

Tribunal Arbitral du Sport
Court of Arbitration for Sport

CAS 2019/A/6184 Pablo Barrios v. Fédération Equestre Internationale (FEI)

CONSENT AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Prof. Dr. Ulrich Haas, Professor in Zurich, Switzerland

Arbitrators: Ms. Jennifer Kirby, Attorney-at-law in Paris, France

Mr Carlo Dalla Vedova, Attorney-at-law in Rome, Italy

in the arbitration between

Pablo Barrios, Venezuela

Represented by Mr Mike Morgan and Ms Lisa Lazarus, Morgan Sports Law in London, United Kingdom

Appellant

and

Fédération Equestre Internationale (FEI), Lausanne, Switzerland

Respondent

I. THE PARTIES

1. Pablo Barrios (the “Appellant” or the “Athlete”) is an equestrian from Venezuela. He rides a horse called Le Vio.
2. The Fédération Equestre Internationale (the “FEI” or the “Respondent”) is the international body governing equestrian sports which is recognized by the International Olympic Committee. Founded in 1921, its “primary mission”, as set out in the FEI Mission Statement, is *“to advance orderly growth of equestrian sport worldwide by promoting, regulating and administering humane and sportsmanlike international competition in the traditional equestrian disciplines.”*

II. BACKGROUND FACTS

3. On 26 July 2018 and 29 July 2018, urine and blood samples were collected from the Appellant’s horse Le Vio, during the Central American and Caribbean Games in Bogotá (the “Samples”).
4. The Samples were transported to and analysed at the LG Laboratory in Fordham, United Kingdom (the “Laboratory”). The analysis of the Samples revealed the presence of Caffeine and Theophylline. Both substances are classified as Controlled Medications on the FEI Prohibited List.
5. Following the results of the analysis a disciplinary procedure was initiated against the Athlete before the FEI Tribunal. The final hearing took place on 4 February 2019 at the headquarters of the FEI in Lausanne. On 15 February 2019, the FEI Tribunal issued its decision (the “Appealed Decision”). The latter reads in its operative part as follows:

- “1) The PR¹ shall be suspended for a period of **six (6) months** from the date of notification of this decision. Therefore, the PR will be ineligible **until 14 August 2019**.
- 2) The PR is fined **three thousand Swiss Francs (CHF 3,000)**.
- 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1,500)** towards the costs of this procedure.”

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

6. On 1 March 2019, the Appellant filed a Statement of Appeal with the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”) against the Appealed Decision.
7. On 11 March 2019, the CAS Court Office, initiated an appeals arbitration procedure under the reference *CAS 2019/A/6184 Pablo Barrios v. FEI* and invited the Appellant – *inter alia* – to file his Appeal Brief within 10 days following the expiry of the time limit for the appeal.
8. With a letter dated 15 March 2019, the Appellant requested an extension of the deadline to file his Appeal Brief.

¹ Person Responsible (PR) is Mr Pablo Barrios.

9. With a letter dated 18 May 2019, the Respondent did not oppose the Appellant's request.
10. On the same day, the CAS Court Office extended the Appellant's deadline to file his Appeal Brief until 1 April 2019.
11. With a letter of 26 March 2019, the Appellant requested certain information from the Respondent pursuant to Article R44.3 of the Code.
12. With a letter of 27 March 2019, the CAS Court Office advised the Parties that unless the Respondent provides the requested information / documents by 3 April 2019, it will be for the Panel, once constituted, to decide on such issue.
13. With a letter dated 27 March 2019, the Respondent advised the CAS Court Office that it had rendered a preliminary decision on 17 December 2018, on the request of further documentation, which the Appellant failed to appeal. Furthermore, it advised that the FEI had already provided the legal counsel with the reply to their request on 27 February 2019.
14. On 28 March 2019, the CAS Court Office forwarded the Respondent's letter to the Appellant.
15. With a letter dated 1 April 2019, the Appellant informed the CAS Court Office that the Parties had agreed on another extension of the deadline to file the Appeal Brief until 12 April 2019 and that the Appellant requested the Panel to confirm the deadline extension.
16. With a letter on the same day, the CAS Court Office extended the Appellant's deadline to file the Appeal Brief until 12 April 2019 subject to the Respondent's objection.
17. With a letter dated 3 April 2019, the CAS Court Office advised the Parties that the Respondent had failed to nominate an arbitrator within the prescribed deadline and that it was now for the President of the CAS Appeals Arbitration Division (or her Deputy) to nominate an arbitrator *in lieu* of the Respondent.
18. On 3 April 2019, the Appellant provided comments on the Respondent's letter not to provide the requested information pursuant to the Appellant's request for document production dated 26 March 2019.
19. On 4 April 2019, the CAS Court Office acknowledged receipt of the Appellant's letter dated 3 April 2019 and suspended the Appellant's deadline to file the Appeal Brief.
20. On 16 April 2019, the Appellant filed a Request for Provisional Measures.
21. On 18 April 2019, the CAS Court Office acknowledged receipt of the Appellant's Request for Provisional Measures and forwarded the latter to the Respondent. It further granted the Respondent a deadline of seven days from receipt of this letter to file its position regarding the Appellant's Request for Provisional Measures.
22. On 30 April 2019, the FEI advised the CAS Court Office as follows:

"Considering the development of the facts of the case the Parties have come to an Agreement of the following:

- *The Appellant has provided a plausible explanation of how the Controlled Medication Substances entered the horse's system.*
- *Based on No Significant Fault and negligence for the rule violation, the standard Ineligibility period for Controlled medication Substances, namely six (6) months, can therefore be reduced.*
- *A final Ineligibility period of three (3) months shall be imposed on the Appellant.*
- *The three (3) months suspension shall be from 15 February until 16 May 2019.*

In reply to the provisional measures, the FEI does therefore not oppose to the lifting of the final ineligibility period imposed by the FEI Tribunal, provided that the suspension is lifted once the three (3) months have been served, namely as of 15 May 2019."

23. On 1 May 2019, the CAS Court Office acknowledged receipt of the Respondent's letter. It invited the Appellant to comment on the Respondent's letter by 6 May 2019.
24. On 2 May 2019, the Appellant noted that the FEI had accurately summarised the agreement of the Parties and that the Appellant accepts that the suspension shall be lifted from 15 May 2019.
25. On 6 May 2019, the CAS Court Office inquired with the Parties – in view of the agreement between them – whether or not the Request for Provisional Relief was moot.
26. On 7 May 2019, the Appellant clarified that the Request for Provisional Measures was not moot and that the suspension should be "*lifted by way of the Request for Provisional Measures on 15 May 2019.*"
27. On 8 May 2019, the CAS Court Office acknowledged receipt of the Appellant's letter.
28. On 10 May 2019, the Appellant informed the CAS Court Office that the Parties had circulated a draft settlement agreement between them and that they were hopeful that a settlement will be executed shortly, following which the Parties will request the Panel to issue a Consent Award further to Article R56 of the Code.
29. On 13 May 2019, the CAS Court Office acknowledged receipt of the above letter from the Appellant and advised the Parties that such correspondence will be forwarded to the Panel, once constituted.
30. With letter of the same day, the CAS Court Office advised the Parties that the Panel had been constituted as follows:

President: Prof Dr Ulrich Haas, Professor in Zurich, Switzerland

Arbitrators Mrs Jennifer Kirby, Attorney-at-law in Paris, France
Mr Carlo Dalla Vedova, Attorney-at-law in Rome, Italy
31. On 14 May 2019, the Panel issued the operative part of the Order on Request for Provisional Measures.

32. On 17 June 2019, the CAS Court Office notified to the Parties a copy of the reasoned Order on Provisional Measures rendered by the Panel.
33. On 1 July 2019, the CAS Court Office sent a letter to the Parties referring to the Appellant's email of 10 May 2019, whereby he stated that the "*Parties are hopeful that a settlement agreement will be executed shortly*" and invited the Parties to update the CAS Court Office on the status of their negotiations by 4 July 2019.
34. On 4 July 2019, the Appellant informed the CAS Court Office that the Parties were "*close to agreeing the terms of the Settlement Agreement*" and that they intended to provide a more "*fulsome update to the Panel tomorrow (5 July 2019).*"
35. On 5 July 2019, the Appellant informed the CAS Court Office that the "*parties expect to finalise and execute the settlement agreement in the coming days*" and that "*the parties will provide an update to the CAS as early as possible next week*".
36. With letter dated 8 July 2019, the CAS Court Office acknowledged receipt of the Appellant's letters dated 4 and 5 July 2019.
37. On 9 July 2019, the Appellant provided the CAS Court Office with a settlement agreement executed by both Parties. Furthermore, the letter stated that the "*parties would be grateful if the Panel could issue a Consent Award further to Article R56 of the Code of Sports-related Arbitration, incorporating the terms of the settlement agreement.*"
38. On 11 July 2019, the CAS Court Office acknowledged receipt of the Appellant's email dated 9 July 2019 and informed the Parties that the Settlement Agreement will be embodied by the Panel in a Consent Award in due course.

IV. JURISDICTION OF THE CAS

39. The jurisdiction of the CAS in the present matter follows from Article R47 of the Code in conjunction with Article 12 of the FEI Equine Anti-Doping and Controlled Medication Regulations ("EADR"). The provision reads in its pertinent parts as follows:
 - "12.1 Decisions made under these EAD Rules may be appealed as set forth below in Article 12.2 through 12.3. Such Decisions shall remain in effect while under appeal unless the appellate body orders otherwise. ...
 - 12.2 The following Decisions may be appealed exclusively as provided in this Article 12.2: (a) a Decision that an EAD Rule violation was committed; (b) a Decision imposing consequences for an EAD Rule violation; ...
 - 12.2.1 In cases arising from participation in an International Event or in cases involving FEI-registered Horses, the Decision may be appealed exclusively to CAS in accordance with the provisions applicable before CAS.
 - 12.2.2 In cases under Article 12.2.1, the following parties shall have the right to appeal to CAS: (a) the Person Responsible ... "
40. The Appellant was competing in an international event on a FEI-registered horse within the meaning of Article 12.2.1 EADR when the samples were taken. Thus, the CAS has

jurisdiction according to the applicable rules to which the Parties have submitted. The Panel further notes that the jurisdiction is not disputed between the Parties.

V. ADMISSIBILITY OF THE APPEAL

41. Article 12.3 EADR provides that the time limit for an appeal to the CAS is twenty one days. The Appellant received the Appealed Decision on 15 February 2019 and filed his appeal on 1 March 2019. Thus, the appeal was filed in time. Furthermore, the appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee. It follows that the appeal is admissible.

VI. THE SETTLEMENT AGREEMENT

42. On 9 July 2019, the Parties provided the CAS Court Office with the following Settlement Agreement signed by both Parties to be included into a Consent Award:

"This Settlement Agreement (the "Agreement") between Mr Barrios and the FEI describes the terms upon which the parties are willing to settle the appeal currently pending before the Court of Arbitration for Sport ("CAS") in case number CAS 2019/A/6184 (the "CAS Appeal").

1 WHEREAS:

1.1 On 26 July 2018 and 29 July 2018, urine and blood samples (the "Samples") were collected from Le Vio, a horse, as part of doping control at the Central American and Caribbean Games.

1.2 Le Vio was ridden by Mr Barrios in the Competition. Mr Barrios was thus the Person Responsible as defined by Article 118 of the FEI's General Regulations.

1.3 Analysis of the Samples revealed the presence of Caffeine and Theophylline. Caffeine and Theophylline can be the direct metabolite of each other and vice versa. Caffeine and Theophylline are classified as Controlled Medication (and not Banned Substances) on the FEI Prohibited List.

1.4 A Final Hearing took place before the FEI Tribunal on 4 February 2019. On 15 February 2019 a decision was issued by the FEI Tribunal, imposing a suspension of 6 months (the "Appealed Decision"):

1.5 On 1 March 2019 Mr Barrios filed a Statement of Appeal with the CAS.

1.6 Mr Barrios, together with his new legal counsel, conducted further factual and scientific investigations. In doing so, he identified information which shed light on the most likely source of the Caffeine and Theophylline in the Samples.

1.7 In particular, Mr Barrios discovered that during the competition Le Vio grazed extensively on an area of grass behind the VIP hospitality tent, onto which significant volumes of coffee were discarded. Mr Barrios submitted a scientific report to the FEI, explaining how coffee-saturated grass consumed by Le Vio could have resulted in the positive test result.

1.8 *Mr Barrios provided supporting testimony from a number of individuals, independent of his stables, confirming that coffee was discarded in the grazing areas, together with a scientific report detailing the plausibility of such discarded coffee causing the positive finding.*

1.9 *Mr Barrios submits, and the FEI has accepted, that it is more likely than not that the source of the Caffeine and Theophylline in the Samples was grass behind the VIP hospitality tent, onto which significant volumes of coffee were discarded throughout the course of the competition.*

2 *NOW, THEREFORE, THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS FOR DISPOSAL OF THE CAS APPEAL:*

2.1 *The Parties agree as follows:*

- (a) *The Appealed Decision shall be set aside.*
- (b) *Mr Barrios inadvertently committed a violation of Article 2.1 of the CMR.*
- (c) *Mr Barrios agrees to that in accordance with ECM Rules Articles 9.1 and 10.1.2 the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes²;*
- (d) *Mr Barrios bears No Significant Fault or Negligence for the violation and, in accordance with Article 10.5.2 of the CMR, shall be sanctioned with a period of Ineligibility of 3 months, commencing on 15 February 2019 (i.e. the date on which the Appealed Decision was issued) and ending on 14 May 2019;*
- (e) *Mr Barrios agrees to pay the fine of CHF 1500;*
- (f) *Mr Barrios agrees to pay the legal cost before the FEI Tribunal of CHF 1500;*
- (g) *Mr Barrios agrees to stand the cost of the B sample;*
- (h) *The Parties shall bear their own costs in respect of the CAS Appeal.*

2.2 *Immediately upon execution of this Agreement by both Parties, Mr Barrios shall send a letter the CAS Court Office, enclosing a signed copy (or, if signed in counterparts, copies) of this Agreement and seeking the ratification of the terms of paragraph 2.1 of this Agreement in a CAS Arbitral Award rendered by consent of the Parties in accordance with R56 of the CAS Code ("Consent Award").*

2.3 *Without limitation to paragraph 2.2 above, the Parties shall do all things reasonably necessary in order to procure, as soon as reasonably practicable*

² Especially the Competition of 27 July 2018, which was disqualified in the final FEI Tribunal Decision subject to this appeal. The Disqualification of the results of 26 and 29 July 2018, was decided on a Partial Decision FEI Tribunal (which was never appealed) and is not subject to these proceedings.

following the execution of this Agreement, that the substantive terms of their agreement, as set out at paragraph 2.1 above, shall be embodied in a Consent Award.

2.4 The terms set out in this Agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. ”

VII. RATIFICATION OF THE SETTLEMENT AGREEMENT BY CAS

43. Article R56 of the CAS Code determines the following:

“[...] Any settlement may be embodied in an arbitral award rendered by consent of the parties.”

44. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties’ settlement, if the consenting parties agree to a termination of their dispute in this manner. In doing so, the parties may incorporate issues in their settlement that did not form part of the matter in dispute before this Panel. The Panel’s ratification of their settlement and its incorporation into this consent award serves the purpose of vesting the settlement with a *res judicata* effect and of enabling the enforcement of their agreement.
45. It is the task of the Panel to verify the *bona fide* nature of the Settlement Agreement to ensure that the will of the parties has not been manipulated to commit fraud and to confirm that the terms of the agreement are not contrary to public policy or to mandatory rules of the law.
46. After reviewing the terms of the Settlement Agreement and a *prima facie* review of the evidence on file, the Panel finds no grounds to object or disapprove the terms of the Settlement Agreement and is satisfied that the Settlement Agreement constitutes a *bona fide* settlement of the dispute brought to its attention. The Panel considers the Settlement Agreement reached by the parties and the outcome of the present proceedings not unreasonable.
47. In accordance with the mutual consent of the Parties, the Panel hereby directs the Parties to fully comply with the terms of the Settlement Agreement.
48. This Consent Award terminates the CAS arbitration referenced *CAS 2019/A/6184 Pablo Barrios v. Fédération Equestre Internationale (FEI)*.
49. The above conclusion, finally, makes it unnecessary for the Panel to consider any other requests submitted by the Parties. Accordingly, all other and further motions or prayers for relief are dismissed.

VIII. COSTS

50. Article R65 of the Code provides as follows:

“R65.1 This Article R65 applies to appeals against decisions which are exclusively of a disciplinary nature and which are rendered by an international federation or sports-body. It is not applicable to appeals

against decisions related to sanctions imposed as a consequence of a dispute of an economic nature. In case of objection by any party concerning the application of Article R64 instead of R65, the CAS Court Office may request that the arbitration costs be paid in advance pursuant to Article R64.2 pending a decision by the Panel on the issue.

R65.2 Subject to Articles R65.2, para. 2 and R65.4, the proceedings shall be free. The fees and costs of the arbitrators, calculated in accordance with the CAS fee scale, together with the costs of CAS are borne by CAS.

Upon submission of the statement of appeal, the Appellant shall pay a non-refundable Court Office fee of Swiss francs 1,000.— without which CAS shall not proceed and the appeal shall be deemed withdrawn. ...

R65.3 Each party shall pay for the costs of its own witnesses, experts and interpreters. In the arbitral award and without any specific request from the parties, 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 complexity and the outcome of the proceedings, as well as the conduct and financial resources of the parties”

51. The appeal in the present matter is directed against a decision which is exclusively of a disciplinary nature that has been rendered by an international federation. Consequently, the proceedings are free subject to the non-refundable CAS Court Office fee of CHF 1,000. Furthermore, the Parties in their Settlement Agreement have agreed that each of them shall bear their own fees and expenses in respect of the CAS Appeal. The Panel sees no reason why to deviate from this explicit agreement.

* * * * *

ON THESE GROUNDS


The Court of Arbitration for Sport rules:

1. The procedure *CAS 2019/A/6184 Pablo Barrios v. Fédération Equestre Internationale (FEI)* is terminated and removed from the CAS roll.
2. The Settlement Agreement entered into by the Parties on 5 July 2019 is hereby ratified by the Court of Arbitration for Sport with the consent of the Parties and its terms are incorporated into this arbitral award:
 - (a) *The Appealed Decision shall be set aside.*
 - (b) *Mr Barrios inadvertently committed a violation of Article 2.1 of the CMR.*
 - (c) *Mr Barrios agrees to that in accordance with ECM Rules Articles 9.1 and 10.1.2 the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes³;*
 - (d) *Mr Barrios bears No Significant Fault or Negligence for the violation and, in accordance with Article 10.5.2 of the CMR, shall be sanctioned with a period of Ineligibility of 3 months, commencing on 15 February 2019 (i.e. the date on which the Appealed Decision was issued) and ending on 14 May 2019;*
 - (e) *Mr Barrios agrees to pay the fine of CHF 1500;*
 - (f) *Mr Barrios agrees to pay the legal cost before the FEI Tribunal of CHF 1500;*
 - (g) *Mr Barrios agrees to stand the cost of the B sample;*
 - (h) *The Parties shall bear their own costs in respect of the CAS Appeal.*
3. Each Party is hereby ordered to perform its obligations and duties as per the Settlement Agreement.
4. The present the arbitration is free of costs subject to the CAS Court Office fee in the amount of CHF 1,000 which will be retained by the CAS.
5. Both Parties shall bear their own legal fees and other expenses incurred in connection with the present arbitration proceedings.

³ Especially the Competition of 27 July 2018, which was disqualified in the final FEI Tribunal Decision subject to this appeal. The Disqualification of the results of 26 and 29 July 2018, was decided on a Partial Decision FEI Tribunal (which was never appealed) and is not subject to these proceedings.

Seat of arbitration: Lausanne, Switzerland
Date: 14 August 2019

THE COURT OF ARBITRATION FOR SPORT

A handwritten signature in black ink, consisting of a series of connected loops and a final downward stroke.

Prof Dr Ulrich Haas
President of the Panel