

DECISION of the FEI TRIBUNAL

dated 26 September 2019

In the matter of

Mr. Rob de BRUIN ("Mr. de Bruin" or "the Appellant")

Represented by GEA HUISMAN STIBBE, Paardenjuristen, BC Weert, the Netherlands

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")

together "the Parties"

I. COMPOSITION OF PANEL

Ms. Harveen Thauli, chair
Mr. Cesar Torrente, member
Mr. Chris Hodson QC, member

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, as well as all oral arguments presented.

2. Hearing: On 13 September 2019, via video conference call.

Present:

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

For the Appellant:

- Mr. Rob de Bruin, Appellant
- Ms. Gea Huisman Stribbe, Counsel for the Appellant
- Ms. Ulla Ramge, witness
- Ms. Elske Hoving, witness

For the FEI:

- Ms. Aine Power, Deputy Legal Director
- Mr. Mikael Rentsch, Legal Director

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT**1. Articles of the Statutes/Regulations which are applicable:**

Statutes 24th edition, effective 20 November 2018 ("Statutes").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019 ("GRs").

Vaulting Rules, Updated 9th Edition, Effective 1 January 2015, Updates effective 1st January 2019 ("VARs").

FEI Stewards Manual – FEI Vaulting, Edition 2017, Update January 2018 ("FEI Stewards Manual Vaulting").

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

2. The relevant Legal Provisions**GRs Article 165.1:**

"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 paragraph 2 below):
 (...)

1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.
 (...)

5. Appeals to the FEI Tribunal must be dispatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within thirty (30) days of the date on which the Secretary General's notification of the earlier Decision was sent."

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. (...)"

GRs Appendix H: FEI Officials' Code of Conduct:

"As an FEI Official I undertake to respect all FEI Rules and Regulations at all times, and in particular the FEI Code of Ethics and Conflict of Interest Policy and the FEI Code of Conduct for the Welfare of the Horse.

I am aware that I am a representative of the FEI while officiating at any FEI Event (hereinafter the "Event/s"). I am also conscious of my role as an authority and of the associated obligation to have adequate knowledge of the principles of equestrian sport and the relevant FEI Rules and Regulations, and to apply them at all times in a fair and consistent way.

(....)

"The breach of any obligation assumed under this Code of Conduct and/or any breach of the FEI Rules and Regulations may lead to any of the following sanctions as stipulated in the FEI Rules:

- Warning letter
- Obligation to attend an FEI course and/or to pass an exam
- Fine
- Suspension from officiating duties (provisional or for a stated period of time)
- Removal from the relevant and appropriate FEI lists of Officials
- Any other sanctions as stated in the relevant FEI Rules and Regulations."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and oral testimony made during the hearing. 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 Background

- 1.1 Mr. de Bruin is registered with FEI ID 10055349 as a 4* judge, a technical delegate, and a course director. He is a judge for the discipline of vaulting. His administering National Federation is the National Federation of the Netherlands ("NED-NF").
- 1.2 Mr. de Bruin is a member of the FEI Vaulting Committee. He signed a "FEI Committee Member Responsibility Acceptance" (the "**Responsibility Acceptance**") document on 11 January 2019.
- 1.3 Mr. de Bruin acted as President of the Ground Jury at a FEI 3* vaulting event in Ermelo, the Netherlands, from 3 to 5 May 2019 (the "**Event**").
- 1.4 On Friday, 3 May 2019, the German Fredenbeck Squad (the "**GER Squad**") had a female squad member compete in the compulsory test. On Saturday, 4 May 2019, the GER Squad replaced her with a male squad member for the freestyle test. There are six members in a squad.
- 1.5 The substitution made by the GER Squad did not comply with the FEI Vaulting Rules (the "**VARs**") or Article 707 of the VARs. Therefore, the GER Squad made an "illegal" substitution.
- 1.6 On 6 May 2019, Anna Kull submitted her "Report of Technical Delegate or Foreign Judge". Her report did not discuss the substitution that the GER Squad made on Saturday or the disqualification.
- 1.7 At the FEI's request, on 7 May 2019, Ms. Kull submitted a revised "Report of Technical Delegate or Foreign Judge" in which she stated, "*There has been a squad that was disqualified after the first free style because they brought in a new squad member. This was found out after the first free style.*"
- 1.8 On 8 May 2019, the FEI emailed Mr. de Bruin and asked for his explanation on the substitution made by the GER Squad at the Event. Mr. de Bruin responded on 11 May 2019.
- 1.9 On 15 June 2019, the FEI officially notified Mr. de Bruin and alleged that he failed to act appropriately over the illegal substitution made by the GER Squad and his failure to act was a breach of the FEI Rules and Regulations (the "**Notification Letter**"). The FEI alleged that the Appellant breached the FEI Official's Code of Conduct (the "**FEI Code**"), which states:

As an FEI Official I undertake to respect all FEI Rules and Regulations at all times, and in particular the FEI Code of Ethics and Conflict of Interest

Policy and the FEI Code of Conduct for the Welfare of the Horse.

The FEI further alleged that Mr. de Bruin breached the Responsibility Acceptance, which states that one of his key responsibilities was to “*be familiar with and comply with all relevant FEI Rules and Regulations*” related to his role and pursuant to which he agreed “*As an FEI appointed official to undertake to respect all FEI Rules and Regulations...*”

- 1.10 Mr. de Bruin responded to the Notification Letter on 28 June 2019.
- 1.11 On 3 July 2019, the FEI Secretary General and the FEI Legal Director issued a decision (the “**Decision**”) stating that Mr. de Bruin failed to act appropriately over the illegal substitution and held him in breach of the FEI Code and the Responsibility Acceptance. The FEI suspended him for one month until 3 August 2019.
- 1.12 The FEI initially made two allegations against Mr. de Bruin in its email of 8 May 2019 and the Notification Letter. The FEI decided not to pursue or sanction Mr. de Bruin for the second allegation. Therefore, this decision only deals with whether the finding in the Decision is valid and the sanction, proportionate.

2. Procedural Background

- 2.1 On 2 August 2019, the Appellant lodged an appeal by filing the FEI Appeal Form and provided submissions. He was now represented by legal counsel.
- 2.2 On 7 August 2019, the FEI Tribunal Deputy Chair nominated a one member panel in accordance with Article 19.1 of the IRs.
- 2.3 On 9 August 2019, the Tribunal granted the Appellant an opportunity to comment on the documents, which the FEI had not previously provided.
- 2.4 On 14 August 2019, the Appellant provided supplementary submissions.
- 2.5 On 15 August 2019, the FEI Tribunal Deputy Chair increased the panel to three members at the Appellant’s request.
- 2.6 On 21 August 2019, the FEI submitted its Answer to the Appeal.
- 2.7 On 13 September 2019, a hearing was held by video conference call at the Appellant’s request.

3. Submissions by the Parties before the Appeal

- 3.1 The FEI sent the Appellant an email on 8 May 2019 requesting

information about the substitution made by the GER Squad. The Appellant submitted the following on 11 May 2019:

During the judges meeting on Friday evening 21:30 I brought up to the judges that there is a rumor circulating that a German squad might appear in the next freestyle in another formation than that they participated on the Friday.

As we should not decide based on rumors, we agreed to judge the squads in the freestyle on Saturday and then as soon as we were certain that the formation had changed I would as a president disqualify this squad from the competition. I became aware of the definite squad change during the freestyle, but to be certain not to make mistakes from our site, we judged them for their whole routine. The scores were deleted 5 minutes after the end of that round. Besides that immediately after freestyle round of the squads 3 Ms Rame from Germany informed me and apologised about the formation change*

To answer your question, I did not know of a squad change before the start of the event. I made a decision of disqualification based on the judges observation. The decision was not based on information given by others to me after the freestyle.

- 3.2 The FEI then sent the Notification Letter explaining why the FEI believed the Appellant breached the FEI Code and the Member Acceptance. The FEI stated the following:

Although you were already aware on the evening of Friday 3 May that the illegal substitution may potentially occur, you did not take any steps to intervene to avoid such rule breach, even though you had ample time to do so, by, for example, approaching the Chef d'Equipe of the GER Squad to instruct her not to make an illegal substitution. Further, the FEI is not convinced by your explanation that the change in the GER Squad was only a "rumor" on the Friday evening and we have grounds to believe that in fact you were aware in advance that the change would be made.

Even when, by your own admission, you became aware during the GER Squad's freestyle routine that the GER Squad had indeed gone ahead with the illegal substitution, you did not stop the routine and, instead, allowed the GER Squad complete their full routine. The illegal substitution would not have been difficult to spot immediately given that (i) this was already on your radar given the "rumor"; and (ii) the substitution involved the change from a female to a male vaulter. The FEI, therefore, sees no reason why the GER Squad was not disqualified as soon as they commenced their routine.

*The fact that the performance of the freestyle routine by the GER Squad was mandatory for the GER NF's internal selection process for the upcoming CH-EU-V 2019 would tend point to a **deliberate attempt on your part to allow the GER Squad to perform their freestyle routine**, even though you knew they had an ineligible team member, and only disqualify the GER Squad once the entire routine had been completed." [Emphasis is added.]*

- 3.3 In response to the Notification Letter, the Appellant submitted the following on 28 June 2019:

Regarding the disqualification of the German Squad:

I did not know of a squad change before the event in Ermelo started. I only heard a faint rumour, and no more than that, while judging on Friday that a German squad had a different formation than on earlier events and that the formation could be different on the Saturday compared to Friday (less persons or a person change.). This rumour was for me so bizarre and unbelievable that I took it as one of the many incorrect rumours you hear during an event.

After having officiated whole Friday, we had a judges meeting (as stated in the FEI VAULTINGRULES Chapter IV – Officials, Article 723-11, page 31) which is a daily evaluation of the tests. As there were big differences in the scores that day we discussed relatively long about those scores and tried to find reasons for the differences. The German-squad-rumor was discussed in less than one minute and was seen by the whole group of judges as something which "would never occur". As far as I know, this has never occurred or noticed before on other events.

At the event in Ermelo several German squads participated and honestly I did not see the squad change while running in and saluting, which takes less than one minute. Besides that I was judging at judges table A, which is the horse-score position. This means that I was fully focussed on the running in of the lunger and the horse, plus the horses' trot round. I could even imagine, that if there would be a squad change of any squad, that most probably a judge would not notice this.

Immediately after the round of the squads 3 freestyle on Saturday, the judges group came together and I made the decision of disqualification based on the judges observation. The decision was not based on information given by others to me after the freestyle.*

These decisions were made to be as fair as possible and to not make any mistakes from the FEI Officials site. We had no idea which squad might

come in with less persons (which is allowed according the FEI Vaulting Rules) or in another formation. From 9 squads (63 persons and 9 horses) it is very difficult to recognise a squad change within a big competition like this, where honestly our focus is on judging as good as possible. To avoid making mistakes from the judges site, we judged the whole routine and directly after this round the results of the changed squad were deleted and the squad was disqualified. (...)

- 3.4 The FEI held the Appellant in breach of the FEI Code and Member Responsibility and provided the following reasons in its Decision:

1. The FEI was not satisfied by the explanations provided in your written submission of 28 June 2019 and, in particular, noted some significant discrepancies from the reply you sent to the FEI Legal Department on 11 May 2019 which give us grounds to doubt the credibility of your explanations.

In your email of 11 May 2019 you stated "*During the judges meeting on Friday evening 21:30 I brought up to the judges that there is a rumor circulating that a German squad might appear in the next freestyle in another formation than that they participated on the Friday*".

In your written submission of 28 May 2019, you instead refer to the rumor as only a "*faint rumor*" and you describe the rumor as so "*bizarre and unbelievable*" that you took it as "*one of the many incorrect rumours you hear during an event*".

2. The FEI found it significant that at no point, in either your email of 11 May 2019 or your formal written submission of 28 June 2019, do you provide any information or go into any detail about how you came to hear about the "*rumour*" or who brought this "*rumour*" to your attention.
3. You confirmed in both your email of 11 May 2019 and your formal written submission of 28 June 2019 that you brought this "*rumour*" to the attention of the other judges during the judges meeting on the Friday evening. Bringing this matter to the attention of the judges during a judges meeting does not seem consistent with your statement that it was only a "*faint rumour*" and even more so if it was one you found "*bizarre and unbelievable*".
4. In your written submission of 28 June 2019, you stated "*The German-squad-rumor was discussed in less than one minute and was seen by the whole group of judges as something which 'would never*

occur”. Yet, despite this, you already pre-agreed with the other judges what you would do if the “*faint*”, “*bizarre*”, “*unbelievable*” and unlikely ever to happen rumour did turn out to be true. The FEI finds it less than credible that you would already pre-agree with the other judges upon a very specific course of action (i.e. the disqualification of the GER Squad after their full freestyle performance) in response to something which you claim to have been convinced would never happen. This leads the FEI to believe that you were already aware that the illegal substitution would indeed happen and had already made plans to handle it.

5. If the matter was deemed worthy of raising with the other judges and already deciding how you would deal with the matter if the illegal substitution did occur, we fail to understand why you did not raise the “rumour” with Mrs Ramge, the German Chef d’Equipe at the Event in order to find out the truth and to avoid any potential rule violation before it could occur.
6. In your email of 11 May 2019 you stated “*I became aware of the definite squad [sic] during the freestyle, but to be certain not to make mistakes from our site, we judged them for the whole routine*”. However, in your written submission of 28 June 2019 you tried to distance yourself from that admission: “*....honestly I did not see the squad change while running in and saluting, which takes less than one minute. Besides that I was judging at judges table A, which is the horse-score position. This means that I was fully focussed on the running in of the lunger and the horse, plus the horses' trot round. I could even imagine, that if there would be a squad change of any squad, that most probably a judge would not notice this.*”

This changing of your account again calls us to question the credibility of your written statement.

Furthermore, the minute it took for the squad to run in and salute was ample time to check the composition of the GER Squad. The fact that the change of the GER Squad member involved a change from a female to a male vaulter makes your failure to notice this all the more unlikely particularly given that (i) in your 11 May 2019 you admitted to noticing the change; and (ii) you were on notice of the possible illegal substitution due to your awareness of the “rumour”.

7. Overall, the FEI finds the fact that the performance of the GER Squad’s freestyle routine was crucial to their selection for the FEI European Vaulting Championships 2019 **to be relevant and significant factors in how you approached this whole matter. You did not take any**

steps to avoid the rule violation occurring either by approaching the GER Chef d'Equipe in advance and, **once the violation had occurred, you still permitted the GER Squad to complete their routine, both of which decisions facilitated the performance by the GER Squad of their freestyle routine even with the illegally substituted vaulter.** [Emphasis is added.]

4. Submissions by the Appellant for the Appeal

4.1 In his Appeal, the Appellant submitted that:

- a) He disagreed with the Decision and maintained he did not breach the FEI Code, the Member Responsibility or any other FEI Rule or Regulation.
- b) The Appellant initially heard about the rumour from his scribe on Friday. The scribe wondered how the GER Squad would manage on Saturday because a squad member who normally competed in the freestyle test had not participated in the compulsory test on Friday. The Appellant raised this rumour during the judges' meeting that took place on Friday evening after competitions had concluded for that day. None of the judges had any concrete information about this rumour and everyone agreed that "*no official action could and should be taken upon such a casual comment on a totally unlikely scenario.*"
- c) The Appellant emphasized in his submissions that, "*...there is no reference anywhere in the Rules that justifies a sanction, before a non-compliant behaviour has actually taken place. Nor is it up to the President of the Ground Jury [the Appellant] to launch an investigation based upon gossip on a potential future non-compliant behaviour.*"
- d) Immediately after the GER Squad performed its freestyle test with the substituted squad member, the Appellant convened a meeting of the Ground Jury. Some Ground Jury members had noticed the change in the squad member and others had not. The Ground Jury all agreed with the Appellant's decision to disqualify the GER Squad. The Appellant then informed the Show Office so that the GER Squad was removed from the rankings.
- e) Ulla Ramge, the German Chef d'Equipe, acknowledged being responsible for "*planning and realisation of the selection process*". She instructed the GER Squad to perform despite knowing of the substitution of the squad member, which would ultimately result in a disqualification. Ms. Ramge intended to inform the Appellant of the substitution right after the freestyle round, but the judges had already disqualified the GER Squad. In her email of 13 May 2019, Ms. Ramge

stated:

For the German squads it was compulsory to take part at the CVI Ermelo for the selection process for the CH-EU-V 2019, because the international comparison and comparison with the other respective German squads is necessary for a well-grounded selection. As National Chef-Trainer Vaulting I am responsible for planning and realization of the selection process.

On Thursday, 2nd of May, the lunger of the Squad Fredenbeck addressed to me that there might be a problem with one of the squad members (who is irreplaceable in the freestyle for the moment) to participate in all three rounds. I asked her urgently to find a solution to have all there, because it would be obligatory for them to compete and that I had to see the squad performing in original case for the selection process in the free style.

On Saturday morning the lunger told me, that the 7th entered team member has been arrived and so they could show their freestyle in original cast.

Focused on our selection process, under the time pressure and not overviewing the whole situation at that moment, I order the squad to run in and perform although it was clear for me, that this would entail disqualification. Particularly the change from a female to a male vaulter in this good known squad was completely obvious because there is no possibility to make a substitution from one test to the other in the FEI Vaulting Rules as in former times. Directly after the freestyle I informed the PGJ, Mr Rob de Bruin, about the change of a squad member and the squad was disqualified. (...)

Retrospective, I strongly feel, that I made a wrong decision on site under that circumstances to order the squad to compete in this case on Saturday in the 3* Squad competition. I made this decision at the moment, to be sure not to cause an irreparable mistake in connection with our selection process. With indicating the change of the squad member to the PGJ and disqualification of the squad by the GJ this case was done in my opinion.

I deeply regret having caused any troubles thereby, that was never my intention. I sincerely apologize for that. Aside I'm convinced, that nobody else had any disadvantage nor is affected through this action. (...)" [Emphasis is added.]

- f) The Appellant explained that the judges have no way of confirming the

identity of each squad member. Each squad member wears only a number from 1 to 6. The judges have a score sheet listing six names with numbers from 1 to 6. They assume that the squad member wearing number 1 is indeed the member listed as number 1 on their score sheet. Furthermore, the judges did not have the score sheet from Friday's compulsory test for Saturday's freestyle test.

- g) The other judges confirmed in emails that (i) "the substitution was discovered after the freestyle round and resulted in a disqualification" (Anne Deeks); (ii) "... It was our collective decision to judge a fact, and thus to only disqualify a competitor after they infringed the Rules. (...) I let the event go ahead to discuss with my Colleagues later. It was noted by Mr de Bruin that one vaulter had indeed changed in the Squad from Fredenbeck, and so I removed them from the scoring system (Alexander Brooks); and (iii) "... The decision was: let them start, look if the rumor is right or not, give scores. But if the rumor is right, delete the scores because of disqualification (Heddy Boelsma).
 - h) The Appellant alleged the FEI's investigation and the Decision were aimed to prevent him from acting as the President of the Ground Jury at the World and European Championships organised by the NED-NF in Ermelo in July 2019.
 - i) In response to the FEI's comments in the Decision that there were "significant discrepancies" in his emails of 11 May 2019 and 28 June 2019, the Appellant submitted that he was not legally represented at that time but he maintained the facts as described in his emails. He further alleged that the Decision was "*...solely based on the wording of his statements, re-interpreting what the FEI thinks Mr. de Bruin might have intended or thought, without any concrete fact that would support these allegations.*"
 - j) The Appellant lastly submitted that, "*The harshness of the sanction was surprising as well: no discussion, no warning, no consideration for the upcoming major event and its organisers.*" He referred to a previous case where a judge was suspended outside of the competition season. He requested the Decision be cancelled and his reputation, restored.
- 4.2 In his supplementary submissions to his Appeal, the Appellant submitted that:
- a) The Appellant stated that although the FEI did not publish his suspension for "privacy reasons", the vaulting community was aware of his suspension because he had to withdraw from being President of

the Ground Jury at the European and World Championships. He believed the FEI's contact with the other judges and the German trainer put him in an "*ambiguous*" position, which was unnecessary.

- b) The Appellant believed the FEI did not provide him with all of the minutes or emails about this investigation. He thought there should have been minutes or emails of the conversation between the Chair of the Vaulting Committee and the FEI Vaulting Department.
- c) The Appellant questioned why the FEI Legal Department started an investigation instead of allowing the FEI Vaulting Department to clarify the circumstance. He added that Ms. Kull, one of the most experienced 4* judges, did not mention the disqualification in her initial report, which suggested that the disqualification was carried out properly. He further stated that John Eccles, the chairperson of the Vaulting Committee, was present at the Event and had the opportunity to take any action he thought was appropriate but chose not to do so.

5. Submission by the FEI in its Answer to the Appeal

- 5.1 The FEI submitted the following prayers for relief in its Answer:
 - (a) Dismiss the Appeal;
 - (b) Uphold the FEI Decision; and
 - (c) Determine that the Appellant shall bear the full costs of the Appeal proceedings and contribute to the FEI's legal costs.
- 5.2 In essence, the FEI submitted that the Appellant breached the FEI Code and Responsibility Acceptance by stating: (i) his "*actions were carried out with the aim of facilitating the selection of the squad in question for the FEI Vaulting European Championships*"; and (ii) the one (1) month sanction imposed via the Decision was validly taken, reasonable and proportionate and should, therefore, be confirmed. [Emphasis is added.]
- 5.3 More specifically, the FEI submitted that the FEI was deliberately submitting a very concise Answer due to the fact that the Appeal was somewhat moot given (i) the Appellant's short period of suspension had already expired; and (ii) the FEI believed that the Notification Letter and the Decision were self-explanatory and clearly set out the reasons behind the Appellant's suspension.
- 5.4 The FEI submitted the following:

... the fact Mr. de Bruin did not disqualify the GER Squad until after they had performed their freestyle routine (and received the scores) had to be viewed in light of the fact that, in order for the GER Squad to be

considered for selection for the then upcoming FEI Vaulting European Championships, it was mandatory that the squad perform both the compulsory and freestyle routine.

[...] *It is clear from Ms. Ramge's statement that had the GER Squad not performed their freestyle routine on the Saturday morning, they simply would not have been considered for selection for the FEI European Championships. Thus, there was a massive incentive for the GER Squad to compete with their regular squad in the freestyle on the Saturday morning. It simply did not matter, for selection purposes, that they would be subsequently disqualified as long as they were not disqualified until after they had performed their entire routine. **The Appellant's actions in not disqualifying the GER Squad until after their performance clearly facilitated this.** [Emphasis is added.]*

- 5.5 The FEI disagreed with the Appellant's view on Ms. Kull's first report and held a contrary view that it was "very strange that such an unusual incident as the illegal substitution of a vaulter did not merit any mention in Ms. Kull's report."
- 5.6 The FEI submitted that as the international governing body, it was entirely up to the FEI to decide what it should and should not look into, which included contacting the other judges and the German trainer in this case.
- 5.7 The FEI found it significant that the Appellant did not name his scribe or submit any witness statements from her.
- 5.8 The FEI further submitted the FEI did not hide from the fact that this case required the Tribunal to "*read between the lines*" somewhat and consider the totality of the situation. The surrounding circumstances were important. The FEI submitted:

*As a standalone matter, **Mr. de Bruin's actions in deliberately waiting to disqualify the GER Squad until after they had performed the full routine with the illegally substituted athlete might seem rather innocuous.** However, the FEI, as the international governing body for equestrian sport, has a duty to uphold the principles of fair play.* [Emphasis is added.]

- 5.9 The FEI further submitted:

[...] *the evidence points to **Mr. de Bruin's decision being taken in order to ensure that the GER Squad would not miss out on selection for the FEI Vaulting European Championships.** He*

"looked the other way" even though he was on notice of the planned rule breach and, in doing so, **he facilitated that rule breach** and undermined the integrity of FEI Vaulting judges generally and the FEI Vaulting Committee of which he is a member. [Emphasis is added.]

- 5.10 The FEI quoted a well-known motto among FEI Officials of "*Help, Prevent, Intervene*", which encourages FEI Officials to be proactive and take corrective action to avoid a rule breach before it occurs. The FEI submitted the Appellant failed to prevent the rule breach and added, "*A simple conversation with the GER Squad or Mrs. Ramge prior to the Freestyle was all that it would have taken but Mr. de Bruin made no effort to do so and was deliberately passive.*" [Emphasis is added.]
- 5.11 The FEI submitted the applicable standard of proof of "*comfortable satisfaction of the Hearing Panel*" pursuant to Article 32.2 of the IRs had been met.
- 5.12 The FEI further submitted the suspension imposed on the Appellant was both reasonable and proportionate. In comparing this matter with previous cases, the FEI was of the view that the suspension was certainly in line with previous suspensions imposed on FEI Officials. The purpose of a sanction was not only to penalise wrongdoing but also to encourage the person in question to act differently in the future. The FEI imposed the one (1) month suspension with these dual aims in mind. The FEI thought it was troubling that Mr. de Bruin continued to state he acted correctly in this case and had concerns about his judgment and decision-making.
- 5.13 Pursuant to Article 168 of the GRs, FEI Decisions take effect from the date of notification. Contrary to the Appellant's allegations, the FEI did not have a particular timeline in mind when applying the suspension. The FEI stated had the Appellant not requested an extension of the deadline to submit his formal reply to the Notification, his suspension would have expired before the start of the FEI Vaulting European Championships.
- 5.14 The FEI noted the Decision was communicated to a limited circle of people. The FEI did not publish the Decision or issue any press release in response to the Appellant's call for his "*reputation to be restored*".
- 5.15 Finally, the FEI noted that Appeal proceedings in front of the Tribunal are not *de novo*, and the Tribunal's role was to assess whether the Decision was validly made and proportionate.

6. Further submissions

- 6.1 On 3 September 2019, the Appellant provided a further witness

statement from Ms. Elske Hoving, who was the Event Director. Ms. Hoving confirmed the GER Squad was disqualified by the Ground Jury right after it had completed the freestyle test and removed from the rankings.

- 6.2 On 11 September 2019, the Appellant provided a further statement. At the outset of the hearing, the Tribunal informed the Appellant that the Tribunal did not accept this statement because it was not submitted within the given deadline but more importantly, the Tribunal did not find this additional statement particularly helpful to this Appeal.

7. The Hearing

- 7.1 The Parties confirmed they did not have any objections to the Tribunal members hearing this Appeal. At the conclusion, the Parties confirmed they had ample opportunity to present their cases. The Tribunal then closed the hearing and reserved its Decision.
- 7.2 The Parties maintained their written submissions. Therefore, the Tribunal will summarise only those submissions that were newly learned and/or clarified during the hearing.
- 7.3 The Appellant testified during the hearing as follows:
- a) He confirmed there was a meeting of the judges to discuss scores at the conclusion of Friday's competitions. He discussed the rumour with the other judges at this meeting. He explained he learned about the potential squad change when he overheard his scribe speaking about it with another person earlier that same day. He firmly believed the rumour was nothing more than that and did not expect any German squad to make any changes because German squads consistently won medals. The other judges also did not think this would occur. This meeting began at approximately 9:00pm and concluded between 10:00pm and 10:30pm.
 - b) He advised five (5) German squads competed on Saturday. He confirmed he did not notice any changes to the GER Squad when the squad members entered the arena. His salute took approximately seven (7) seconds and the squad members were about 12 metres away from him when they ran into the arena. Furthermore, all of the squad members, whether male or female, wore the same costumes and makeup. He showed the Tribunal a photo, which showed the similarity in outfits and makeup among them. Furthermore, the squad members wear only a number from 1 to 6 on their right arm, right leg, or back. They wear no other identification.

- c) He advised the competitions began at 8:00am and ended at 8:00pm. During this time, he saw over 60 individual squad members, so it would have been difficult to notice a squad change, particularly given the similarity in dress and makeup.
- d) He noticed the squad change about halfway through the GER Squad's freestyle test, which lasted approximately four (4) minutes. He asked his scribe if this was what she was talking about on Friday. He knew then he would disqualify the GER Squad, but he explained it would have been too dangerous to stop the GER Squad mid-performance. He also wanted to double-check this squad change with the other officials, two of whom noticed the change whereas the other two did not. He then disqualified the GER Squad.
- e) He confirmed he was not aware of the German selection process for the upcoming championships.
- f) He suggested rules should be implemented so that the identities of squad members are verified before they enter the arena. Currently, there are no rules and in his view, it was the responsibility of the Chef d'Equipe to verify each squad member's identity.
- g) He disagreed with the FEI's allegation that he "looked the other way". He disqualified the GER Squad at the conclusion of its performance. Furthermore, there is nothing in the Rules that specify at which point in time the disqualification had to happen.
- h) He believed the Decision was incorrect and not based on the facts. He did not act wrongly and believed he was punished for a mistake he did not make. Furthermore, contrary to the FEI's interpretation, he maintained that his email of 11 May 2019 was consistent with the email of 28 June 2019. He was merely trying to provide a better explanation.
- i) He found it ironic that the FEI questioned his judgment and decision-making but then asked him to give educational seminars for the FEI.
- j) He stated the suspension was very harsh and caused him to miss two of the most important events of the year. He also stated the vaulting community was aware of his suspension, which was damaging to his reputation.

7.4 Ms. Ramge testified during the hearing as follows:

- a) She explained that on Saturday morning when the GER Squad was

preparing, she noticed a dressed squad member who was preparing but had not competed on Friday. She was aware that changing a squad member from the compulsory test to the freestyle test was not permitted by the FEI Rules. She believed this new squad member was not aware of this Rule because substitutions were previously allowed. She confirmed she allowed the GER Squad to compete because she did not want to stop the squad members from preparing and it was important for her to see their performance. She acknowledged she made the wrong decision. Furthermore, she confirmed she did not tell the Appellant about the squad change before the competition began but informed him after the GER Squad had completed. When she did, she discovered the Appellant had already disqualified the GER Squad.

- b) She advised she has been a FEI vaulting judge for a long time. She stated the scribes verified whether every squad member, numbered 1 to 6, performed on the horse at least once during the freestyle test.
- c) In her view, she stated it was impossible to see a change in a squad member unless the judge was previously familiar with that particular person. She further confirmed that the identities of the squad members were not normally verified before they entered the arena and there was a better chance of seeing the squad members' faces when they ran out of the arena as opposed to running into the arena. She stated she would have checked the passports after the competition and compared Saturday's video to Friday's.
- d) She confirmed that judges would not stop a squad mid-performance unless a squad member or a horse was at risk to sustain a physical injury, which happened only once or twice per year. She stated that before stopping a performance, a judge would have to have "*strong reasons*" and "*be very sure*".

7.5 The FEI testified during the hearing as follows:

- a) The FEI disagreed with the Appellant that he did not do anything wrong. The FEI stated the FEI Officials are appointed to be the "*eyes and ears*" of the FEI and the FEI relied on them to act in accordance with the FEI Rules and Regulations.
- b) The FEI argued that the Appellant was on notice of the very usual squad change. He did not do anything about it and looked the other way when something was happening or about to happen. The FEI maintained the Appellant should have taken steps to prevent a Rule

breach, which he failed to do, and this merited the disciplinary sanction of one (1) month. The FEI believed that a warning would not have been sufficient in this case. The FEI stated the timing of the suspension was unlucky for the Appellant as the Rules provide suspensions begin on the day a decision is notified to the affected party.

- c) The FEI submitted the information of the potential squad change was stronger than just a rumour. The FEI claimed the Appellant stated in his first submission he noticed the change in squad member when the squad members entered into the arena, but he later changed his submissions to state he noticed the change during their performance.
- d) A Tribunal member asked the FEI whether the FEI believed there was any favouritism on the Appellant's part to enable the GER Squad to compete. The exchange was as follows:

Tribunal: *Ahh - are you suggesting that there is any element of favouritism - ahh - to enable this particular German squad to compete?*

FEI: **We, we can't say that.**

Tribunal: *You don't say that?*

FEI: **We don't say that.** *We just say that what happened was not what should have happened. That there was no effort made to - ahh - intervene, to investigate, that the President of the Ground Jury did not act appropriately as the FEI would expect the President of the Ground Jury to act in this case when being on notice of a, of ahh, of an anticipated rule breach. That is our issue here. We haven't - And I think in fairness we haven't gone that far, we haven't said anything that we cannot support in in our submission.*

[Emphasis is added.]

8. Jurisdiction & Admissibility of the Appeal

- 8.1 In accordance with Article 18.1 of the IRs, the Tribunal has jurisdiction to hear and determine Appeals lodged in accordance with Article 165 of the GRs.
- 8.2 The Tribunal takes note that the Appellant lodged his Appeal in accordance with Article 165 of the GRs. Article 165 of the GRs provides an Appeal can be lodged against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible. The Appellant provided a deposit as required under Article 166 of the GRs.

8.3 The Tribunal therefore finds that the Appeal is admissible. The FEI also did not object.

9. Decision

9.1 The Tribunal notes that neither the GRs nor the IRs refer to *de novo* proceedings in cases of Appeals. The Tribunal finds that as a general rule, Appeals are not *de novo*. Furthermore, the Tribunal agrees with the FEI that the purpose of an Appeal is to confirm whether the FEI made the right decision in applying the FEI Rules and Regulations to the facts and circumstances of each case.

9.2 The Tribunal begins by addressing the following procedural matters:

- a) Article 163.9 of the GRs gives the FEI wide latitude to open a disciplinary case against a person. Therefore, the FEI has the discretion to commence an investigation without a complaint and may do so should a matter be referred from another department to the FEI Legal Department. The FEI may contact whomever it thinks is necessary during the course of its investigation.
- b) The Tribunal understands the timing of the suspension was not favourable to the Appellant, but Article 168 of the GRs provides the starting date of any suspension is the date the decision is notified to the affected party.
- c) The Tribunal notes the GRs and IRs provide very little guidance on disclosure. However, it is clear from Article 22.1 of the IRs that, "Proceedings before the *Hearing Panel* are adversarial in nature." Given that proceedings are adversarial, the FEI is expected to give proper disclosure so that an opposing party may properly defend his case. The Tribunal notes that documents, such as Ms. Ramge's statement, were disclosed to the Appellant after he lodged his Appeal. The Tribunal finds Ms. Ramge's statement as well as those from the other judges and officials should have been disclosed to the Appellant before the Appeal stage. The Appellant should not have been required to obtain statements on his own efforts.

9.3 The Tribunal now must decide whether to uphold the FEI's Decision. At the conclusion of the hearing, the Tribunal members deliberated at length. For the reasons set out in the following paragraphs, the Tribunal respectfully disagrees with the finding in the Decision and allows the Appeal lodged by the Appellant.

9.4 The Tribunal finds the Notification Letter, the Decision, and the FEI's

Answer to the Appeal (collectively, the “**FEI Submissions**”) are all predicated on the perhaps honest yet mistaken theory that the Appellant deliberately facilitated the performance of the GER Squad on Saturday because its performance was mandatory for the GER NF’s selection for the upcoming championships. The Tribunal highlights certain passages from the FEI Submissions in paragraphs 3.2, 3.4, 5.2, 5.4, 5.8, 5.9, and 5.10 above, which evidences the FEI’s position. On an in-depth review of the FEI Submissions, it appears that the FEI fit the facts and made assumptions to support its theory the Appellant acted in a deliberate manner.

- 9.5 The FEI’s theory collapsed when on its own admission at the hearing, the FEI stated “we can’t say that” and “we haven’t gone that far” at paragraph 7.5(d) in answer to whether the FEI believed there was any element of favouritism on the Appellant’s part to allow the GER Squad to compete. This admission is clearly contrary to what is written in the FEI Submissions. The FEI’s concession was appropriate in that there was no evidence in the materials before the Tribunal to support any suggestion of deliberate favouritism to facilitate the GER Squad’s performance. Although the Tribunal could end its discussion here, the Tribunal will address other points made in the FEI Submissions.
- 9.6 A rumour, whether it is *faint, bizarre, or unbelievable*, is still simply a rumour. Some rumours come to fruition; others do not. The important point is if a rumour is not substantiated with any concrete evidence, it remains a rumour.
- 9.7 The Tribunal acknowledges that FEI Officials are the FEI’s “*eyes and ears*” at FEI sanctioned events and they are therefore responsible for ensuring the FEI Rules and Regulations are adhered to at events. The Tribunal further understands the motto, “*Help, Prevent, Intervene*”, which encourages FEI Officials to be proactive and take corrective action before a Rule breach occurs. In this case, however, the Appellant was dealing with an unsubstantiated rumour. The Tribunal’s view is that the Appellant made the most pragmatic decision he could in these circumstances by discussing the rumour with other judges at the judges’ meeting. There was nothing nefarious in his decision to discuss the rumour with them. The Appellant and the other judges, as evidenced by their statements in paragraph 4.1(g) above, agreed that if they saw a change in a squad member, they would immediately disqualify that squad. Here, the Tribunal agrees with the Appellant that, “...*there is no reference anywhere in the Rules that justifies a sanction, before a non-compliant behaviour has actually taken place.*” In any event, the Tribunal finds the Appellant did indeed “*intervene*” in accordance with the FEI Rules and Regulations. Once the Rule breach actually occurred, the Appellant disqualified the GER Squad

for the change in squad member. The Tribunal further notes the FEI Rules do not state at which point in time a disqualification has to happen.

- 9.8 The FEI suggested the Appellant should have approached Ms. Ramge, the German Chef d'Equipe before the competition and instructed her not to make the illegal substitution. The Tribunal queries whether this would have been possible. The judges' meeting ended between 10:00pm and 10:30pm on Friday night and competitions began at 8:00am the next day. During this short window of time, it was probably unlikely the Appellant would have had an opportunity to speak with Ms. Ramge. Furthermore, the flurry of activity that occurs on competition day is certainly another factor that would have impacted his opportunity to speak with Ms. Ramge ahead of the competitions on Saturday.
- 9.9 The FEI stated in its Notification Letter that the illegal substitution would not have been difficult to spot immediately given: (i) this was already on his radar given the "rumour"; and (ii) the substitution involved the change from a female to a male squad member. The Tribunal respectfully disagrees. It was clear from the Appellant's and Ms. Ramge's testimony that it would have been difficult for any judge to notice the change in squad members. In fact, two judges did not notice the change. For the Appellant's part, his salute took approximately seven (7) seconds and the squad members were approximately 12 metres away from him when they entered the arena. The squad members, whether male or female, were all dressed in the same outfit and wear makeup. This became apparent when the Appellant showed the Tribunal a photo of a squad. The squad members wear only a number from 1 to 6 as identification. Furthermore, he was focussed on judging. He stated in his email of 28 June 2019 that he was judging at "Table A", which is the scoring position for the horse. Therefore, he was focussed on the horse, its trot, and the lunger, not the rumour. Ms. Ramge's testimony echoed that of the Appellant's. She confirmed it was impossible to see a change in squad member unless the judge was already familiar with that squad member. She also advised it was easier to see squad members' faces when they exited the arena. The Appellant and Ms. Ramge both advised the identities of the squad members were not normally verified by the FEI Stewards before they entered the arena.
- 9.10 The FEI questioned why the Appellant did not stop the routine as soon as he noticed the change in squad member. The Appellant and Ms. Ramge confirmed it would have been too dangerous to stop a squad mid-performance. It is true that these athletes are performing difficult gymnastic moves on a cantering horse. Any reasonable and objective person would agree that stopping a squad mid-performance could put these athletes in grave danger. The Appellant was acting prudently in

allowing the GER Squad to finish its performance. He was protecting the squad members from injuries, not deliberately facilitating their performance. Safety is paramount and a duty of the President of the Ground Jury to ensure the squad members and horses are safe.

- 9.11 The Appellant consistently stated in his emails of 11 May 2019 and 28 June 2019, in his Appeal, and during his oral testimony that he noticed the change in squad member *during* the GER Squad's performance. The Tribunal finds it curious why the FEI stated the Appellant changed his account of when the Appellant noticed the change as set out in paragraph 7.5(c) above.
- 9.12 The Tribunal notes the Appellant advised he was not aware of the German selection process for the upcoming championships during his oral testimony.
- 9.13 The Tribunal wishes to say a few words about the witnesses. The Tribunal had a sufficient opportunity to assess the Appellant. The Tribunal found the Appellant to be a credible and sincere witness. He answered the FEI's and Tribunal's questions in a forthright manner. It was clear he lacked the requisite intent to facilitate the GER Squad's performance. In fact, this is supported by his decision to talk to the other judges about the rumour. If he indeed wanted to facilitate the GER Squad's performance, he would not have had any discussions. It was also very clear he was upset with the Decision. Despite the FEI's best efforts to keep the Decision and resulting suspension confidential, it was no secret the vaulting community knew about the Appellant's suspension since he had to withdraw as President of the Ground Jury in the championships held in his home Federation. The Tribunal has no doubt the Appellant felt shame and embarrassment over the Decision.
- 9.14 The Tribunal found Ms. Ramge to be a credible witness. Her testimony was genuine and honest. She appeared visibly upset that this matter resulted in a hearing. It was not lost on the Tribunal that Ms. Ramge apologised during the hearing and in her statement at paragraph 4.1(e) above for her decision to allow the GER Squad to compete despite knowing of the squad change and accepted responsibility for her decision. The Tribunal notes the FEI chose not to cross-examine Ms. Ramge.
- 9.15 Since the Tribunal is allowing the Appeal and setting aside the Decision, the Tribunal does not need to assess whether the sanction was reasonable and proportionate. Despite this, the Tribunal wishes to comment. The Tribunal disagrees the sanction in the Decision was in line with the cases cited in the FEI's Answer. The two decisions cited dealt with actual Rule breaches. In one decision, the sanction arose because a FEI judge made negative statements in a printed magazine article and in

the other, the sanction arose because two FEI judges engaged in "nationalistic judging". In the Appellant's case, he was dealing with an unsubstantiated rumour. If the FEI deemed it necessary to sanction the Appellant, the most he should have received was a warning letter.

9.16 The Tribunal finds the Appellant did not breach the FEI Code or the Member Responsibility and allows his Appeal.

9.17 As a result, the Tribunal therefore decides as follows:

- 1. The Appeal is admissible.**
- 2. The Appeal is upheld.**
- 3. The FEI Decision is set aside.**
- 4. All other requests are dismissed.**
- 5. The FEI is ordered to return the Appellant's deposit to him.**
- 6. The FEI is ordered to pay costs to the Appellant of four thousand Swiss Francs (CHF 4'000).**

9.18 According to Article 168 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.

9.19 According to Articles 165.1.3 and 165.6 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

Ms. Harveen Thauli, FEI Tribunal panel chair