

DECISION of the FEI TRIBUNAL

Dated 17 August 2012

In the matter of

MEREL BLOM

(Claimant)

-and-

FEDERATION EQUESTRE INTERNATIONALE

(Respondent)

(Collectively 'the Parties')

1. COMPOSITION OF PANEL

Mr. Henrik Arle, Chair
Mr. Pierre Ketterer, Member
Mr Armand Leone, Member

2. SUMMARY OF THE FACTS

2.1 Submissions and Evidence before the Tribunal: The FEI Tribunal duly took into consideration all of the Parties' submissions, evidence, and documents presented in the case file and at the hearing.

2.2 Memorandum of case: By Legal Department.

2.3 Oral hearing: On 5 June 2012 – Leeds, UK

Present: The FEI Tribunal Panel
Ms. Erika O'Leary, FEI Tribunal Clerk

For the PR: Ms. Merel Blom, Athlete
Dr. Monika Gattiker, Counsel for the Athlete
Mr. John Blom, Father of the Athlete
Mrs. MC Blom-Muilwijk, Mother of the Athlete
(by telephone)
Ms. Sanne Blom, Sister of the Athlete
Mr. Leendert Jan Hofland, DVM, Dutch Team
Veterinarian
Ms. Madeleine Brugman, Dutch Event Rider
(by telephone)

For the FEI: Ms. Lisa Lazarus, General Counsel
Ms. Carolin Fischer, Legal Counsel
Mr. Alain James, President of the Ground Jury
(by telephone)
Mr. Jean-Michel Berkovits, Technical Delegate
(by telephone)
Mr. Martin Lips, Dutch National Eventing Coach
(by telephone)
Mr. Giuseppe Della Chiesa, Chair FEI Eventing
Committee (by telephone)

2.4 Applicable Rules

Statutes 23rd edition, updates effective 15 November 2011
("Statutes"), Articles 36 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective
1 January 2012 **("GRs")**, Articles 157, 159, 161, 163, 165 and 169.

Internal Regulations of the FEI Tribunal, effective 1 January 2012
("IRs")

FEI Rules for Eventing, 23rd edition, 1 January 2009, updates
effective 1 January 2012 **("Eventing Rules")**, Articles 519.7 and
520.

3. Procedural Background

3.1 On 26 April 2012, Ms. Merel Blom **("the Athlete")** received a Notification Letter from the Secretary General of the FEI which enclosed a Yellow Warning Card **("Yellow Card")** for Ms. Blom from the CCI3* Event in Vairano, Italy (19 - 22 April 2012) **("the Event")**, for Abuse of Horse, Incorrect Behaviour and Dangerous Riding. Further, enclosed to the letter was a previous Yellow Warning Card received by the Athlete for Abuse of Horse at the CIC1* Event in Bialy Bor, Poland (27 - 29 May 2011). In the letter it was explained that pursuant to Article 169.7.2 of the GRs and Article 520.3 of the Eventing Rules, having received a second Yellow Card Warning for the same offence **("Abuse of Horse")**, within one year from the delivery of the first Yellow Warning Card, the Athlete was automatically suspended from the day following the Event in Vairano **("Automatic Suspension")** for a period of two (2) months.

3.2 On 4 May 2012, the Athlete concurrently filed a Protest and/or Appeal with the FEI Secretary General and Legal Department to lift the Automatic Suspension on the grounds that the second Yellow Warning Card, issued by the Ground Jury was invalid. Significantly, she requested a Preliminary Hearing to provisionally lift the Automatic Suspension.

Furthermore the Athlete requested that the Yellow Card be declared invalid. The Athlete also requested for the FEI case file regarding the Yellow Card to be disclosed "including the report sent to the Secretary General based on Article 155.6 of the GRs", and lastly that costs be awarded to the Athlete. The Athlete's submission contained Witness Statements from Dr. Leendert Jan Hofland, the Athlete's private Veterinarian and Dutch Eventing team Veterinarian, Ms. Madeleine Brugman, a fellow Dutch Eventing rider and competitor, Mr. Raf Kooremans another fellow Dutch Eventing rider and competitor, Ms. Sanne Blom, the Athlete's sister, and Mrs. M.C Blom-Muilwijk, the Athlete's mother. An unsigned Witness Statement was provided by Mr. Tim Lips, also a fellow Dutch Eventing rider and competitor.

3.3 On 14 May 2012, the FEI filed its Answer to the Athlete's Protest and/or Appeal. The FEI contended that both the Protest and Appeal were inadmissible. That, the Athlete did not respect the procedural prerequisites established in Article 163.1 and Article 163.4 of the GRs for filing a Protest. Further, that an Appeal against any punishment stipulated in Articles 159.6.1-159.6.4 of the GRs was expressly prohibited under Article 165.2.1 of the GRs. The FEI's submission contained Witness Statements from Mr. Alain James, the President of the Event Ground Jury, Mr. Jean Michel Berkovits, the Technical Delegate of the Event, Mr. Martin Lips, the Dutch National Eventing Coach, and Ms. Alice Naber-Lozeman, Dutch Eventing rider and competitor.

3.4 The FEI Tribunal granted to the Athlete her request for a Preliminary Hearing. On 18 May 2012, the Tribunal heard both Parties address the issue of the imposition of the Automatic Suspension by telephonic hearing.

3.5 On 23 May 2012, the Preliminary Tribunal Panel issued its Interim Decision and held that the Automatic Suspension was maintained pending the full hearing. The Preliminary Panel found that the Athlete failed to demonstrate that the Yellow Card was invalid or that it was given by the Ground Jury for reasons that were unfounded.

3.6 On 15 May 2012, the PR brought proceedings in this matter before the Dutch National Courts and noticed the hearing for 30 May 2012. On 30 May 2012, during the proceedings before the Dutch Court, the Parties agreed to the following in settlement of the issues before the court:

1. the FEI Tribunal hearing will take place on 5 June in or around Bramham in the afternoon;
2. the hearing will take place in person;
3. the Tribunal will consist of three members; and
4. the Dutch proceedings are discontinued.

The settlement was recorded by the court's registrar.

4. Factual Background

4.1 The hearing was therefore held on 5 June 2012 in Leeds, United Kingdom, which is close to Bramham where the Olympic trials for the Dutch team were taking place the same week.

4.2 The Athlete submitted evidence in the form of written witness statements and witness testimony. Relying on their written statements Mr. Leendert Jan Hofland, Ms. Brugmann, Ms. Blom and Mrs M.C Blom-Muilwijk also gave oral evidence.

(a) Mr. Hofland confirmed his written statement in which he explained that during the Athlete's dressage test at the Event, irregularities were noted by the Ground Jury in the Horse's trot work. That because of this the Horse was presented at two additional vet checks prior to the cross country phase, which it passed. He submitted that during the cross country he was situated at the finish about fifty meters from fence 12. That he witnessed the Athlete being stopped between fence 12a and 12b, upon which the Athlete immediately returned to the finish. He further testified that he waited with the Athlete in the finish area for twenty minutes and a further ten minutes at the Horse's stable, during which time no Official contacted the Athlete. That at no time was he aware the Athlete had been requested, by loudspeaker, by any person, or by any notice, to present herself to the Ground Jury. Furthermore that, upon his advice to contact Mr. Martin Lips, the Athlete withdrew her second horse from the Event. That she collected the passports of her two horses from the Event office at approximately 5pm, after which she schooled a third horse, and then left the following morning. During the hearing Mr. Hofland testified and explained that he examined the Horse after the elimination. That he did not notice any signs of abuse to the Horse notwithstanding that his focus at these checks was only soundness. It was put to Mr. Hofland that Abuse of Horse under the Eventing Rules differs from the ordinary definition of the term. He acknowledged that he did not know the definition under those Rules, but that as a practising veterinarian he had the authority to give an opinion on it. In his opinion if a horse showed signs of being pushed beyond its limits in the cross country phase it would simply refuse to jump.

(b) Ms. Brugman gave oral evidence in which she testified that she saw the Athlete being stopped after fence 12a. That she presumed it was because the Horse had not given the Athlete a good ride. That having spoken with the Athlete in the finish area for approximately fifteen to twenty minutes, she did not witness her raising her voice or saying anything inappropriate about the Event officials. Further to her written statement, she testified that from her own experience, having received a Yellow Card a number of years ago, it was common practice to be informed immediately that the rider was required to present herself to the Ground Jury at the end of the Event.

(c) Ms. Sanne Blom, the Athlete's sister, submitted in her statement that she did not attend the Event but that the Athlete had telephoned her after the cross country to tell her that she had been eliminated. That during that telephone call, her sister explained to her that the Horse was overenthusiastic and that she had to work hard to help the Horse around the course. Ms. Blom explained that the Athlete was upset because of the elimination. That at that stage her sister told her that no official, nor in fact any person, had been to see the Athlete regarding the elimination. Ms. Blom submitted that she then consulted the FEI Rules online and concluded to the Athlete she was most likely disqualified for Dangerous Riding. That it was therefore unsurprising nobody had come to talk to her because the Athlete already knew the reason she was eliminated. She explained that she advised the Athlete to monitor the notification boards and that the secretariat would inform her if something further was to be done. She submitted that the Athlete informed her she would leave the Event the following morning having informed the stable manager of her intended departure and re-checked the notification boards for any messages.

(d) Mrs Blom-Muilwijk, in her witness statement stated that she was located close to fence 12, that while she saw the Horse was a little overenthusiastic, the Athlete appeared under control. That in fact the Horse appeared to have settled by fence 10. She concurred that she had witnessed the Athlete being stopped between fence 12 a and 12 b. That she too believed Mr. Martin Lips had advised the Athlete to wait patiently and that it was not the Athlete's duty to go the Ground Jury in such circumstances. Furthermore she explained that she heard no announcements for the Athlete, that the Athlete collected her horses' passports after the competition and that it was decided to leave the following morning.

(e) Mr. Kooremans was not called to give oral testimony but the contents of his witness statement were accepted by the Parties. Mr. Kooremans submitted in his witness statement that while at the Event he did not hear any requests for the Athlete over the Event loudspeakers. Furthermore that no one came to the stabling area and asked for the Athlete so he was not in fact aware she had to present herself to the Ground Jury. That on Sunday morning shortly after 6.30am the Athlete left the Event.

(f) An Unsigned Statement by Mr. Tim Lips, a fellow Dutch Eventing rider and competitor was submitted. Up to the hearing no executed statement was provided and therefore could not be relied upon at the hearing.

(g) The Athlete also attempted to submit video evidence of her dressage test and cross country ride, however the Tribunal declined to review it as on the grounds that it did not have the competence to review video footage from the field of play.

4.3 The Athlete in her written Claim confirmed that she was only first made aware of a Yellow Card when she received the Notification Letter on 26 April 2012. The Athlete confirmed that she was stopped during the cross country after fence 12a, having seen a yellow flag which indicated elimination. That she was shouted at from a distance and heard "dangerous riding", upon which she stopped immediately and returned to the finish area. That while clearly aware of the allegation of Dangerous Riding, the Athlete claimed that she was not aware of any allegation of Horse Abuse or Incorrect Behaviour until she received the Yellow Card by email. The Athlete concurred with the witness testimony of Mr. Hofland and Ms. Brugmann that she remained in the finish area following her elimination but that no Event official approached her. That she received no message to present herself to the Ground Jury either at the finish or throughout the duration of the day from anybody or via the rider's message board, and disputed that a loudspeaker announcement was made to that effect. The Athlete confirmed the outcome of her conversation with Mr. Martin Lips, as adduced in Mr. Hofland's testimony but added that Mr. Lips told her that should the Ground Jury want to speak to her further they would approach her. That she then informed the cross country steward of the withdrawal of her second horse, collected her horses' passports later in the afternoon, and then schooled a third horse in the jumping exercise area which was under the supervision of two further event officials, neither of whom had a message to relay to her. She submitted at no time was she made aware of a Yellow Card. Addressing the issue of her demeanour, the Athlete confirmed that she did not make any untoward comments about the Ground Jury or any Event official. That it remained unclear who allegedly made these allegations against her, or when and to whom they were made. That she believed as punishment for these alleged comments and an alleged lack of respect for the Ground Jury the decision was taken to issue her with a Yellow Card.

4.4 The Athlete's oral testimony supported her written Claim, further to which she testified that she was concerned after the elimination because of the previous Yellow Card received at Bialy Bor. That she called her sister, who after reading the FEI Rules explained that the repercussions were not serious. That the worst possible outcome would be that she might receive a Yellow Warning Card but for a different offence to the first Yellow Warning Card in Bialy Bor. That because no official had approached the Athlete, disqualification was likely to be the only penalty imposed. When questioned over her failure to present herself to the Ground Jury directly to determine the reasons for and the scope of the Yellow Warning Card, the Athlete replied that she did not understand it to be her obligation to seek out the Ground Jury. She testified that she checked the riders' message board and did not see anything for her, nor did she hear any announcements directed at her, and that therefore she was under the belief that nothing further was to happen. Furthermore that should a message need to be relayed to a competitor it was usual to find such message attached to the horse's passport and she did not receive any message in her horse's passport.

4.5 Mr. James testified by telephone and confirmed his written statement in which he submitted that during the Dressage phase of the Competition the Horse had executed the test with "resistance and several defences", and that this necessitated the Ground Jury to closely observe the Horse during the cross country. He submitted that he and his fellow Ground Jury member, Mrs. Sandy Phillips, viewed the cross country from a central control centre approximately 30 meters from fence 12a and 12b. That from fence one the Horse was defensive and required strong intervention from the PR to present the Horse to the obstacles. That he consulted with Mr. Berkovits, and it was agreed to stop the Athlete at fence 12 for "Dangerous Riding and Abuse of Horse". Mr. James explained that Mr. Berkovits stopped the rider and informed her of the reasons for the elimination. That thereafter, the Ground Jury was repeatedly informed that the Athlete was very agitated and made "incorrect comments" about them. He further submitted that the Ground Jury waited at the location "foreseen for the meeting" with the Athlete but when they learnt that the Athlete had left the Event, they met privately where it was unanimously agreed to give the Athlete a Yellow Card for three cumulative reasons: Dangerous Riding, Abuse of Horse and Incorrect Behaviour. Furthermore he clarified that the reason she was given a Yellow Card for Incorrect Behaviour was because the Athlete failed to present herself as was requested and not any alleged inappropriate behaviour of the Athlete.

4.6 Mr. Berkovits also testified by telephone and confirmed his witness statement, in which he submitted that from the time the Athlete began the cross country course she used "repeated acts of violence" to the Horse, which then jumped each fence in an "acrobatic way". He explained that he stopped the Athlete after fence 12 because of safety concerns with her riding. That while the Athlete was initially stopped for Dangerous Riding, when the Ground Jury later met they concluded that her riding had put the Horse in danger of having a rotational fall. That the constant rubbing of the fences by the horse, in the eyes of the Ground Jury, was dangerous and abusive towards it. Mr. Berkovits submitted that in fact when he stopped the Athlete on the cross country course he asked that she present herself to the Ground Jury after the Competition. He further submitted that at the end of the cross country the Athlete was requested over the Event loudspeakers, and through her stable companions, to present herself but that she failed to do so. That further, he made efforts to contact a member of the Dutch team to relay the message, that he asked "a person wearing a Dutch shirt", Ms. Hannah Bloms, to inform the Athlete, that Ms Bloms later confirmed she relayed the message. Concurring with Mr. James' testimony, Mr. Berkovits confirmed that it was subsequently reported to them that the Athlete had verbally insulted the Ground Jury. Furthermore that after the competition finished, he spoke with the Event Secretariat, who informed him the Athlete had collected her horses' passports, that she had indicated a desire to leave the Event immediately but was told by the Secretariat that she needed to await the end of the competition. Shortly afterwards, the Secretariat received information that the competition was over, and returned the horses'

passports to the Athlete, not aware that the Ground Jury had asked the Athlete to present herself. That because it was believed that the Athlete had left the Event, the Yellow Card was sent to the FEI Eventing Department for delivery. Despite signing the Yellow Card together with Mr. James, Mr. Berkovits clarified that the decision to issue the Yellow Card was solely one for the Ground Jury.

4.7 Mr. Martin Lips, testified in accordance with his witness statement and confirmed that he did not attend the Event, but that the Athlete telephoned him the on cross country day and sought his advice of what to do following her elimination. He explained that in his second conversation with the Athlete, he recommended "not to make a scene, to adopt a humble attitude and to apologise to the Ground Jury and Officials". Mr. Lips testified that while he did not believe there was a written rule requiring an Athlete to present herself to the Ground Jury when not summoned, this was the polite and expected thing to do in these circumstances. He further testified that he was not contacted by anybody during this period regarding the Athlete and the Yellow Card

4.8 The FEI called Mr. Guiseppe Della Chiesa, the Chair of the FEI Eventing Committee, to provide oral testimony, which was disputed at first by the Athlete but ultimately agreed between the Parties since Mr. Della Chiesa had not provided a witness statement. Mr. Della Chiesa explained that the use of a Yellow Warning Card system formed part of the FEI Eventing Committee's risk management policy. That the Committee must limit and manage the risk inherent in the sport of Eventing and that Yellow Cards played an important role in this quest. That they served as a reminder to competitors to stay within the parameters of safe riding and are regarded as Field of Play decisions. He testified that a Yellow Warning Card issued for Dangerous Riding and Abuse of Horse were not mutually exclusive, that a Yellow Warning Card could be issued for one or both reasons, and emphasised that no physical signs were necessary to define Abuse. Mr. Della Chiesa further testified that when a rider is stopped for Dangerous Riding, a meeting organised by the Technical Delegate, at the request of the Ground Jury, usually follows. That at such a meeting, the Ground Jury or Technical delegate would explain the reasons for the Yellow Warning Card and listen to any explanations that the Athlete might want to present. Mr. Della Chiesa confirmed that while it was unlikely to have a Yellow Warning Card reversed after such a conversation, it was not impossible and had occurred a limited number of times in the past.

4.9 Ms. Naber-Lozeman was not heard during the hearing as it was agreed by the Parties that she was not required to give oral evidence but that the contents of her witness statement were relied upon. In her witness statement, Ms. Naber-Lozeman acknowledged that she was making her statement reluctantly, but explained that she had met the Athlete after being eliminated, that the PR was upset, and had told Ms. Naber-Lozeman she had received a Yellow Warning Card. That the Athlete did not accept this as she had no jumping penalties up to that point of the

course, but that her groom overheard the Athlete at the stables confirming she had received a Yellow Warning Card. That furthermore Ms. Hannah Broms, a photographer, asked her to relay a message from the Ground Jury to the Athlete requesting that she present herself to the Ground Jury. However, Ms. Naber-Lozeman explained that with her busy schedule at the Event, she had forgotten to relay the message.

5. The Parties' Legal Arguments

5.1 The Athlete contended that procedurally both a Protest and an Appeal against the Automatic Suspension arising from the two Yellow Warning Cards delivered within 12 months were admissible.

5.2 Concerning the Appeal, the Athlete argued that Article 36.1 of the Statutes provided the FEI Tribunal with competency to hear all cases, including an Appeal or matter not otherwise made under the jurisdiction of the Ground Jury, submitted to it by the Secretary General. That the present claim to lift the Automatic Suspension was such an Appeal having resulted from, *inter alia*, the violation of the common principles of fairness and the accepted standards of sportsmanship, as stipulated in Article 36.1(i) of the Statutes.

5.3 Concerning the Protest the Athlete submitted that it was lodged in accordance with Article 163.1 and 163.4 of the GRs. She argued that the Ground Jury and the Technical Delegate failed to observe the common principles of fairness and to respect the accepted standards of sportsmanship, when they issued the Yellow Warning Card. That she was not provided the opportunity to defend herself, nor provided with a right to be heard. That there was no Appeal Committee at the Event, as stipulated in Article 163.3 of the GRs, to lodge a Protest with. But that nonetheless she submitted this was not possible because she did not in fact receive the Yellow Warning Card until four days after the Event. That therefore the correct avenue was to lodge a timely Protest with the Secretary General and have it referred to the FEI Tribunal in accordance with Article 163.5 of the GRs.

5.4 On the merits, the Athlete relied on the content of her written Claim and oral testimony, and contended that the Automatic Suspension should be lifted on the grounds of the invalidity of the Yellow Card given for reasons that were untrue, notably Abuse of Horse and on the "hearsay evidence" regarding her alleged Incorrect Behaviour. The Athlete accepted that she was stopped on the cross country course for Dangerous Riding, and that this was a sports level decision. That however under the Eventing Rules, Dangerous Riding and Abuse of Horse can be penalised with elimination only, and did not always warrant a Yellow Warning Card. The Athlete contended that if the Ground Jury had intended to issue her a Yellow Warning Card, they would have spoken to her about it after the cross country. But that instead the decision to issue a Yellow Warning

Card was reached after the Event. The Athlete argued that the Yellow Warning Card was therefore invalid because she was unaware of it at the time of her elimination, and therefore was not given the opportunity to defend herself against the allegations. That the right to be heard is a principal constitutional right, which she was denied. That the Yellow Warning Card was not delivered to her by hand in accordance with Article 169.7.1 of the GRs. Furthermore that the cumulative effect of the ineffective delivery of the Yellow Card, the violation of her constitutional rights, of Article 2.6 of the Statutes, of the common principles of fairness and of the accepted standards of sportsmanship, invalidated the Yellow Warning Card. Furthermore, the Athlete argued that the Automatic Suspension unfairly prejudiced her because it denied her the opportunity to qualify for a place on the Dutch Olympic Eventing team.

5.5 Responding to the issue of the admissibility of the Appeal the FEI stated that Article 165.1 of the GRs provided that "an Appeal can 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." That nevertheless Article 165.2.1 of the GRs stipulated that an Appeal against decisions covered by Article 159.6.1-4 of the GRs is not admissible. Furthermore that an Appeal was expressly prohibited against the imposition of a warning without additional penalties from the Ground Jury (Article 159.6.3 of the GRs). The FEI argued that the imposition of a Yellow Warning Card in the case at hand constituted such a warning. That the Automatic Suspension, for clarity, was not an additional penalty within the context above. That such penalties were only those stipulated in Article 159.4 of the GRs, and that further the Automatic Suspension was not a penalty imposed by any body, or official, but followed directly and automatically from the quoted regulations. The FEI submitted that further to the above regulations, the Appeal was inadmissible.

5.6 Concerning the Protest, the FEI contended that the prerequisites of Article 163.4 of the GRs, which were relied upon by the PR, were not fulfilled. That the incident "occurred during and in direct connection" with an International Event as defined under the FEI General Regulations, that the PR was aware of the "matters" at stake in the case at hand, in particular the grounds for the delivery of the Yellow Warning Card, prior to the end of the Event. Consequently, the FEI argued that the Protest should be declared inadmissible.

5.7 Responding to the issue of the validity of the Yellow Warning Card, the FEI submitted that it was valid. It stated that a Yellow Warning Card, having its legal basis in Article 159.4.1, can not only be imposed for Dangerous Riding (Article 519.7.1 of the GRs) but can be imposed in cases of Abuse of Horse, and in cases of Incorrect Behaviour towards Event Officials (Articles 169.6.2, 169.6.3, 169.7.1 of the GRs). That it was unfounded for the Athlete to allege that the Yellow Warning Card was issued in bad faith or maliciously. That the decision was given on the

grounds of safety for both Horse and Athlete. It further argued that because the Athlete was automatically suspended having received two Yellow Warning Cards for the same offence under Article 520.3 of the Eventing Rules, the only relevant argument here regarded the validity of the Yellow Warning Card for "Abuse of Horse". That the Tribunal should be made aware of the verbal warning the Athlete received in 2011 for Abuse of Horse albeit that no Yellow Card followed that penalty. Nevertheless the FEI reminded the Tribunal that it had no authority to hear the Protest and/or Appeal or to decide if the Yellow Warning Card was valid given its inadmissibility as a Protest.

5.8 The FEI further argued that the Yellow Warning Card was a 'Field of Play' decision taken by an Event Official and that therefore the decision could not be appealed whether at the Event or anytime thereafter. The FEI submitted that such technical determinations made by the officials responsible for judging an event, and which are related to the conduct of the competition, can only be reviewed under very restrictive conditions. Citing the Court of Arbitration ("CAS") case, NAOC v IAAF & USOC, CAS 2008/A/1641, the FEI argued that the jurisprudence required "as a minimum threshold, that the official made abusive use of their discretion, showed malicious intent or bad faith in the making of the decision (corruption etc), or severely breached the athlete's procedural rights in making the decision". Further that the application of "the rules governing the play of the game" is left to the specifically trained field officials. That these restrictive conditions also apply to the review of the procedural rules defining how the decision is reached and announced. The FEI argued that for a decision to be reviewed it must be more than an alleged error of judgement, that it must be one no sensible person could have reached, that there must be evidence of prejudice. It referred to the CAS case of Korean Olympic Council v ISU, CAS OG 02/007, to substantiate this "high hurdle" which the Athlete must overcome to have the Yellow Card reviewed. Furthermore that it is not for the FEI Tribunal to substitute its views for those of the experts. The FEI submitted that the Tribunal must only hear arguments from the Athlete relating to the procedure through which the Decision was reached and not the merits, and that the assessment should only consider if the Ground Jury and/or Technical Delegate made the decision in bad faith, in an arbitrary manner or otherwise maliciously neglected the fundamental rights of the Athlete. That it was simply untrue that the Athlete was not afforded an opportunity to be heard by the Ground Jury. The FEI testified that the Athlete was aware that a disciplinary situation had arisen and as a professional competitor it was incumbent upon her to liaise with the Ground Jury.

5.9 Responding to the argument that the Yellow Warning Card was not effectively delivered to the Athlete within the confines of the GRs, the FEI disagreed. Relying in this context on the witness statements of Mr. James and Mr. Berkovits, the FEI submitted that the Athlete's version of events was discredited by the testimony of the officials. That contrary to the Athlete's contentions the Ground Jury is not obliged to chase the Athlete

to contact her, even less so after she collected her horses' passports. Furthermore it submitted that a Yellow Warning Card is not invalid because it was not delivered by hand, that Article 169.7.1 also stipulates delivery by "any other means" and that this is to be interpreted in the broadest sense possible. The FEI submitted that the Yellow Warning Card, emailed to the Athlete, was duly delivered. That delivery may include registered mail, email, and delivery by a third person.

Lastly the FEI submitted that the requirements for the Automatic Suspension had been met and should remain in place.

5.10 On 6 June 2012, the FEI Tribunal issued an Abridged Decision by which it upheld the Yellow Warning Card based on the ground of Dangerous Riding, but declared the Yellow Warning Card on the additional bases of Abuse of Horse and Incorrect Behaviour as void. The Tribunal further determined that the Automatic Suspension can no longer be maintained.

6. The Decision

6.1 Article 36.1(i) of the Statutes provides the FEI Tribunal with the competency to decide all cases which involve, the 'infringement of the Statutes, GRs, Sport Rules, ... or of violation of the common principles of behaviour, fairness and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event'. This confers jurisdiction upon the Tribunal to hear the dispute between the Parties. The question however, in this Claim, is whether the jurisdiction of the Tribunal is limited by the "field of play" decision doctrine as submitted by the FEI.

6.2 The Tribunal finds that for the Protest and/or Appeal to be sustained and the relief requested by the Athlete granted, the Athlete must (i) prove the infringement she has alleged, i.e. the invalidity of the Yellow Warning Card by the balance of probability and (ii) demonstrate that the appropriate remedy for such an infringement is the annulment of the Automatic Suspension.

6.3 The Tribunal finds that the Appeal filed under Article 165 of the GRs is not admissible because there is no Appeal against a Decision by the Ground Jury in cases covered by Articles 159.6.1 – 159.6.4 of the GRs. Article 159.6.3 of the GRs specifically identifies the "imposition of a Warning without additional penalties" as one decision of the Ground Jury that cannot be appealed. The Tribunal therefore accepts the FEI's submission that the imposition of a Yellow Warning Card constituted the imposition of a warning without additional penalties because the automatic suspension cannot be considered an additional penalty since it only arose as a consequence of the fact that a second Yellow Warning Card was received by the Athlete for the same offence. Accordingly, the Appeal is dismissed.

6.4 Conversely, the Tribunal finds that a Protest under Article 163 of the GRs is admissible and timely for the following reasons. The Tribunal accepts that the Athlete was stopped on the cross country track, while competing at the Event, for "Dangerous Riding" and concurs that it has no authority to review this "field of play" decision rendered by the technical officials. However, the Tribunal is not convinced that the additional grounds for the Yellow Warning Card of "Abuse of Horse" and "Incorrect Behaviour", which appear to have been added later, can be upheld because the Athlete was never notified about these additional grounds or given any opportunity to be heard. As a Protest may be allowed for "failing to respect the common principles of fairness", the Tribunal finds that failing to clearly inform the Athlete of all the reasons for her sanction and affording her an opportunity to be heard and at least explain her conduct does rise to the level of violating the common principles of fairness.

6.5 The Tribunal therefore rejects the FEI's argument that the prerequisites of Article 163.4 of the GRs were not fulfilled because the facts at issue arose "in direct connection with an Event". It finds that while the Dangerous Riding clearly occurred during the Event, the further bases for the Yellow Warning Card did not. The Tribunal therefore holds that the Athlete had the right to lodge a Protest against the Decision of the Ground Jury to issue her a Yellow Warning Card for "Abuse of Horse" and "Incorrect Behaviour".

6.6 The Tribunal accepts from the witness testimony adduced that the Athlete was stopped on the cross country track for Dangerous Riding, and that this matter is undisputed by the Parties. It accepts the testimony of Mr. Berkovits that an announcement was made for the Athlete over the Event loudspeaker but the evidence shows that it was most likely done just once and was therefore not heard by the Athlete or indeed any of the other witnesses including Mr. Berkovits himself. The Tribunal also finds that no further messages were relayed to the Athlete. In fact, the Tribunal considers that more could have been done by the Ground Jury or Technical Delegate to ensure the message reached the Athlete, for example Mr. Berkovits could have requested the stable manager to wait at the Athlete's stable with the message or indeed have a message on the riders' message board, or a message inserted into the Horses' passport by the Event Secretariat or the Chief Steward after she was eliminated. The Tribunal does emphasise however that while no rule or statute of the FEI states so, as a professional rider, the Athlete should have taken the responsibility to check with the Ground Jury personally if any further action was to be taken against her. Should anything similar happen in the future, the Tribunal would expect that the Athlete would present herself to the Ground Jury on her own initiative.

6.7 The Tribunal will therefore not annul the Yellow Warning Card for Dangerous Riding as it falls squarely within the "field of play" doctrine which is well-established in the CAS jurisprudence. The Tribunal

recognises that Field of Play decisions reflect the compromise between a correct and just decision on the one hand and the need for a swift decision on the other. That, furthermore such technical issues are therefore dealt with by the person in the best position to judge the error, the sporting official. The Tribunal also respects that while purely technical decisions are shielded from judicial review, there are some exceptions. It accepts the submission of the FEI, that a Field of Play decision may only be reviewed under very restrictive conditions, where evidence suggests that the sporting officials have made abusive or arbitrary use of their discretion, showed malicious intent or bad faith in the making of the decision (corruption), or severely breached the athlete's procedural rights in making the decision (NAOC v IAAF and USOC, 2008/A/1641). Furthermore the Tribunal accepts that this is a high threshold for the Athlete to overcome.

6.8 The Tribunal therefore accepts that the issuing of the Yellow Card was a 'Field of Play Decision' in this case and therefore it does not have the authority to overrule that decision. The Tribunal is satisfied that the Ground Jury has the right and the duty to monitor cases of Dangerous Riding, Abuse of Horse and Incorrect Behaviour and to stop and eliminate an athlete during a competition, if appropriate, and to deliver a Yellow Warning Card to the Person Responsible. The Tribunal credits Mr. Della Chiesa's testimony and accepts that the use of the Yellow Warning Card system is first and foremost a matter of ensuring safety within the high risk sport that is Eventing.

6.9 However it finds that this Claim falls within one of the exceptions outlined by the CAS jurisprudence. The Tribunal holds that the Athlete's Protest challenging to the validity of the Yellow Warning Card is affirmed in part and denied in part. It concludes that the justification for the Yellow Card based on Dangerous Riding is valid and denies the challenge to this. With regard to the justification based on Abuse of Horse and Incorrect Behaviour, the Tribunal finds that the Ground Jury significantly breached the Athlete's procedural rights and arbitrarily used its discretion in determining these offences. While it is not for the Tribunal to make a judgement on whether the Athlete's riding constituted Abuse of Horse and if her demeanour constituted Incorrect Behaviour, the Tribunal has to consider that the Athlete, contrary to the principles of fairness, was not afforded an opportunity to be informed about or heard on these two offences before the Ground Jury.

6.10 Finally, the Tribunal accepts the FEI's submissions that the Yellow Warning Card sent by the Technical Delegate to the FEI for follow up complies with one of the mechanisms of delivery foreseen under the GRs and there is no problem in that regard.

6.11 Significantly, because the Athlete's Automatic Suspension was based on the "Abuse of Horse" basis in the Yellow Warning Card as that was the same offence for which her prior Yellow Warning Card was given,

the Automatic Suspension is lifted by the annulment of the "Abuse of Horse" and "Incorrect Behaviour" bases in the Yellow Warning Card. The Tribunal holds that the grounds upon which the Automatic Suspension was imposed (Article 519.7 and 520 of the Eventing Rules) no longer exist and that therefore the Automatic Suspension can no longer be maintained.

6.12 This Decision can be appealed before the Court of Arbitration for Sport (CAS) within 30 days of the present notification.

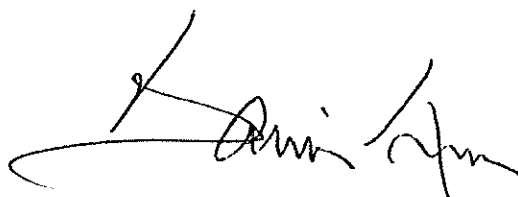
7. The Decision

For the above reasons, the FEI Tribunal therefore decides as follows:

- 7.1 The Appeal of the Claimant is denied.
- 7.2 The Protest of the Claimant is allowed in part and denied in part.
- 7.3 The Yellow Warning Card in respect of the Dangerous Riding remains valid and is therefore upheld.
- 7.4 The Yellow Warning Card in respect of Abuse of Horse and Incorrect Behaviour is invalid and is therefore void.
- 7.5 The Automatic Suspension is lifted.
- 7.6 The Parties are to bear their own costs and expenses.

8. DECISION TO BE FORWARDED TO:

- 8.1 The Parties to the proceedings: Yes**
- 8.2 Any other: The Dutch National Equestrian Federation**



Mr. Henrik Arle
Chair of the Panel