view of the panel in CAS 98/222 according to which "*the particular problem of proof in the field of causality lies in the possible parallel impact of several causes potentially leading to the same consequence. As soon as the science admits that more than one cause can lead to the same result, the legal issue arises who has to prove the exact cause of a given consequence. However, in the majority of cases in real life, it will be impossible for any of the parties to prove that the result has occurred exactly due a specific cause ('probatio diabolica'). To charge one of the parties with such a heavy burden would, in fact, amount to a presumption, rebuttable on its face but irrebuttable in the reality. Therefore, alternative ways of proving the causal link must exist, such as, e.g., elimination of other causes: a party requested to prove the causal link and unable to demonstrate that a particular cause has led to the consequence, can nevertheless be deemed successful, if it can provide proof excluding all other possible causes*".

109. In the present case, it is, a priori, not excluded that the serious injury suffered by the Horse might be due to several causes or even a combination of causes. It would, in such a case, be unrealistic and thus unreasonable to compel the Trainer to establish that the injury was not and could not have been due to bad or inappropriate training practices as this might not be established by convincing evidence. However, in such a situation, it does not seem unreasonable to expect from the FEI to establish that other causes than the bad training practices did not lead or could not have led to the serious injury at hand. The FEI could, for example, have required supplementary examination of the Horse after the Event given that, as stated in the witness statement of the President of the Ground Jury, it was referred to the equine hospital in Newmarket. The Panel considers that the FEI could not simply rely on the legal presumption that the serious injury was a consequence of bad training practices of the Trainer but should have provided additional evidence supporting this presumption or, at least excluding all other causes like, for example, an accidental tripping due to a rabbit hole (see, per analogy, CAS 98/222).

110. However, in the present case, no evidence has been submitted in that regard. […].

111. The Appellants, on the other hand have submitted a witness statement by the President of the Ground Jury according to which he had been informed by the Technical Director that the Horse "*put his foot in an unsighted rabbit hole which caused the horse to rotate and bring both the rider and horse crashing to the ground*". The President of the Ground Jury confirmed this statement during the hearing. He further testified that he gave the instruction to go check for the cause of the crash of the Horse and was informed that "*they had found the hole and filled it with sand*". The Panel considers that Mr Dunn, who acknowledged not having

witnessed the crash nor seen the rabbit hole himself as he was at the Vet-gate, appeared to be a credible and convincing witness as regards the fact at stake. Even if the Panel were, as requested by the Respondent, only to attribute a light evidentiary weight on the testimony of Mr Dunn, it remains that the elements of this testimony confirm the thesis that an accidental crash of the Horse led to its serious injury. This thesis seems even more plausible considering the fact that, as Mr Dunn has stated in an answer to a question from the Panel, the incident occurred 75 to 100 meters from the finish line while the Horse was still in a position to make a place on the podium. In the Panel's view it seems very unlikely that a horse that managed to complete 99,9 km out of 100 km and was, according to the final results, all along the race amongst the top 5 horses would suffer an injury in the last 100 meters of that race due to bad training practices (over training, high speeds, insufficient rest periods etc.).

112. In view of the above, the Panel finds that the Respondent has not provided any evidence in that particular case supporting the legal presumption that the serious injury suffered by the Horse was due to bad training practices of its Trainer, whereas the Appellants have convincingly established that, in the present case, there has been an unfortunate race incident that one cannot exclude to be the major cause of that serious injury. The Panel thus concludes that the causal link between the sanctioned consequence (serious injury of the horse) and the misconduct (bad training practices) that Article 864 of the ERs aims to prevent is not established and that, accordingly, the sanction set out in this provision cannot by applied in the present case.

113. In view of all the above considerations, the Panel considers that, in the present case, the sanctions set out in Articles 864 and 866 of the ERs may not be applied and that the Appealed Decision is ill-founded and must be set aside.

114. As regards the Appellants' request to "*order the FEI to remove the already published Appealed Decision from the FEI website and issue an official letter declaring that the Trainer has received an unjustified suspension for 2 (two) months. The letter may either be published publicly or alternatively dispatched to the Trainer by electronic mail as deemed appropriate by the CAS*", the Panel notes that such request has, as the FEI rightly pointed out, not been made in front of the FEI Tribunal. Hence, it cannot be reproached to the FEI to have published the Appealed Decision as foreseen in Rule 39.3 of the Internal Regulations of the FEI Tribunal. Further, the Panel considers that, as it holds that the Appealed Decision is ill-founded and must be set aside, the Appealed Decision has vocation to be automatically erased from the FEI website. Finally, the Panel finds that the present award is sufficient proof that the CAS considered that the sanction imposed on the Trainer in relation to the Event was inflicted in violation of the principle of proportionality and, thus, "*unjustified*" in the wording of the Appellants. Hence, the Panel does not see any reason to grant the above-mentioned request and the latter is thus dismissed.

115. Concerning the Appellants' request to "*rule that articles 864 and 866 of the [ERs], or any of its later versions containing the same provisions, cannot be applied by the FEI in [the future] towards a trainer, without taking into account the degree of fault and the principle of proportionality*", the Panel considers that such request goes beyond the scope of the present appeal which is manifestly limited to the disciplinary consequences of the incident that occurred at the FEI CEI 1* 100 km Endurance Event held in Windsor, United-Kingdom, on 13 May 2022. This request has, thus, to be dismissed.

116. In view of all the above considerations, the Panel finds that the appeal has to be partially upheld, that the FEI Tribunal Decision of 13 June 2022 has to be set aside and that the 80 penalty points imposed on the Mr Ismail Mohd in relation to the Event and the subsequent two (2) months suspension, have to be annulled.

117. Any other and further claims or requests for relief are dismissed.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 11 July 2022 by the UAE Equestrian and Racing Federation and Mr Ismail Mohd with the Court of Arbitration for Sport against the decision rendered by the Fédération Equestre Internationale (FEI) Tribunal on 13 June 2022 is admissible.

2. The appeal filed on 11 July 2022 by the UAE Equestrian and Racing Federation and Mr Ismail Mohd with the Court of Arbitration for Sport against the decision rendered by the Fédération Equestre Internationale (FEI) Tribunal on 13 June 2022 is partially upheld.

3. The decision rendered by the Fédération Equestre Internationale (FEI) Tribunal on 13 June 2022 is set aside and the 80 penalty points imposed on the Mr Ismail Mohd in relation with the FEI CEI 1* 100 km Endurance Event held in Windsor, United-Kingdom, on 13 May 2022 as well as the subsequent two (2) months suspension are annulled.

4. (…).

5. (…).

6. All other or further claims are dismissed.

Lausanne, 15 March 2023

THE COURT OF ARBITRATION FOR SPORT

Jacques Radoux
President of the Panel

João Nogueira Da Rocha
Arbitrator

Carine Dupeyron
Arbitrator