

**DECISION of the FEI TRIBUNAL
dated 18 June 2020**

In the matter of

Mr. Billy TWOMEY (“Mr. Twomey” or “the Appellant”)

Represented by Keystone Law, London

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

together “the Parties”

I. COMPOSITION OF PANEL

Mr. José A. Rodriguez Alvarez, one member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The Tribunal duly took into consideration all the Parties’ written submissions and communications received up to date.
- 2. Hearing:** 8 May 2020, via videoconference call.

Present:

- The FEI Tribunal Panel
- Ms. Erika Riedl, FEI Tribunal Clerk

For the Appellant:

- Ms. Jacqueline Brown, counsel
- Mr. Marcus C. Lavell, counsel
- Mr. Billy Twomey, Appellant

For the FEI:

- Mr. Mikael Rentsch, FEI Legal Director
- Ms. Anna Thorstenson, FEI Legal Counsel
- Ms. Ana Kricej, FEI Junior Legal Counsel

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 24th edition, effective 19 November 2019 ("**Statutes**").

General Regulations, 24th edition, 1 January 2020 ("**GRs**").

FEI Jumping Rules, 26th edition, effective 1 January 2018, Updates effective 1 January 2020 ("**JRs**").

FEI Stewards Manual – Jumping, Annexes, Edition November 2009, Updated February 2020 ("**Stewards Manual**").

Veterinary Regulations, 14th Edition 2018, effective 1 January 2020 ("**VRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

2. The relevant Legal Provisions

GRs Article 162 - Appeals:

"1. 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):

(a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body. (...)

162.2 An Appeal is not admissible:

(a) Against Decisions by the Ground Jury in cases covered by Article 161.2;"

GRs Article 161 - Protests:

"161.2 There is no Protest against: (...)

(b) The Elimination or Disqualification of a Horse for veterinary reasons, including non-acceptance of a Horse at a Horse Inspection unless otherwise specified;"

GRs Appendix A – Definitions:

"Competition: Refers to each individual class in which Athletes are placed in an order of merit and for which prizes may be awarded."

"Elimination: Unless the Sport Rules provide otherwise, Elimination means that an Athlete and/or a Horse may not continue in the Competition at issue and/or in future Competition(s) of the Event."

"Event: A complete meeting, "Show", "Championship" or "Games". Events may be organized for one or more than one Discipline."

“Period of an Event: commences one hour before the beginning of the first Horse inspection and terminates half an hour after the announcement of the final results in the relevant Discipline, unless the Sport Rules for the respective Discipline provide otherwise. (...)”

VRs Annex X – Glossary:

“In-Competition/Period of the Event

The period commencing one (1) hour before the beginning of the First Horse Inspection and terminating half an hour after the announcement of the final results of the last Competition at the Event. This period may vary for the Olympic and Paralympic Games, as determined by the applicable rules.”

VRs Article 1047 – Examination of Horses:

“1. Horses’ legs, boots, bandages and/or other tack may be examined by Stewards and/or OVs at any time during the Period of the Event. (...)

5. The Examination should check for:

e) the presence of blood on the Horse’s legs, flanks or mouth.”

JRs Article 241 – Elimination:

1. “Unless otherwise specified in the Rules or in the conditions for the Competitions, Elimination means that the Athlete with the Horse in question may not continue in the Competition at issue. Elimination may also be retroactive. (...)

3. The following paragraphs lay down the reasons for which Athletes are eliminated in Jumping Competitions. The Ground Jury must enforce Elimination under the following circumstances: (...)

3.30 blood on the Horse’s flank(s); (...)”

JRs Article 244 – Boot and Bandage Control:

“Stewarding – Boot and Bandage Control (see also JRs Art. 257.2.3-257.2.5 and VRs Art. 1023, 1046, 1047)

It is obligatory to carry out boot and bandage control on all Horses taking part in the Grand Prix, Nations Cup, Puissance and Six Bar Competitions, and during the Competition with the highest prize money at each Event. It is also recommended that boot and bandage control be carried out during other Competitions. Refer to the VRs and to the Jumping Stewards Manual for the procedure for boot and bandage control.”

JRs Article 247 – Elimination, Retirement or Withdrawal from a Jump-off, Second round or Winning round

1. “An Athlete who retires, is eliminated or withdraws with the permission of the Ground Jury from a jump-off or second round or winning round

will be placed equal last in the jump-off/second round/winning round.
(...)”

Stewards Manual - ANNEX XVI – STEWARDS’ PROTOCOL FOR HANDLING CASES OF BLOOD ON A HORSE’S FLANK(S) AND/OR MARKS INDICATING EXCESSIVE USE OF THE SPUR(S)

“A member of the Ground Jury must be available throughout the event to examine, at the request of the Chief Steward, a horse if it is found to have blood on the flank(s) and/or marks indicating excessive use of the spur(s).

If a Steward notices blood on a horse’s flank at any time in connection with the warm-up for a competition or at any time in connection with a horse leaving the competition arena, including but not only during post-competition boot and bandage control, the following procedure must be followed. (...)

3.(f) The Chief Steward* will then report the incident to the Ground Jury member designated to handle such cases and show him/her the photographs and, if there is one, the video.

4. In all cases of blood on the horse’s flank the Ground Jury must eliminate the Athlete/horse combination from the Competition or round in question. Particular attention must be paid to two round competitions and competitions with a jump-off. If a Steward notices blood on a horse’s flank after it has taken part in the second round (or jump-off) but had found no blood on that horse’s flank(s) after the previous round, the combination is to be eliminated from the second round (or jump-off) only. It is not the role of the Chief Steward or any member of the stewarding team to inform the PR that he/she has been eliminated. This is the responsibility of the Ground Jury. (...)”

IRs Article 18.1:

“In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the FEI Anti-Doping Rules for Human Athletes and the FEI Equine Anti-Doping and Controlled Medication Regulations. (...)”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written and oral submissions. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, the Tribunal only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. Factual and Procedural Background

- 1.1 The Appellant is an FEI registered rider (FEI ID: 10011444), and his administering National Federation is the National Federation of Ireland (the "**IRL-NF**").
- 1.2 The Appellant competed at the CSI5* in Wellington (USA) that took place on 15 March 2020, (the "**Competition**"), where he and his horse LADY LOU (the "**Horse**"), were eliminated by the Ground Jury following the Boot and Bandage Control of the Horse. The reason given for the elimination was that there was blood on the Horse's left flank due to the use of the spurs. On this basis, the Ground Jury proceeded to eliminate the Appellant and his Horse from the Jump-off, and thus the Appellant finished in sixth place.
- 1.3 On 30 March 2020, the Appellant submitted an Appeal against the elimination, a decision taken by the Ground Jury at the Competition (the "**Decision**"). On the same day, and prior to submitting the Appeal, the Appellant requested a hearing on jurisdiction, and further submitted as follows: "*Upon determination of jurisdiction, the Tribunal provide directions as to the future conduct of the case, if appropriate and subject to any appeal to the CAS in respect of the decision.*" On 8 April 2020, the Appellant provided further documents, including extracts from the FEI Officials reports from the Event, as well as video evidence supporting his Appeal.
- 1.4 In a response on 14 April 2020, the Appellant re-confirmed agreeing for the Tribunal to deal with jurisdiction as a preliminary issue. However, the Appellant conditioned such agreement to receiving the complete copies of all reports and notes from the Event from the FEI. The Appellant repeated his document disclosure request on 23 April 2020. On 30 April 2020 and on 1 May 2020, the Appellant clarified that in his view these documents were central to the issue of jurisdiction, and formed the basis of the decision being appealed, as they were (i) The foundation of the decision being appealed and in turn, the foundation of this very Appeal; (ii) held by the FEI and readily available; and (iii) not protected by confidentiality to the Appellant. In response, on 24 April 2020, the FEI submitted that "*the Reports are confidential and that there is no obligation from the FEI to provide such*

reports to the Appellant. The FEI confirms that it has provided the relevant sections pertaining to the incident.” Further, the FEI failed to see how the reports could be relevant for deciding on the jurisdiction of the Tribunal. On 28 April 2020, the Tribunal decided not to address the document disclosure request prior to deciding on jurisdiction, and on 4 May 2020, the Tribunal re-confirmed its decision following further communications by the Parties on this point between 30 April and 1 May 2020.

- 1.5 On 20 April 2020, the FEI submitted its Answer to the Appeal with regard to jurisdiction.
- 1.6 On 28 April 2020, the Tribunal nominated a one-member panel to which neither party objected.
- 1.7 On 8 May 2020, a hearing with regard to jurisdiction was held via video conference call.
- 1.8 During the hearing the Parties once more confirmed not having any objections to the panel and acknowledged that the Tribunal has respected their right to be heard and their procedural rights. The Appellant however maintained his objection with regard to his previous document disclosure request, re-confirmed the importance of these documents for the decision on jurisdiction, and requested the Tribunal to draw an adverse inference against the FEI since the FEI refused to disclose the documents requested.
- 1.9 At the outset of the hearing, the panel accepted the Appellant’s submission of the Final Tribunal Decision in the *Bubau case* on the day prior to the hearing. Furthermore, and since no PoA was provided in the case at hand, Mr. Twomey was requested to confirm that the counsels referenced in this decision had the authority to represent him in these proceedings, which he did.

In the following a short summary of the written and oral submissions made by the Parties concerning jurisdiction of the Tribunal is provided. While the Tribunal has taken into consideration all submissions, only the ones relevant for the Decision are outlined below.

2. Submissions by the Appellant

- 2.1 In essence, the Appellant argued that the Tribunal had jurisdiction as the starting point for an Appeal was a “legitimate interest” of the Appellant pursuant to Article 162 of the GRs which was clearly the situation in the case at hand. Further, the Appellant accepted that Article 161.2(a) of the GRs with regard to decisions of the Ground Jury arising from the field of play included a non-exhaustive list, but argued that this list was restrictive; all matters listed could only arise during the course of a Jumping round.

Further, the Appellant disagreed with the FEI that the case at hand concerned an elimination of the Horse for veterinary reasons. There was no indication that the Decision was a veterinary matter, nor did the extracts of the FEI Officials reports mention any veterinary reasons; none of them identified any interaction with a veterinarian.

2.2 The Appellant submitted that the FEI erred in its submission that “the blood occurred during the competition”. In providing a close up of a frame of a video filed, the Appellant argued that the close up shows that there was no blood on the Horse at the moment after the Competition – while he remained in the ring and before leaving through the hustle and bustle of spectators, fans and well-wishers, when he assumes the mark seen on the boot and bandage check occurred - and so there could not have been any blood on the Horse during the Competition. He was the last rider of the Jump-off, competed his round clear and in the fastest time. The sporting contest was over, and he was announced the winner. He further explained as follows: “(...) *At the entrance/exit to the arena was a large arch, that I think has the sponsor’s name on it. As I was riding out of the ring, there were a lot of people in that area all wanting to say well done and high-five me. This meant that there was less room to get through and I felt my Horse get a little unsettled by the crowd and bump the arch. (...)*”.

2.3 In addition, the Appellant further argued as follows:

“The FEI Stewards Manual for Jumping, Annex XVI; protocol for handling cases of blood, was implemented (deficiently) in this case. The application of that Protocol is specific to “any time in connection with the warm-up for a competition or at any time in connection with a horse leaving a competition arena”. By contrast to the Jumping Rule the Protocol has no function or application “in Jumping Competitions”.

The Jumping Rules’ mandatory elimination for blood on the flanks, enables the Ground Jury to act immediately upon seeing blood on flanks in “Jumping Competitions”, so the round can be stopped, in accordance with 241.3.30. A decision of this nature is a “field of play” decision, which is not appealable to the FEI Tribunal, under Art 162.

Mr Twomey was not eliminated in the manner provided for by the Jumping Rules. In the absence of intervention under the Jumping Rules, the officials must address blood on the flanks in connection with a horse having left the competition arena in accordance with the FEI General Regulations’ Article 161 Protest procedure, as they purported to do in this instance.”

2.4 In addition, and contrary to the FEI’s submission, the Appellant argued that on the spot elimination for blood was possible, for example in cases

where a horse was bleeding from the nose. In that case it would be a field of play decision; whereas an Article 241.3.30 of the JRs decision was outside the field of play.

- 2.5 The Appellant further argued that elimination pursuant to Article 241.1 of the JRs meant that the athlete and the horse in question could not continue, but elimination was only starting from the point of Boot and Bandage Control; in the case at hand the Competition was over, so there was nothing to continue with. This was not a field of play decision. Further, Article 241.3.30 of the JRs stated that the Ground Jury must eliminate the rider where there is blood on the Horse's flank. However, this provision does not include any retroactive elimination. Retroactive could only be from the point of its effects.
- 2.6 Moreover, in the Appellant's position it is alleged that the "blood protocol" had not been followed. In particular, when he went to the Boot and Bandage Control where he was told that blood could be seen on the Horse's flank, no pictures were taken at that point in time. He was then allowed to walk off the Horse, and only thereafter (about 20 to 30 minutes after the end of his round) the glove test was conducted. Further, he argued that it had been a hot day, and as confirmed by a veterinarian the gloves could induce the bleeding. In the Appellant's view, it was therefore important that the step by step process of the blood protocol was followed.
- 2.7 Finally, the Appellant submitted that the Stewards Manual was only guidance for Stewards but not rules as such and did not apply to the Ground Jury who took the Decision. The Stewards Manual itself specified that where there was a conflict with the GRs, the latter had priority unless otherwise specified in the Sports Rules. The FEI referred to Article 3.8 of the Stewards Manual that elimination from the Competition must be from the beginning of the round in question; however, this was wording that was nowhere to be found in the rules. Therefore, in the present case there was no rule at all for the Ground Jury to eliminate the Appellant from the Competition.
- 2.8 The Appellant also submitted that the Protocol had to be considered as guidance regarding the collection of evidence concerning a Protest under Article 142.1 (iii) GRs (Abuse of Horses). In this respect, pursuant to Article 38.1 (III) of the Statutes, the Tribunal may review and decide any matter involving abuse of horses, and the extracts from the Foreign Judge Report demonstrated an "Abuse of Horse report".
- 2.9 By referring to a previous Decision issued by the Tribunal (Case 2019/11 Appeal Mr. Viorel Bubau v. FEI, Final Tribunal Decision dated 8 May 2019) the Appellant argued that there were circumstances in which the FEI could

agree to a field of play decision being rendered null and void. For the exception to apply, the decision had to be in bad faith or arbitrary. The Decision in the case at hand was arbitrary, i.e., random with no grounding in the rules. If the decision in the case at hand was a field of play decision, which the Appellant did not accept, then it had no grounding in the rules since it was made upon an assumption that because there was a mark on the Horse after the Competition was finished, the mark must have been there during the Competition and as such it would have been arbitrary. The FEI had adduced no evidence and the Officials who ordered the elimination had no evidence that there was blood on the flanks during the Jumping Competition. On the contrary, the close up from the video showed there was none.

3. Submissions by the FEI

- 3.1 The FEI submitted that it was the FEI's position that the subject matter was not appealable and that the Tribunal has no jurisdiction. The GRs were clear that the elimination for veterinary reasons, such as in case of blood on the horse's flank, there was neither the possibility to lodge a Protest (as per Article 161 of the GRs) nor to file an Appeal (as per Article 162 of the GRs). Once a Ground Jury has decided upon a field of play matter, or in this case more specifically the elimination of a horse for veterinary reasons, that decision was considered final and binding, with no further right of appeal as specified in Article 162.2 of the GRs.
- 3.2 The matter at hand, an elimination for blood on the horse's flank, was a field of play matter and was clearly a veterinary matter. The blood occurred during the Competition (during the Jump-off). The fact that the blood was only "discovered" during the Boot and Bandage Control was a natural consequence on how Jumping works. During the Jumping performance it was virtually not possible to assess whether blood is visible or not on the horse's flanks in the area where the spurs are, as the spurs will obstruct the visibility. This was the reason why there was a Boot and Bandage Control immediately after the Jumping performance. Such control was performed immediately after the athlete/horse leave the competition arena so that there is no question that anything "discovered" during such control has occurred during the Competition. The FEI argued that pursuant to Article 149 and 158 of the GRs, the Ground Jury was responsible to take decisions at Events, and had jurisdiction starting one hour before Horse Inspection until half an hour after the Event. The FEI made reference to the Definition of "In-Competition" in the EADCMRs, which the Appellant argued was not applicable in the present case; rather the Definition in the GRs had to be applied.

- 3.3 For the FEI it was clearly a field of play matter because it was a decision of Officials, as well as a veterinary matter, since blood on the horse was a welfare of the horse matter. The FEI also argued that almost no Ground Jury would stop the performance of a rider, judges would sit 40 to 50 meters away, and a Jump-off was a very short performance of around 35 seconds. The Boot and Bandage Control was immediately after and was part of the Competition. At this stage the Competition had not been over and the results had not been signed off; only with the official results the Ground Jury had finalised its decision, *i.e.*, a field of play decision. The mere fact of blood on the Horse's flank was a consequence of elimination, it did not matter whether it happened during or after the Jump-off.
- 3.4 Pursuant to Article 244 of the JRs Boot and Bandage Control for the Competition was mandatory, and this provision makes reference to the VRs and the Stewards Manual. In following the Stewards Manual Annex XVI, and Articles 241 and 247 of the JRs, the Ground Jury had to enforce elimination, and did not have discretion not to eliminate the athlete/horse combination in cases of blood on a horse's flank. The Ground Jury eliminated the athlete/horse combination from the Jump-off, and the Appellant finished sixth. The definition of "Elimination" clearly allowed for the elimination to be retroactive pursuant to Article 241 of the JRs. And this is what happened in the present case. The athlete/horse combination went to the mandatory Boot and Bandage Control where the blood was seen. And thus the elimination was applied retroactively to the Jump-off that had just taken place.
- 3.5 This was purely a field of play matter, dealt with by the Ground Jury in accordance with the JRs. For this reason, there was no written decision of the matter and the outcome was only orally communicated to the Appellant and the results of the Competition adjusted accordingly. Decisions made on-site were considered as field of play decisions which required finality, as prize money, and results and ranking points were involved. The Tribunal had no jurisdiction to decide whether or not the procedure applied by the Officials was the correct one. Officials are due to take decisions. The FEI did not believe that the Officials took a wrong decision. However, this did ultimately not matter, as long as the decision was taken in good faith.
- 3.6 In responding to the Appellant's allegations that the blood procedure had not been followed, the FEI argued that the Appellant could have lodged a Protest pursuant to Article 161.3 of the GRs and challenged the decision of elimination within 30 minutes after he was notified. However, he did not file any Protest. It was the responsibility of riders to know the rules, there was no remedy at this point in time.

- 3.7 Contrary to the Appellant's argument, the matter was not, and is not, considered as an Abuse of Horse in the meaning of Article 142 of the GRs. The Ground Jury in this specific case "only" confirmed the presence of blood on the Horse's flank. In the case of Abuse of Horse, the Ground Jury would have disqualified the Athlete/horse combination in accordance with Article 242.3.1 of the JRs. The reports did not indicate that there was an Abuse of Horse, and the FEI had not opened and was not planning on opening a case of Abuse of Horse. When questioned whether the incident had to be reported under the section "Abuse of Horse" on the Officials report, the FEI explained that it should have been reported under the section "Official warnings, protest, incidents" instead.
- 3.8 The FEI submitted the following prayers for relief:
- (a) *Confirm that the FEI Tribunal has no jurisdiction on the Appeal;*
 - (b) *Dismiss the Appeal in its entirety, so that the decision of the Ground Jury is left undisturbed;*
 - (c) *Determine that each Party bear their own costs of the Appeal proceedings.*

4. Legal Discussion

- 4.1 As a preliminary matter, the Tribunal wishes to clarify that the Tribunal has jurisdiction to issue a decision on jurisdiction prior to determining the merits of the case (if any). Pursuant to Article 23.1(a) of the GRs, the Tribunal has the power, either on the application of a party or of its own motion, to order that certain potential dispositive issues be heard and determined in advance of any other issues in the matter. Therefore, it does not matter whether or not the Parties agreed for the Tribunal to hear jurisdiction first. However, the Tribunal wishes to point out that the Appellant – even prior to submitting his Appeal – suggested that the Tribunal heard the matter on jurisdiction first. The Appellant seemed to have later on made his agreement to such a decision conditional to the disclosure of documents requested.
- 4.2 In this sense, while the Tribunal accepts that the Appellant revoked his original suggestion and confirmation, as previously found, the ultimate decision for the Tribunal to hear and determine jurisdiction does not depend on the Appellant's approval or not. As previously informed the Tribunal has the possibility to determine the bifurcation of the proceedings unilaterally. As such, it has been decided to hear the matter with regard to jurisdiction first prior to any potential decision on the merits (if any). In view of the above, it is worth noting that the Tribunal also comes to the conclusion that whether or not the Appellant had the entire FEI Officials reports at his disposal, does not represent an issue of relevance when

passing a decision as to the jurisdiction of a particular matter. Thus, the Appellant's request to draw adverse inference is dismissed.

- 4.3 Moreover, with regard to the content of the abovementioned reports, the Tribunal takes note that on the Foreign Judge Report, the observations were manifested under the section "Abuse of horse report". In this sense, after having noted that the others reports were filled under segments not directly limited to abuse of horse incidents and the indications provided by the FEI, the Tribunal finds satisfactory the explanation provided. Thus, the Tribunal concludes that reporting an incident, such as in the case at hand, in the wrong section in the FEI Officials reports, does not justify different proceedings as argued by the Appellant. The FEI confirmed that no proceedings under Article 142.1 of the GRs, i.e., Abuse of Horses, have been opened against the Appellant. The Appellant's arguments in this respect are therefore dismissed.
- 4.4 With regard to the matter at hand, determining the Tribunal's jurisdiction to hear the present Appeal, it has been noted that pursuant to Article 162.2(a) of the GRs, an Appeal is not admissible "*Against Decisions by the Ground Jury in cases covered by Article 161.2 of the GRs.*" In this sense, Article 161.2 of the GRs reads as follows: "*There is no Protest against: (a) Decisions of the Ground Jury arising from the field of play, which are final and binding, such as, but not limited to: (i) where the Decision is based on a factual observation of performance during a Competition or the awarding of marks for performance; (ii) whether an obstacle was knocked down; whether a Horse was disobedient; whether a Horse refused at an obstacle or knocked it down while jumping; (iii) whether an Athlete or Horse has fallen; (iv) whether a Horse circled in a combination or refused or ran out; (v) the time taken for the round; (vi) whether an obstacle was jumped within the time; and/or (vii) whether, the particular track followed by an Athlete caused him/her to incur a penalty under the applicable Sport Rules. (b) The Elimination or Disqualification of a Horse for veterinary reasons, including non-acceptance of a Horse at a Horse Inspection unless otherwise specified; (...)*".
- 4.5 The Appellant states that the Decision does not fall into either of those two categories, while the FEI argues that it falls into both. For the avoidance of doubt, the Tribunal wishes to clarify that those two categories do not have to be concurrent for this provision to apply; the existence of either category suffices.
- 4.6 To start with, the Tribunal notes that the Appellant *inter alia* argues that he could not be eliminated as (i) there was no evidence that "*the blood occurred during the competition*"; and since (ii) elimination could in

essence not be retroactive and had to start from the time after the Boot and Bandage Control.

- 4.7 The Tribunal has taken note of the various arguments by the Parties with regard to how "Competition" and "In-Competition" was to be defined. The Tribunal agrees with the Appellant that the definition of "In-Competition" in the EADCMRs relates to doping control and cannot be applied expressly in the case at hand. However, the same time-frame reference can be found in the VRs for the Definition of In-Competition/Period of Event. While the JRs do not include a definition of Competition and the definition of Competition in the GRs is not very helpful in determining at what point in time a Competition is over, the Definitions of Period of Events in both the VRs and the GRs are more of assistance in this regard. More importantly and also the only logical explanation is that a Competition cannot be understood as being concluded unless the final and "official" results have been announced. *In casu*, this does not mean when the Appellant had completed his Jump-off as argued by the Appellant, but only once the Ground Jury has taken into consideration all eventual disqualifications, eliminations, protests etc. The final results in this case are clearly different from the results after the Appellant completed his Jump-off in the arena. The Tribunal also finds that the fact that the Appellant was the last rider in the Jump-off might give the impression that the Competition had been concluded after his performance. Whereas, if he had been riding the Jump-off earlier, *e.g.*, if the Jump-off had taken place in a different order, it would be clear that the Competition was not completed after his performance. In any case, this also means the Boot and Bandage Control is part of the Competition, and – as in the case at hand – might determine the final and "official" results.
- 4.8 With regard to which body has the authority to take decisions during a Competitions and/or Event, Article 149.1 of the GRs mandates overall and residual decision power to the Ground Jury, unless such power expressly falls within another authority, and reads as follows: "(...) *The Ground Jury is responsible for the technical judging of all Competitions and for all other Decisions except where otherwise stated in the Statutes, GRs or relevant Sport Rules.*" Moreover, pursuant to Article 158 of the GRs, the Ground Jury is responsible for signing off the final results of a Competition, as well as for the elimination of an Athlete and/or Horse from a Competition and/or from an Event.
- 4.9 More specifically, pursuant to Article 241.3 of the JRs, the Ground Jury must enforce Elimination in circumstances of blood on the Horse's flank(s). This is also confirmed in Annex XVI of the Stewards Manual which reads as follows:

"(...) In all cases of blood on the horse's flank the Ground Jury must eliminate the Athlete/horse combination from the Competition or round in question. Particular attention must be paid to two round competitions and competitions with a jump-off. If a Steward notices blood on a horse's flank after it has taken part in the second round (or jump-off) but had found no blood on that horse's flank(s) after the previous round, the combination is to be eliminated from the second round (or jump-off) only. It is not the role of the Chief Steward or any member of the stewarding team to inform the PR that he/she has been eliminated. This is the responsibility of the Ground Jury. (...)"

- 4.10 Therefore, the Tribunal finds that the Ground Jury had a regulatory basis to take the Decision, i.e., to eliminate the Horse for blood found on the left flank. For the avoidance of any doubt, it is clear from the results listed in the FEI Database, as well as from the extracts of the FEI Officials reports provided, that the Appellant was eliminated and not disqualified.
- 4.11 From the foregoing, and in taking into consideration Articles 241.1 and 241.3.30 of the JRs, and contrary to the Appellant's submission, the provisions allow and even mandate the Ground Jury to eliminate the Athlete with the Horse in question from the Competition, until the final results are announced - as the Competition is still not finished -. Thus, since the Competition was still on-going, having to determine whether there has been a retroactive elimination is irrelevant. For the avoidance of doubt, the literal wording of the relevant provision - Article 241.1 of the JRs -, clearly allows for retroactive elimination. Such elimination is also confirmed in Annex XVI of the Stewards Manual, which clarifies that if blood on a horse's flank is detected after the Jump-Off, the Athlete/horse combination is to be eliminated from the Jump-Off (as outlined in par. 4.18 ff.).
- 4.12 In a next step, the Tribunal will review whether the matter at hand concerns an elimination for veterinary reasons.
- 4.13 Firstly, the content *per se* of the reports issued by the relevant FEI Officials has not been challenged. The extracts from the FEI Officials reports from the Event read as follows:
- The extract from the Chief Steward Report in the "Unusual incidents, irregularities" section reads as follows: *"Spur mark with blood after jump off of Grand Prix, horse # 346, Rider Billy Twomey; Rider was eliminated from Jump Off by Ground Jury"*.
 - Further, the extract from the Foreign Judge Report in the "Abuse of horse report" section reads as follows: *"Horse # 346 was eliminated from the*

Jump Off in class # 2018 (GP) because the horse had blood in the left flank caused by the spur.”

- Finally, the extract from the Foreign Steward Report reads as follows:“(…) *Unfortunately when Billey Twoney of Ireland came out to boot check, the chief and assistant steward saw the blood [blood] on the side of the horse. pictures were taken, the ground jury and foreign [foreign] judge were called and Mr. Twomey was eliminated. Chief steward sent [sent] in his report with the pictures. I feel that the situation was handled in a very professional and fair way following the blood protocol.*
- 4.14 Although, the possible exact timing of the encountered cut and/or exact cause has not been fully confirmed, it remains an uncontested fact that upon review by the relevant authorities, the presence of blood was discovered on the Horse’s flank, while conducting the Boot and Bandage Control.
- 4.15 Regarding the procedures at the Boot and Bandage Control, Annex XVI of the Stewards Manual outlines the Stewards’ Protocol for handling cases of blood on a horse’s flank(s). In essence, the Chief Steward or a specific member of the stewarding team in certain circumstances, will conduct a glove test, take the appropriate photos, and report the incident to the Ground Jury. The Protocol foresees that “*A member of the Ground Jury must be available throughout the event to examine, at the request of the Chief Steward, a horse if it is found to have blood on the flank(s) (…)*”. The Foreign Steward Report confirms that the Ground Jury was called upon detection of the blood on the Horse’s flank by the Chief Steward and assistant steward in the case at hand.
- 4.16 Furthermore, the Tribunal finds that a regulatory reference to the VRs exists within the JRs in this respect. Namely, Article 244 of the JRs regarding Boot and Bandage Control clearly refers to Articles 1023, 1046 and 1047 of the VRs.
- 4.17 Pursuant to Article 1047.1 of the VRs, Stewards and/or Official Veterinarians (OVs) have the authority to examine horses during the Period of the Event, and such Examination should check for the presence of blood on the Horse’s legs, flanks or mouth (Article 1047.5(e) of the VRs). Therefore, the decision to eliminate an Athlete/horse combination for veterinary reasons does not require the exclusive involvement of a veterinarian, in fact the Boot and Bandage Control is conducted by Stewards.
- 4.18 In relation to the Stewards Manual, the Tribunal still wishes to review the differences expressed regarding the legal weight of the provisions therein.

In general terms the Tribunal concurs that a manual usually only provides guidance as to the application of particular operational processes and does not - unless very specific circumstances apply - constitute an official source of law. In the present case, the Tribunal notes that the relevant Manual is not one of the leading body of rules within the FEI regulatory framework. In particular, reference is made to the "Note" of the relevant Manual - bullet points 2 and 3 in page 4 - which clearly indicates that precedence is provided to the Statutes, the GRs or the Sport Rules (as applicable) in cases of conflict between the respective provisions. In this sense, the Tribunal notes that the prioritisation made in the above mention "Note" clearly provides a legal value to the provisions present in the Stewards Manual. Furthermore, *in casu*, the Tribunal finds that the relevant Sport Rules make reference to procedures in the Manual, such as is the case for Article 244 of the JRs with regard to the procedures of Boot and Bandage Control.

- 4.19 From the forgoing, it is clear that the Stewards Manual, or more specifically Annex XVI thereof, is relevant and legally applies in the case at hand. In this respect, the Tribunal wishes to stress that the provisions therein extend to responsibilities executed by the Ground Jury, expressly with regard to instances in which blood is found on a horse's flank and for which elimination is expressly mandated. The mere fact that the Manual is titled Stewards Manual does not mean that it only applies for Stewards; in fact it provides guidance and/or obligations also for other authorities, such as the Ground Jury in the case at hand. The Appellant's arguments with regard to the Stewards Manual and respective Annexes are therefore dismissed.
- 4.20 That said, the Tribunal also notes that pursuant to Article 154.5 of the GRs "*Any irregularities must be reported immediately by the Chief Steward to the President of the Ground Jury*" and as mentioned before the Ground Jury besides being responsible for technical judging of all Competitions, is responsible for a wide array of other Decisions, amongst those signing off the final result(s) of the relevant Competitions (cf. art. 158.2 of the GRs) and in all cases of blood on the horse's flank the elimination of the Athlete/horse combination from the Competition or round in question.
- 4.21 In the case at hand, the Tribunal therefore disagrees with the Appellant that the issue under contention was not an elimination for veterinary reasons. The Tribunal, notes that there was a veterinary incident (i.e., blood discovered on the flank of the Horse) during the Competition and that the Stewards, - despite not being official veterinarians - were entitled to conduct the Boot and Bandage Control and more specifically the Protocol for handling blood on a horse's flank, thus reaching conclusions of a veterinary nature. Said conclusions, were duly reported to the Grand Jury,

which in turn, and as per the applicable regulations, determined the elimination of the Athlete/horse combination.

- 4.22 For the sake of clarity, the Tribunal notes the Appellant's arguments in relation to the execution of the "blood protocol", indicating that they were not followed as outlined in the Stewards Manual. In essence, the Appellant contests that no pictures were taken when the blood was detected and the glove test was only conducted about 20 to 30 minutes after the end of his round. In this regard, the Tribunal wishes to clarify that the elements raised do not suffice to possibly question the results of the Boot and Bandage Control and, in any case, the Appellant had a possible mean to contest the procedure followed in the event of dissatisfaction. Pursuant to Article 161.3 of the GRs, the Appellant had the possibility to lodge a Protest on site no later than 30 minutes after the announcement of the results of the Competition, which he did not execute.
- 4.23 In view of the above, since the present Appeal to the Tribunal is against a decision of the Ground Jury in relation to the elimination of an Athlete/horse combination for veterinary reasons, the Appeal is not admissible.
- 4.24 All in all, since the Tribunal has decided that the elimination of the Athlete/horse combination was based on veterinary reasons, following the Boot and Bandage Control, and that the list of circumstances for which a decision is not appealable or subject to Protest (established in Article 161.2 of the GRs) does not require the concurrent presence of all said elements, the Tribunal finds that there is no need to review if any other of said circumstances is observed in the present case.
- 4.25 Finally, since it has been determined that the present Appeal is not admissible, as it falls under the scope of Article 161.2 of the GRs, the Tribunal cannot review the Appeal lodged on the merits.
- 4.26 For the above reasons, the FEI Tribunal therefore decides as follows:
- 1) The Appeal is not admissible.**
 - 2) The Decision of the Ground Jury stands.**
 - 3) All other requests are dismissed.**
 - 4) No deposit shall be returned to the Appellant. Each party shall pay their own costs in these proceedings.**
- 4.27 According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.

4.28 According to Article 162.7 of the GRs, this decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. Any other: No**

FOR THE PANEL



Mr. José A. Rodríguez Álvarez
One member panel