



Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2010/A/2058 British Equestrian Federation v. Fédération Equestre Internationale

ARBITRAL AWARD

issued by

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Dr Dirk-Reiner Martens, Munich, Germany

Arbitrators: The Hon. Michael J. Beloff QC, London, United Kingdom
Me Olivier Carrard, Geneva, Switzerland

in the arbitration between

BRITISH EQUESTRIAN FEDERATION (BEF), Kenilworth, United Kingdom
Represented by Mr Richard Lane, Wright Hassall LLP, Leamington Spa, United Kingdom and
Me Claude Ramoni, Ibarrola Sports International Law, Lausanne, Switzerland

- Appellant -

and

FEDERATION EQUESTRE INTERNATIONALE (FEI), Lausanne, Switzerland
Represented by Dr Xavier Favre-Bullet and Me Marjolaine Viret of Lenz & Stachelin, Geneva

- Respondent-

I. THE PARTIES

1. The British Equestrian Federation (hereinafter also "BEF" or the "Appellant") is the national federation for equestrian sports in Great Britain, recognized by the Fédération Equestre Internationale (hereinafter also "FEI" or the "Respondent").
2. The FEI is the international federation governing equestrian sports worldwide.

II. BACKGROUND FACTS

3. This case concerns BEF's wish to be re-instated as a participant for the 2010 edition of the Meydan FEI Nations Cup (the "Nations Cup"), a major jumping team competition based on an annual relegation/promotion system.
4. At the end of the 2009 Nations Cup in August 2009 the FEI published the Final Standings which placed Great Britain in 8th place with 22 points, Belgium in 9th place also with 22 points and Italy in 10th (= last) place with 14 points.
5. The relegation/promotion system for the Nations Cup for the seasons 2009 and 2010 is regulated in the "Rules, FEI Nations Cup Series, Approved by the FEI Bureau 11 April 2009, effective for seasons 2009 and 2010" (hereinafter the "Rules") provides so far as material as follows:

"3. Procedure for promotion of teams to the Top League

The two teams placed 9th and 10th in the season's Top League are relegated to the FEI Nations Cup Promotional League for the following season. Two teams are promoted for the coming season to the Top League competitions

....

10. Team classification at the end of the Top League season

The points obtained by each team in each of the eight Top League competitions are added together to establish the overall Top League classification at the end of each season.

In case of equality of points for any place on the overall Top League classification, teams are separated by giving preference to the team with the greater number of first place classifications; in case there is still a tie the number of second place classifications will count and if necessary the number of third place classifications and so on if the necessity

arises.

...

16. *Relegation of Top League Teams*

The two last placed teams in the overall standings at the end of each season will be relegated to the FEI Nations Cup Promotional League. Teams tying on points for either of the last two places in the final classification of the Top League are separated by relegating the two teams with the greatest number of last places in the Top League competitions. If further ties exist the teams with the greatest number of second last places are relegated and so on until a tie no longer exists."

6. The parties agree that in application of Rule 10 the FEI Final Standings (paragraph 4 above) accurately place Great Britain in 8th place and Belgium in 9th place. They are, however, in disagreement as to how by application of Rules 3 and 16 this placement impacts upon relegation from the Top League to the Promotional League. There is a perceptible tension between those Rules (to which we will need to return), which was recognized by the FEI, and the purported resolution of which by the FEI has led to the current dispute.
7. On 19 August 2009 the FEI Bureau took the following decision (the "August Decision") with regard to the participation of Great Britain and Belgium in the 2010 Nations Cup:

"2009 Meydan FEI Nations Cup – Relegation

Following the Dublin CSIO it became evident that the current rules for the Nations Cup regarding relegation could be interpreted differently (Art. 3, 10 and 16 in the rules). Applying one view GBR would be relegated and applying the alternative view BEL would be relegated since they both ended on the same number of points at the end of the series. Based on this information the majority of the Bureau members decided to allow the teams of both Great Britain and Belgium to compete in the 2010 FEI Nations Cup Top League. (Team Italy would be relegated)."

8. The August Decision was preceded by an intense debate on the wisdom of the earlier FEI decision to increase the number of teams competing in the Nations Cup from eight to ten for the 2009 and 2010 seasons - in chronological sequence:
- (i) On 6 June 2008 the International Association of Chefs d'Equipe in Show Jumping ("the Association") wrote to the President of the FEI Jumping Committee as follows:

"... would like to advise the FEI Jumping Committee the following eight items to be taken into (re)consideration and to subsequently propose to the FEI Bureau to adapt the current plans for the Super League Series [now the Nations Cup] ~ 2009 and onwards as follows:

...

2. 8 NFs maximum to be qualified for the Super League series".

- (ii) On 10 October 2008 the organisers of the eight events making up the Nations Cup wrote to FEI as follows:

"...The decision to change the number of teams from eight to ten is a problem for all organizers"

- (iii) On 27 May 2009 the Association wrote to the President of the FEI Jumping Committee as follows:

"... the Chefs d'Equipe unanimously advise the FEI jumping Committee to propose to the FEI Bureau to adapt the current plans - and so far as required rules - for the Meydan Nations Cup Series 2010 and onwards as follows:

1) To return to the previous format, including..8 NFs maximum to be involved in the Series.

2) The general feeling among the Chefs d'Equipe moreover is that the number of NFs represented in the FEI Nations Cup Series in practice proves to be simply too much, ..."

- (iv) On 3 July 2009 the FEI Nations Cup Working Group met in Aachen. The minutes of the meeting, inter alia, state the following:

"1. Introduction

The Chair of the FEI Jumping Committee ...referred to the reason for increasing the number of teams invited for the Meydan FEI Nations Cup Series from eight to ten by explaining that the rationale was related basically to promoting universality of the sport as well as promoting the team competition.

...

The FEI Director of Jumping emphasized that alterations to the qualification system for the 2010 Meydan Nations Cup Series could not be made without the written approval of all the NFs in the Meydan Nations Cup Series and all those NFs that had started teams in the 2009 FEI Nations Cup promotional series.

...

3. 2010 Season

...

d) Number of teams to be relegated for the 2010 season;

It was accepted that this rule could not be altered for the 2010 season as not all NFs involved would accept an alteration."

- (iv) On 30 July 2009 a further meeting of the FEI Nations Cup Working Group was

held via telephone conference. The minutes, *inter alia*, state the following:

“... ”

4. Organization of the Top League Nations Cup Series in 2010

4.1 The Working Group endorsed the recommendation from the Aachen meeting where the following points were agreed upon for the 2010 season:

“... ”

c. Ten teams (2010 only – provided that in 2011 there will only be eight teams. It was recognized that the number of Nations competing in the TLNC series in 2010 could not be reduced as qualification specifications for 2010 have been published and distributed);”

9. The August Decision did not, however, put an end to the discussions relating to the number of teams participating in the 2010 edition of the Nations Cup.

10. On 29 August 2009 on the occasion of the European Championship in Windsor, an “*informational and not decision making*” meeting was held in the form of an open forum of all stakeholders involved in the Nations Cup, including National Federations, Organising Committees and riders (the “Windsor Meeting”). The minutes of that meeting, *inter alia*, state the following:

“... ”

3. 2010 Season

Discussion ensued as to how to move forward for the 2010 season. The following strong opinions were voiced:

- *In the best interest of the sport and in the spirit of fair play neither BEL nor GBR should be relegated.*
- ...
- *Mr Pessoa reported on behalf of the IJRC (International Jumping Rider Club an association open to the first 100 riders of the world ranking list) that the riders met this week and recommended that in the best interest of the sport and the series ... that the number of teams should be reduced for the 2010 season. The IJRC recommends that no country should be advantaged and that BEL and GBR should be relegated ...*
- ...
- *A proposal to reverse the previous decision of the Bureau by the riders club and several NFs. The essence of this proposal was to relegate three teams already this year (ITA, GBR and BEL) ...*
- *This proposal was presented in the spirit of trying to protect the quality of the league and the spirit of the sport.*

- *After a lengthy discussion the meeting was asked to state their opinion by a showing of hands. With only the NFs taking part the outcome was 8 for and 5 against. With the whole meeting taking part the outcome was 23 for and 16 against.*
 - *Based on this additional information the JC (Jumping Committee) is asked to advise the Bureau to reverse the previous decision and decide for a relegation of three teams ITA, GBR and BEL from the Nations Cup Top Level League 2009."*
11. On 1st September 2009 on the basis of the Windsor Meeting the FEI Jumping Committee unanimously decided to invite the FEI Bureau to reverse the August Decision and to relegate Great Britain, Belgium and Italy.
 12. On 4 September 2009, the FEI President wrote to the members of the Bureau explaining that a "huge discontent" had arisen at the Windsor Meeting (paragraph 10 above) with regard to eleven teams participating in the 2010 Nations Cup. The President proposed to the Bureau to follow the Jumping Committee's proposal (paragraph 11 above) to make a new decision.
 13. On 15 September 2009 the FEI Bureau, by twelve votes in favour, two abstentions and three non-votes, decided to relegate Great Britain, Belgium and Italy from the Top League so that these teams could only compete in the Promotional League in 2010 season (the "September Decision").
 14. The BEF (but not Belgium) appealed against the September Decision to the FEI Tribunal.
 15. On 21 January 2010 the FEI dismissed the BEF's appeal and upheld the September Decision.

The FEI Tribunal was of the opinion

"that there is an unresolved ambiguity in the Rules which could not have been resolved through any reasonable legal interpretation. Faced with this ambiguity in the Rules, the Bureau correctly and rightfully took steps to resolve it in the best interests of all stakeholders involved and equestrian sport in general."

In the opinion of the FEI Tribunal the authority of the FEI Bureau to make the September Decision was based on Art. 20 of the FEI Statutes which reads as follows:

"20.1 The Bureau shall decide on all matters not otherwise reserved to another body of the FEI."

Without limitation to the generality of the foregoing, the Bureau shall have the following functions and powers:

...

(viii) To approve the Sport Rules (a) that cannot await the next General Assembly and are required by the IOC and (b) Sport Rules for Series;"

III. PROCEEDINGS BEFORE THE CAS

16. On 5 February 2010 the BEF filed a statement of appeal at the Court of the Arbitration for Sport (the "CAS") against the decision of the FEI Tribunal dated 21 January 2010.

17. On 11 February 2010 the BEF filed its appeal brief.

18. On 8 March 2010 the FEI filed its answer.

19. On 11 March 2010 the parties were advised that the Panel appointed to decide the matter had been constituted as follows:

President: Mr Dirk-Reiner Martens, Attorney-at-law in Munich Switzerland

Arbitrators: The Hon. Michael J. Beloff, QC, London, England

Mr Olivier Carrard, Attorney-at-law in Geneva, Switzerland

20. On 22 and 23 March 2010 respectively, the FEI and the BEF signed the Order of Procedure, confirming that the CAS has jurisdiction to hear this matter.

21. A hearing was held on 24 March 2010 at the CAS headquarters in Lausanne. The Panel was assisted by Ms. Louise Reilly, Counsel to the CAS. The BEF was represented by Mr Claude Ramoni, Mr Tim Penny, Mr Richard Lane and Ms Laura Wheeler (external Counsel), Ms Janice Shardlow (BEF Head of Governance and Legal) and Mr Michael Mac (Chairman of the British Showjumping Association). The FEI was represented by Mr Xavier Favre-Bulle and Ms Marjolaine Viret (external Counsel), Ms Lisa Lazarus (FEI General Counsel) and Ms Carolin Fischer (FEI Legal Counsel).

22. At the outset of the hearing, the parties confirmed that it was common ground that (i) the appeal was timely, (ii) the CAS has jurisdiction to decide the matter, (iii) the CAS would decide the matter *de novo*, pursuant to Article R57 of the Code of Sports-related Arbitration (the "Code"), (iv) Swiss law is applicable to the merits of the dispute, and (v) there was no objection to the constitution of the Panel.

IV. THE APPELLANT'S SUBMISSIONS

23. The Appellant submits that the August Decision must be upheld and that Great Britain must not be relegated.
24. In the Appellant's submission the very fact that Belgium did not appeal the September Decision must lead per se to the conclusion that Belgium and Italy are being relegated for the 2010 season. Great Britain cannot be relegated in addition to Belgium and Italy because this would be in breach of the FEI's own regulations which provide for relegation of two teams only, not three (Rule 3, see paragraph 5 above).
25. The Appellant further submits that on the basis of the Swiss principles of legality, legitimate expectations, good faith, fairness and proportionality as well as the general principles of construction the proper resolution of the tension between Rules 3 and 16 requires the same result i.e. relegation of Belgium and Italy, but not Great Britain.
26. The Appellant notes that both the first sentence of Rule 3 and the first Sentence of Rule 16 lead to the same result i.e. that the teams "placed 9th and 10th in the seasons' top league" (in the vocabulary of Rule 3) or (in the vocabulary of Rule 16) the "two last placed teams in the overall standings" i.e. Belgium and Italy should be relegated.
27. The Appellant contends that the 2nd sentence of Rule 16 is "*an unnecessary provision*", which if necessary must be disregarded or blue-pencilled. The application of this sentence in the present case would produce the absurd result (and one inconsistent with the provisions referred to in paragraph 19 above) that the team which finished in 8th place in the overall standings (arrived at by applying Rules 3 and 10), i.e. Great Britain,

would be relegated while the team placed 9th (Belgium) would not.

28. According to the Appellant, in reaching the September Decision the FEI Bureau asked itself the wrong question i.e. simply whether it was in the best interest of sport for all three teams to be relegated. Rather,

“they should have had due and proper regard to the Rules and asked themselves the question which of Belgium or Great Britain should be the second team to be relegated under the Rules.”

They submit that the FEI Tribunal was therefore in error in upholding the September Decision.

29. Finally, the Appellant contends that their right to be heard was not adequately respected in the various “informal” meetings (see paragraph 8 above) leading up to the September Decision.

30. Accordingly and for those reasons the Appellant requests the CAS

“to order that the Great Britain team is not relegated from the Top Level Nations Cup for the 2010 year.”

V. THE RESPONDENT’S SUBMISSIONS

31. The Respondent requests that the CAS Panel

*“- dismiss the appeal filed by the British Equestrian Federation in its entirety,
- order the BEF to pay any and all costs of these appeal arbitration proceedings, including a significant participation towards the legal costs incurred by the Fédération Equestre Internationale;
- dismiss any other relief sought by the BEF.”*

32. The Respondent submits that it was the view of the majority of the equestrian family, including the BEF, that the Nations Cup format of eight teams works best for the sport. After the publication of the Rules for the 2009/2010 seasons which provided for the participation of ten teams critical comments were voiced by many stakeholders, including at that point in time BEF itself.

It was only when some stakeholders continued to seek a reversal of the August Decision and to procure a reduction of the number of teams in the Top League in the 2010 season to eight, that BEF had an apparent change of heart and expressed the self-interested view that it would be perfectly in order for eleven teams to compete in the Top League for that season.

33. The Respondent submits that the August Decision was based on inadequate consultation with stakeholders and at odds with their majority view as to the best way forward. Appropriate consultation only took place after the August Decision, in particular on the occasion of the Windsor Meeting which involved discussions among the organisers of the individual events, the riders and the FEI Jumping Committee.

34. According to the Respondent, the promulgation of Rules for the FEI Nations Cup lies within the exclusive jurisdiction of the FEI Bureau. The Bureau may approve them and apply them by way of requisite resolutions.

Furthermore, in case of any ambiguity within the Rules, the Bureau has the right and power to interpret the provisions and to resolve the issue of construction itself.

35. The Respondent further contends that “nothing prevents the Bureau from replacing a resolution by another” so that it was perfectly legitimate for the Bureau to reverse the August Decision and substitute the September Decision for it.

36. The Respondent supports the view expressed by the FEI Tribunal according to which the September Decision was based on sporting considerations and it “*should not and cannot replace its sport judgement with that of the Bureau*” but may “*only set aside a decision that is arbitrary, capricious and made in bad faith.*”

37. Therefore, in the submission of the Respondent this CAS Panel – despite its power to review the case *de novo* under R57 – should defer to the FEI’s technical expertise and specialised knowledge in the sphere of equestrian jumping and should exercise restraint when reviewing the merits of a decision of the FEI’s duly appointed organs.

38. The Respondent argues also that BEF’s right to be heard was fully respected during the

consultation process and that in any event – as the FEI Tribunal correctly stated in its decision – “*the parties have no inherent right to be heard before the Bureau.*”

39. Finally, in the Respondent’s view Rule 16, 2nd sentence cannot simply be ignored. While Rules 3 and 10 determine the Final Standings, Article 16 specifically deals with the relegation of teams and must thus be characterised as *lex specialis* for the purpose of deciding which of two teams tying on points for either of the two last places must be relegated and has an inherent reasonableness by focussing for the purposes of relegation on the worst rather than on the best results of the teams in contrast to the focus on the best rather than the worst results of the teams for the distinct purposes of final standings.

VI. PROCEDURAL MATTERS

JURISDICTION

40. Article R47 of the Code provides as follows:

An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body. An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance.

41. Article 35.1 of the FEI Statutes (22nd edition, effective 15 April 2007, updated 21 November 2008) provides:

The Court of Arbitration for Sport (CAS) shall judge all Appeals properly submitted to it against Decisions of the FEI Tribunal, as provided in the Statutes and General Regulations.

42. Article 165 of the FEI General Regulations (23rd edition, effective 1 January 2009) provides:

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):

...

1.3. With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the Secretary General and provide him with copies of the Appeal papers.

43. The parties confirmed CAS' jurisdiction in this matter both by signing the Order of Procedure and again orally, at the outset of the hearing. Based on the articles set out above and the parties' express agreement, the Panel is satisfied that the CAS has jurisdiction in this matter.

APPLICABLE LAW

44. Article R58 of the Code provides as follows:

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

45. In their submissions, the parties rely on the FEI rules and regulations and provisions of Swiss law. Furthermore, at the hearing the parties confirmed that the Panel will have to apply Swiss law to the extent that relevant questions cannot be answered on the basis of the FEI rules and regulations. Accordingly, the Panel shall decide the dispute according to the FEI rules and regulations and will apply Swiss law where the FEI regulations are silent.

ADMISSIBILITY

46. Article 165 of the FEI General Regulations provides:

6.1. Appeals to the CAS together with supporting documents must be despatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration:

6.2. So as to reach the CAS within thirty (30) days of the date on which the Secretary General's notification of the FEI Tribunal Decision was received by the National Federation of the Person Responsible;

47. The Decision was issued by the FEI Tribunal on 21 January 2010. Although it is unclear when the "*FEI Tribunal Decision was received by the National Federation of the Person Responsible*", the Statement of Appeal was filed on 5 February 2010, and therefore within 30 days of the decision being issued, regardless of when the decision

was received by the National Federation. It follows that the appeal was filed in due time and is admissible.

VII. DISCUSSION

48. The Panel would observe that it is not for it to pronounce on whether the interests of the sport are best served by any particular limits on the numbers of participants in the Top League in any particular season nor on whether a provision such as the second sentence of Rule 16 with its focus on the worst performance of teams for the purposes of relegation is or is not a better provision than one which simply follows the team standings in accordance with the provisions of a rule such as Rule 10. These issues are indeed for the FEI. The Panel's concern is with a different and narrower issue i.e. is the September Decision upheld by the FEI Tribunal lawful?
49. The Panel need not concern itself with BEF's complaints of procedural fairness. The Panel considers issues of both fact and law *de novo*, pursuant to Article R57 of the Code, and there is ample CAS jurisprudence to the effect that this makes such complaints redundant (CAS 94/219, CAS 2001/A/354, CAS 2004/A/714).
50. The Panel accepts that
 - (i) The FEI Rules on relegation/promotion in the Nations Cup are ambiguous, if not totally irreconcilable; at a minimum Rules 3, 10 and 16, first sentence on the one hand and Rule 16, second sentence on the other, leave scope for debate. The Panel is not in the present circumstances required to pronounce on which of the rival views described above is to be preferred.
 - (ii) According to Article 20 of the FEI Statutes the FEI Bureau is competent to resolve the ambiguity in the FEI Rules, indeed must, subject to any appeal, necessarily do so in performance of its functions.
 - (iii) On the basis on the foregoing considerations the FEI Bureau took the August Decision not to relegate either Great Britain or Belgium but to allow both teams to

compete in the 2010 Nations Cup.

51. It follows that in the Panels view, the August Decision, as a decision taken by the proper body with reference to proper considerations and communicated to the affected parties, must stand and cannot, in so far as it results in Great Britain's relegation, be reversed by FEI in the absence of special circumstances of the kind discussed below.
52. In reaching this conclusion the Panel draws what it conceives to be a useful comparison with a scenario where a public authority issues an administrative decision in favour of a citizen (e.g. grant of a permit) which decision it later proposes to reverse. Under Swiss law and the laws of many other countries (including England and Wales) such a reversal is valid in law only under very limited circumstances, for instance – to the extent relevant here –
- if the decision is illegal, for example because it has been rendered in violation of the rules and regulations of the authority involved or because it has been issued by an authority which did not have the competence to do so, or
 - if new circumstances have arisen (or possibly have since come to light) which would have entitled the authority to refrain from issuing the original decision, had the circumstances been known at the time of its issuance, or
 - if the decision is not final when the new decision is to be taken.

The foregoing is not an exhaustive list but it illustrates the limits of the exceptions to the general legal principle, founded on considerations of legal certainty and finality, according to which a citizen is *prima facie* entitled to rely on valid decisions made by public authorities affecting his rights or interests, and such authority is disabled, absent some express provision, from revoking such decisions (*Auer/Malinverni/Hottelier, Droit constitutionnel suisse, Vol. II: Les droits fondamentaux, Bern 2000, paras 1121ff., spec. 1124, 1127, with ref; Fleiner T., Cantonal and Federal Administrative Law of Switzerland, in: Dessemontet/Ansay (eds), Introduction to Swiss Law, The Hague 2004, p. 40f.*)

53. There is an obvious parallel in this context between a public authority and a sports federation, who make their rules and regulations and reach their decisions by a similar process and with similar impact on those affected.
54. Furthermore, a decision-making body, such as the FEI Bureau, is not entitled to modify a decision which it has previously issued, on its own motion. This results from the general principle of *res judicata*. This principle is recognised in Swiss law. Indeed, according to the case law of the Swiss Federal Tribunal the existence of two contradictory decisions in a same legal order is contrary to public policy. Such a situation can be avoided by application of the principle of *res judicata* (ATF 127 III 238, §2b; ATF 116 II 625, §4a; ATF 114 II 183, §2a). This principle applies to a decision, once it has become final and cannot be contested either by the parties or by the judicial body which took the decision (Decision of the Federal Tribunal of 20 February 2004, in the case 5C.242/2003, unpublished, §2.1). It is therefore not open to the body which took the initial decision to take a subsequent decision about the same matter, with the same parties, relying on the same facts and based on the same cause of action (*ibidem*). Legal authors also recognise the fundamental role of the principle of *res judicata*, in particular in civil procedure (Fabienne HOHL, Procédure civile, Tome I, Ed. Stämpfli, p. 241 and 244).
55. A final decision might be modified subsequently only in limited circumstances, that is if a party to the decision requests the revision or interpretation thereof. The principle of immutability of final decisions is not overridden by considerations on the merits, *i.e.* even if a decision is materially wrong, once it has become final, it cannot be modified, unless through such a request (Decision of the Federal Tribunal dated 12 September 2001, published in SJ 2002 I p. 9 ff, §3a and 3b). This consequence also results from the general principle of prohibition of contradictory actions or "*venire contra factum proprium nulli conceditur*". In addition, as stated above, an administrative body might review its decision, if a new circumstance exists.
56. The application of the above Swiss law principles is vouched for by Article R58 of the Code of Sports-related Arbitration (the "Code"), given that the regulations of the FEI are silent on the issue of conflict between two successive decisions.

57. Furthermore, these principles of Swiss law were often applied in CAS awards, where it was held that a decision becomes final if it cannot be attacked by an ordinary challenge. After that moment, the decision cannot be contested by the parties or by the judicial authorities (Award of April 30, 2009 in the case TAS 2008/A/1740, S.C. FC VASLUI S.A. c/ Fédération Roumaine de Football et S.C. Dinamo 1948 S.A., §132; Award of March 19, 2002 in the case TAS 2001/A/340, S. c/ Fédération Internationale de Gymnastique, §23).
58. The Panel therefore considers it appropriate to apply the principles set out in paragraph 37 to 44 above to the August Decision and is accordingly of the view that the FEI is bound by that decision as far as Great Britain is concerned unless one of the following three questions can be answered in the affirmative:
- Is the August Decision contrary to the FEI Rules and Regulations? (“the First Question”)
 - Are there any new circumstances which dictate a deviation from the general principle that once a decision favourable to a party has been issued the issuing authority is bound by that decision? (“the Second Question”)
 - Is the August Decision final? (“the Third Question”)

59. The First Question:

Has the August Decision been reached in compliance with the FEI Rules and Regulations?

The Panel repeats that it agrees with the decision by the FEI Tribunal that the FEI Rules regulating the relegation/promotion in the Nations Cup are – at a minimum – ambiguous. This ambiguity needed to be resolved by the FEI:

The body in charge of resolving it is determined in Article 20 of the FEI Statutes which provides that the FEI Bureau decides

“on all matters not otherwise reserved to another body of the FEI. Without limitation to the generality of the foregoing, the Bureau shall have the following functions and powers:

...

(vii) to approve the Sport Rules (a) that cannot await the next General Assembly and are required by the IOC and (b) Sport Rules for Series.”

Based on the foregoing provision the FEI Bureau had the authority to issue the August Decision as a way of resolving the difficulty arising from that ambiguity in a manner which did not disadvantage any of the potentially affected parties i.e. Great Britain and Italy. The Panel is thus of the view that the August Decision was a valid decision.

The Panel was encouraged to note that on the occasion of the 24 March hearing both Parties agreed that under the FEI rules and regulations the FEI Bureau had the competence to make the August Decision. In fact, FEI accepted that the decision was *“legally correct but incorrect from a sporting perspective”*.

60. The Second Question

Are there any new circumstances which justify a reversal of the August Decision?

As has been set out in paragraph 8 above the question of the appropriate number of participants in the Nations Cup has been the subject of a lively debate ever since the number had been increased from eight to ten following the 2008 season. In fact again as noted, the Chefs d'Equipe, the organizers of the events making up the Nations Cup, the FEI Nations Cup Working Group, the commercial partners and the media have all clearly advocated a return to an eight team competition format at the earliest possible time. This consensus was made known to the members of the FEI Bureau on 12 August 2009 i.e. before the August Decision was taken, and it was despite that knowledge that the Bureau nonetheless reached a decision not only not to decrease the number of teams to eight but actually to increase that number to eleven for the 2010 edition of the Nations Cup in an obvious and excusable effort to avoid having to make a ruling on the proper interpretation of its own ambiguous rules but rather to reach a practical solution.

In its 21 January 2010 decision the FEI Tribunal accepted the FEI argument that it was the consultation process which took place after the August Decision, particularly during

the Windsor Meeting, which caused the FEI to replace the August Decision by its September Decision. Particular emphasis was placed in the FEI's decision on the views expressed and the recommendations made by the FEI Jumping Committee "*which has specialised and unique knowledge of the Nations Cup*" (the Respondent's answer in these proceedings) but which it is common ground has consultative powers only.

The Panel cannot, however, detect anything "*new*" in the conclusions reached during the Windsor Meeting. The opinion expressed by the FEI Jumping Committee and other relevant stakeholders after the August Meeting was no different from the opinion expressed by many stakeholders before it. When asked by the Panel during the hearing on 24 March 2010 the FEI confirmed that there was no reason why the "*other constituents*" could not have been consulted before the August Decision was made.

Under these circumstances the Panel is not prepared to accede to the Respondent's submission that the Windsor Meeting generated "*new circumstances*" which would justify a reversal by the FEI of the decision properly reached in August 2009. The FEI Bureau, in short, had no material new factors drawn to their attention between August and September. It was simply in consequence of representations made to it that it changed its mind about the best way forward.

61. In summary:

Based on their pleadings before this Panel the FEI's case comes down to the following:

Despite the fact

- that the FEI Bureau was not acting "*ultra vires*" when taking the August Decision, and
- that the August Decision was, as the FEI expressly stated in the 24 March hearing, "*legally correct, but incorrect from a sporting perspective*", and
- that there have been no new circumstances which would justify the reversal of the August Decision,

- that the August Decision had become final before the September Decision was taken,

the FEI is fully authorized to change the August Decision at their absolute discretion. The Panel cannot agree with the FEI on this essential point for the reasons set out above in paragraphs 52 *et sequelae*. In the circumstances of the present case the August Decision was irrevocable.

62. The Third Question:

Furthermore, the August Decision became final after the expiration of the 14 days deadline for appeal, provided for by Art. 165 §4 of the FEI General Regulations (or, as a matter of fact, the 14 days deadline for protest according to Art. 163 §5 of the FEI General Regulations). The Statutes and General Regulations of the FEI do not allow the filing of a request for revision of decisions taken by the FEI Bureau, neither do those rules allow the FEI Bureau to revise its decisions of its own motion. As a matter of fact, none of the parties to the August decision requested the revision of this decision. The Bureau was not entitled to modify the August Decision either, given that no new circumstances existed and that such a procedure is not provided for by the FEI Statutes and the General Regulations.

63. For the avoidance of doubt the Panel notes

- (i) The position of Belgium remains unchanged since it has chosen not to contest the September Decision although aware of it.
- (ii) It is critical to its decision that the August Decision favoured Great Britain. Had it been adverse to Great Britain i.e. required Great Britain's relegation, then the Panel might have been required to resolve the tension in the rules to see whether such adverse decision could be justified on the rules' proper interpretation.

VIII. COSTS

64. Article R64.4 of the CAS Code provides:

At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.

65. Article R64.5 of the CAS Code provides:

In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.

66. Having taken into consideration the outcome of the arbitration the Panel is of the view that the costs of the arbitration, as calculated by the CAS Court Office, shall be borne by the FEI.

67. In addition, as a contribution towards the BEF's legal fees and other expenses FEI shall pay to BEF an amount of CHF 5,000 (five thousand Swiss Francs).

ON THESE GROUNDS

the Court of Arbitration for Sport rules that:

1. The decision of the Fédération Equestre Internationale (FEI) Tribunal of 21 January 2010 is annulled. The 15 September 2009 resolution by the FEI Bureau deciding for a relegation of the teams of Great Britain, Belgium and Italy from the FEI Nations Cup is set aside to the extent that it relegates the team of Great Britain from the 2010 edition of the FEI Nations Cup.
2. The costs of the arbitration, to be determined by the CAS Court Office, shall be borne entirely by the Fédération Equestre Internationale.
3. The Fédération Equestre Internationale is ordered to pay CHF 5,000 (five thousand Swiss Francs) to the British Equestrian Federation as a contribution towards its legal fees and other expenses.
4. All other or further claims are dismissed.

Operative part of the award notified on 6 April 2010
Lausanne, 13 July 2010



Dr Dirk-Relner Martens
President of the Panel