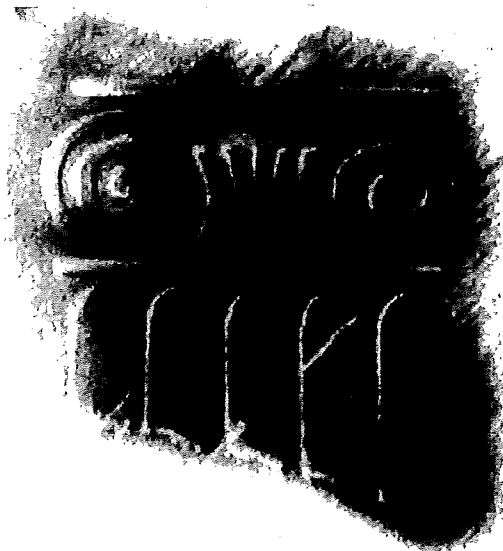


# **Tribunal Arbitral du Sport Court of Arbitration for Sport**

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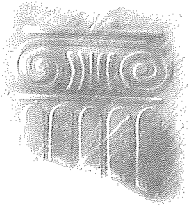
## **ARBITRAL AWARD**

**Abdul Rahman Saeed Saleh Al Ghailani, United Arab Emirates**

**v.**

**Fédération Équestre Internationale (FEI), Lausanne, Switzerland**

**CAS 2020/A/6373 - Lausanne, June 2020**



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2019/A/6373 Abdul Rahman Saeed Saleh Al Ghailani v. Fédération Équestre Internationale (FEI)**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President:	Mr Franco Frattini, Judge, Rome, Italy
Arbitrators:	Prof. Matthew J. Mitten, Professor, Milwaukee, WI, USA Mr Lars Nilsson, Attorney-at-Law, Stockholm, Sweden
CAS Clerk:	Ms Stéphanie De Dycker, Attorney-at-Law, Lausanne, Switzerland

**in the arbitration between**

**Abdul Rahman Saeed Saleh Al Ghailani, United Arab Emirates**

Represented by Mr Mike Morgan, Ms Lisa Lazarus, Mr Tom Seamer and Ms Emma Waters,  
Morgan Sports Law, London, United Kingdom

**Appellant**

**and**

**Fédération Équestre Internationale (FEI), Lausanne, Switzerland**

Represented by Ms Anna Thorstenson and Ms Ana Kricej, Legal Affairs Department,  
Lausanne, Switzerland

**Respondent**

**I. PARTIES**

1. Mr Abdul Rahman Saeed Saleh Al Ghailani is a FEI registered athlete (FEI ID nr. 10114704) from the United Arab Emirates (UAE) (the “Athlete” or the “Appellant”). He is an Endurance rider with Al Wathba Stables and his National Federation is the UAE National Federation (“UAE NF”).
2. The Fédération Équestre Internationale (FEI) is the international governing body for the equestrian sport disciplines of dressage, jumping, eventing, driving, endurance, vaulting, reining, para dressage and para driving (the “FEI” or the “Respondent”).

**II. FACTUAL BACKGROUND**

3. Below is a summary of the main relevant facts and allegations based on the Parties’ submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.

**A. Background of the dispute**

4. The Appellant competed with the horse known as Sarab and registered under FEI ID nr. 105DP50 (“Sarab” or the “Horse”), at the CEI 3\* 160 km President Cup in Al Wathba (UAE) on 9 February 2019 (the “Event”). The combination of Appellant and Sarab completed the course in 6 hours, 14 minutes, and 12 seconds, finishing second at the Event. Sarab passed all six veterinarian checks, and no concerns for the horse’s welfare were raised during any of these checks. None of the FEI Endurance Officials observing the Event, which consisted of a 7-person Ground Jury, 30 veterinarians, an independent Governance Advisor, and 8 stewards, observed and reported any violation of FEI rules or regulations by Appellant.
5. On 15 February 2019, the FEI received a formal protest from Ms Pauline van Drumpt from Clean Endurance (who was not present at the Event and reviewed video of the Event after it ended), for alleged abuse of Sarab by the Appellant at the Event, including a written summary of the relevant facts and two videos. The Protest was filed pursuant to Articles 142.1 and 163.2 of the FEI General Regulations (“GR” or “GRs”) with the FEI Secretary General, who referred it to the FEI Tribunal.

**B. Proceedings before the FEI Tribunal**

6. On 25 March 2019, the FEI notified the Appellant of the Protest against him and invited him to provide a written reply.
7. On 13 April 2019, the Appellant provided his written reply to the allegations of horse abuse.
8. On 6 May 2019, the FEI submitted the case file to the FEI Tribunal for adjudication and, on 8 May 2019, the FEI Tribunal Chair nominated a panel for this case and invited the

FEI to file its opinion on the case. On 6 June 2019, the FEI filed its opinion on the case.

9. On 12 June 2019, the FEI Tribunal informed the Parties that because no party requested an oral hearing, it would decide the case based on the written submissions.
10. On 26 June 2019, the FEI Tribunal rendered its decision in this matter (the “Appealed Decision”), as follows:

“

1. *The Protest is admissible.*
2. *A violation of Article 807.7 of the [Endurance Rules (“ER” or “ERs”)] has been established.*
3. *Mr. Al Ghailani has engaged in horse abuse and thereby violated Article 142 of the GRs,*
4. *Mr. Al Ghailani shall be suspended for a period of twelve (12) months starting from the date of the present decision.*
5. *All results achieved by Mr. Al Ghailani with the Horse at the Event, including forfeiture of medals, points and prizes shall be disqualified.*
6. *Mr. Al Ghailani shall be fined four thousand Swiss Francs (CHF 4,000).*
7. *Mr. Al Ghailani shall contribute one thousand Swiss Francs (CHF 1,000) towards the costs of these proceedings.”*

11. The essence of the reasoning of the FEI Tribunal in the Appealed Decision can be summarized as follows:

*“[...] The Tribunal agrees with the opinion of the FEI, and finds that Mr. A Ghailani by pushing the Horse by excessive kicking of the Horse and pulling of the reins with high hands in order to push it forward was an action or omission which causes or is likely to cause pain or unnecessary discomfort to the Horse. Hence the requirements of Article 142.1 of the GRs are fulfilled and a horse abuse within the meaning of this Article occurred. [...] The Tribunal also [...] finds that the Support Personnel was chasing the Horse which in accordance with Article 807.7 of the ERs is prohibited, and thus a violation of Article 807.7 of the ERs has been established in the present case [...]. [...] Mr Al Ghailani, as rider and Person Responsible, had the obligation to instruct his Support Personnel to follow FEI Rules and Regulations, and not to violate any such rules, including Article 807.7 of the ERs.[...]”*

12. The Appealed Decision was notified to the Parties on 26 June 2019.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

13. On 17 July 2019, in accordance with Article R47 of the Code of Sports-related Arbitration, edition in force since 1 January 2019 (the “CAS Code”), the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (“CAS”) against the Respondent to challenge the Appealed Decision. In his Statement of Appeal, the Appellant requested *inter alia* that a panel composed of three arbitrators be appointed to decide upon his appeal and nominated Prof. Matthew J. Mitten, Professor in Milwaukee, WI, USA, as an arbitrator.

14. On 2 August 2019, the Respondent requested clarifications as to the identity of the Respondent in this matter since the procedure before the FEI Tribunal was initiated by Ms Pauline van Drumpt from Clean Endurance and the FEI is an interested party. The Respondent also requested the present proceedings to be stayed until clarification on the issue raised and appointment of an arbitrator.
15. On 6 August 2019, the Appellant informed the CAS Court Office that in light of the fact that the present dispute is purely vertical, the FEI is the only party having standing to be sued in the present proceedings. The Appellant therefore objected to the FEI's request to suspend the proceedings.
16. On 28 August 2019, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided that the issue of standing to be sued shall be decided upon by the CAS Panel, which shall first be constituted and, as a result, invited the Respondent to appoint an arbitrator. The CAS Court Office also informed the Parties that the present proceedings resumed as from that date of its letter to the Parties.
17. On 2 September 2019, the Respondent informed the CAS Court Office that it had decided to appoint Mr Lars Nilsson, Attorney-at-Law in Stockholm, Sweden, as an arbitrator.
18. On 5 September 2019, which is within the set time limit, the Appellant filed his Appeal Brief.
19. On 9 September 2019, the CAS Court Office invited the Respondent to file its Answer.
20. On 20 September 2019, the CAS Court Office informed the Parties that the Panel appointed to decide on the present proceedings was constituted as follows:  
  
President: Mr Franco Frattini, Judge in Rome, Italy  
Arbitrators: Prof. Matthew J. Mitten, Professor in Milwaukee, WI, USA  
Mr Lars Nilsson, Attorney-at-Law in Stockholm, Sweden
21. On 14 October 2019, which is within the set time limit, the Respondent filed its Answer.
22. On 17 October 2019, the CAS Court Office invited the Parties to communicate whether they would prefer a hearing to be held in this matter.
23. On 21 October 2019, the Appellant informed the CAS Court Office that he would prefer a hearing to be held in the present matter and, on 22 October 2019, the Respondent informed the CAS Court Office that the case should be decided solely on the basis of the Parties' written submissions.
24. On 24 October 2019, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing and proposed two alternative dates for a hearing at the end of January 2020.
25. On 6 November 2019, the Appellant requested the Panel to consider earlier hearing

dates, and informed the CAS Court Office, that if an earlier hearing date is not possible, he will have no choice but to consider applying for provisional measures as an interim solution.

26. On 12 and 15 November 2019, the CAS Court Office suggested additional earlier hearing dates, none of which were convenient to both Parties.
27. On 19 November 2019, the Appellant communicated to the CAS Court Office a series of possible hearing dates, on which both Parties are available.
28. On 20 November 2019, the CAS Court Office informed the Parties that the hearing would be held on 20 January 2019 at the CAS headquarters in Lausanne, Switzerland, and invited the Parties to provide a list of attendees.
29. On 21 and 27 November 2019, the Parties communicated the list of their hearing attendees in the present matter.
30. On 5 December 2019, the CAS Court Office issued on behalf of the President of the Panel an order of procedure (the "Order of Procedure") confirming *inter alia* the CAS jurisdiction and the hearing date, and invited the Parties to return a completed and signed copy of it. On the same day, the Respondent returned a signed copy of it to the CAS Court Office.
31. On 11 December 2019, the Appellant filed with the CAS Court Office an Urgent Request for Provisional Measures pursuant to Article R37 of the CAS Code, requesting the Panel to decide to "*(a) immediately lift the suspension imposed on [the Appellant], and thus (b) allow him to compete pending the determination of his Appeal*".
32. On 12 December 2019, the Appellant returned a signed copy of the Order of Procedure to the CAS Court Office.
33. On 13 December 2019, the CAS Court Office invited the Respondent to file its Reply to the Appellant's Urgent Request for Provisional Measures, which the Respondent did on 18 December 2019.
34. On 23 December 2019, the CAS Court Office notified to the Parties the operative part of the Order on Urgent Request for Provisional Measures rejecting the Appellant's Application for Provisional Measures.
35. On 20 January 2020, a hearing was held in Lausanne. In addition to the Panel, Ms Andrea Sherpa-Zimmermann, Counsel to the CAS, and Ms Stéphanie De Dycker, Clerk to the CAS, the following persons attended the hearing:

For the Appellant:

Mr. Abdul Rahman Saeed Saleh Al Ghailani, athlete; Ms Lisa Lazarus, Mr Tom Seamer, and Ms Emma Waters, Attorneys-at-Law, Morgan Sports Law.

For the Respondent:

Ms Anna Thorstenson, FEI Legal Counsel and Ms Ana Kricej, FEI Junior Legal Counsel.

36. At the hearing, the Parties were given a full opportunity to present their case, submit their arguments and submissions, and answer the questions posed by the Panel. At the end of the hearing, the Parties' counsel confirmed that they were satisfied with the hearing and that their right to be heard was provided and fully respected.
37. On 23 February 2020, the CAS Court Office notified to the Parties the reasoning of the Order on Urgent Request for Provisional Measures rejecting the Appellant's urgent Application for Provisional Measures.

#### IV. THE PARTIES' SUBMISSIONS

38. The following summary of the Parties' positions and submissions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Panel, however, has carefully considered all of the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

##### A. The Appellant

39. The Appellant's submissions may be summarized as follows:
- First, the Protest is inadmissible as it was not lodged in accordance with the rules governing protests set out at Article 163 of the GR, the interpretation of which should follow the principle of *contra proferentem*. Accordingly, the Protest should never have been submitted to the FEI Tribunal, and, as a result, the Appealed Decision must be set aside, and the sanctions imposed by the FEI Tribunal must be eliminated. Indeed, the Protest was filed with the FEI Secretary General several days after the end of the Event, in violation of Article 163.4 and 163.4.4 of the GR. Alternatively, the Protest was required to be filed with the Ground Jury, pursuant to Article 163.5 of the GR. In any event, Article 142.2 of the GR, which concerns horse abuse matters exclusively, expressly refers back to Article 163 of the GR on how to lodge a protest and the conditions for Article 163.6 of the GR to apply are not met.
  - Second, even if the Panel finds that the Protest was admissible – *quod non* –, the issue of whether the Appellant's riding at the Event breached the FEI rules is a field-of-play issue, which is to be assessed and ruled upon by the Ground Jury. Based on the jurisprudence of the CAS and the FEI Tribunal, field-of-play decisions cannot be reviewed unless there is evidence of bad faith on the part of the on-field decision maker. Because no such evidence nor allegation has been made in the present proceedings, the Ground Jury's decision that the Appellant's riding did not breach any FEI rules should not have been reviewed by the FEI Tribunal. Article 159.7 of the GRs provides that "*there is no appeal against Decisions of the Ground Jury arising from the field of play*".
  - Alternatively, were the Panel to hold that the FEI Tribunal was entitled to review the decision of the Ground Jury – *quod non* –, the Appellant did not commit any violation of the ER or the GR. With respect to the alleged violation of Article 807.7 of the ER, the Appellant contends that his support personnel were not chasing the Horse nor seeking to encourage the Horse, but rather they were

running towards their crew car. With respect to the alleged violation of Article 142.1 of the GR, the Appellant submits that he did not commit any horse abuse; in particular he did not (i) push the Horse beyond its limits, (ii) kick the Horse excessively, nor (iii) pull the Horse's reins with high hands. The Appellant draws the attention of the Panel to the fact that (i) the type and extent of these actions are commonplace in the context of Endurance race, (ii) the Horse successfully passed six (6) veterinary checks including at the end of the Endurance race, (iii) none of the officials of the Event raised any concern as to the Appellant's riding of the Horse, (iv) other competitors at the same Event and in other competitions have adopted the same actions without being sanctioned, and finally (v) the Appellant stopped kicking the Horse once it became clear that it was having no effect.

- Finally, were the Panel to reject the previously made submissions, the sanction imposed upon the Appellant in the Appealed Decision is disproportionate and violates his right to equal treatment. Pursuant to Article 807.7 of the ER and Article 142.1 of the GR, the Panel has some flexibility in deciding on the applicable sanctions. However, the FEI Tribunal did not take into consideration the fact that (i) the Appellant has never been sanctioned beforehand, (ii) none of the violations committed were sufficiently obvious to be noticed by the officials at the Event, (iii) the Horse successfully passed all the veterinary checks, (iv) even after review of the video footage, the president of the Ground Jury remains of the opinion that no violation was committed, which is a clear indication that this is a borderline case, and (v) in other comparable or more serious cases, the FEI Tribunal imposed a less severe sanction than in the present matter.

40. In his Appeal Brief, the Appellant requested the Panel to decide as follows:

*"13.1 As his primary position, the Appellant respectfully requests the Panel to rule that the Protest was inadmissible, and thus to:*

*(a) set aside the Decision; and*

*(b) eliminate the sanctions imposed on him.*

*13.2 As his secondary position the Appellant respectfully requests the Panel to rule that:*

*(a) the FEI Tribunal had no valid basis on which to review the field-of-play decision of the Ground Jury (that being a decision that no violations were committed by the Appellant at the Event); or*

*(b) alternatively (i.e. if it is held that the FEI Tribunal did have a valid basis to review the Ground Jury's field-of-play decision), no violations of the FEI rules were committed;*

*such that the Decision must be set aside and the sanctions imposed by the FEI Tribunal must be eliminated.*

*13.3 As his tertiary position the Appellant respectfully requests the CAS Panel to set aside the Decision and to limit any suspension imposed on him to a maximum of three months.*

*13.4 The Appellant respectfully requests the CAS Panel to order the Respondent to:*



*(a) reimburse the Appellant his legal costs and other expenses pertaining to this appeal proceeding before CAS; and*  
*(b) bear the costs of the arbitration.”*

**B. The Respondent**

41. The Respondent's submissions may be summarized as follows:

- With respect to the admissibility of the Protest, the Respondent contends that Article 163.3 of the GR is the general rule regarding how to lodge a protest, which applies unless otherwise is specified in a *lex specialis*, as it unambiguously results from the wording of Article 163.3 of the GR. With respect to horse abuse, such *lex specialis* is to be found in Article 142.2 of the GR, which provides that “*Any person witnessing an Abuse must report it in the form of a Protest (Article 163) without delay.*” Hence, there is no formal time limit to report alleged horse abuse; the Protest, which was filed on 15 February 2019, is to be considered as having filed without delay. In addition, the use in the same provision of the word “*should*” instead of “*shall*” indicates that there is no obligation regarding how to report abuse of horse. In any event, the Respondent contends that the Protest was validly lodged in accordance with Article 163.6 of the GR. Finally, should the Panel consider that the Protest was inadmissible, the Respondent would still have the possibility to open a case against the Appellant for abuse of the Horse at the Event based on Article 163.9 of the GR.
- While the Respondent agrees with the Appellant that field-of-play decisions cannot be appealed or protested against, this general principle is inapplicable in the present matter. First, in this case, the Ground Jury did not make any field-of-play decision; second, even if one could consider that the Ground Jury made an implicit decision regarding whether the riding of the Appellant abused his horse during the Event, the FEI could still open a disciplinary case against any person in case of horse abuse on the basis of Article 163.9 of the GR. The case could, therefore, validly be reviewed by the FEI Tribunal.
- Based on the written expert opinion of Dr Goran Åkerström, FEI Veterinary Director, the Respondent submits that the Appellant committed an abuse of horse within the meaning of Article 142.1 of the GR. In the opinion of the FEI Veterinary Director, the videos show violent and extensive long-lasting kicking, recurrent forceful pulling up and down of the reins, raising his hands high in the air, and flicking the reins in the air. According to Dr Goran Åkerström, (i) kicking or flapping with the legs like the Appellant did is over exerting the horse both physically and mentally and never considered a normal natural aid to riding a horse, (ii) the powerful pulling up and down of the reins causes discomfort to the horse, and (iii) raising his hands high in the air and flicking the reins in the air poses a serious mental stress to the horse. In addition, persistent kicking, pulling, and/or tapping despite the lack of response from the horse to the initial instructions is an excessive use of the aids. Moreover, based on the video footage, it is clear that the Horse showed signs of exhaustion. As a result, there is no doubt that the Appellant's actions caused pain and/or unnecessary discomfort to the Horse both physically and mentally, within the meaning of

Article 142.1 of the GR. Finally, the opinion of the President of the Ground Jury is irrelevant because it was stated well after the end of the Period of the Event as defined in the GR.

- The acts of the Appellant's support personnel constitute forbidden assistance within the meaning of Article 807.7 of the ER because they were not allowed to be on the course of the Event and it appears clearly from the video that they were clapping their hands and chasing the Horse out of the gate instead of merely running towards the crew car. The Appellant, as the rider, is responsible for the acts of his support personnel. These acts constitute an aggravating circumstance to the horse abuse offence because are likely to create unnecessary discomfort to a horse as prohibited by Article 142.1 of the GR.
- Based on the sanctions imposed by the FEI Tribunal in similar cases, the sanction imposed upon the Appellant is proportionate to the violations committed; in addition, there was no breach of the Appellant's right to equal treatment and/or right to be heard. In any event, any breach of the initial procedural rules before the FEI Tribunal would be cured at the level of the CAS proceedings as the case is heard *de novo*. Finally, the Panel should consider the public interest of the fight against abuse of horse over the private interest of the Appellant as individual athlete and, consequently recognize the severe consequences resulting from the evidence of horse abuse provided in this matter.

42. The Respondent requested the Panel to decide as follows:

“

- *Dismiss the Appeal in its totality;*
- *Uphold the sanctions imposed in the [Appealed] Decision, for the Appellant's violations of Art 142 GRs and 807 ERs, including the 12-month period of suspension imposed on the Appellant, the disqualification (including forfeiture of medals, points and prizes) from the Event, and the fine of 4 000 CHF and legal cost before the FEI Tribunal of 1 000 CHF; and*
- *Order the Appellant to pay the CAS arbitration costs, as well as a contribution towards the FEI's legal fees and other expenses incurred in connection with these proceedings, in accordance with CAS Code Article R64.5.”*

## V. JURISDICTION OF THE CAS

43. The question whether or not the CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. As Switzerland is the seat of the arbitration and not all Parties are domiciled in Switzerland, the provisions of the Swiss Private International Law Act (“PILA”) apply, pursuant to its Article 176.1. In accordance with Article 186 of PILA, the CAS has the power to decide upon its own jurisdiction (“*Kompetenz-Kompetenz*”).

44. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.[...]”*

45. The jurisdiction of CAS in the present matter derives from Article 165 of the GR, which reads as follows:

*“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[...].”*

*1.3 With the CAS against Decisions by the FEI Tribunal. The person or body issuing such Appeal shall inform the Secretary General and provide him with copies of the statement of Appeal.[...].”*

46. The fact that the Appealed Decision is a “*decision made by any person or body authorised under the Statutes, GRs or Sport Rules*” is undisputed. The Panel therefore has jurisdiction to decide the present appeal. In addition, both Parties confirmed the jurisdiction of CAS by signing the Order of Procedure.

47. It follows that CAS has jurisdiction to adjudicate and decide the present dispute.

## **VI. ADMISSIBILITY**

48. Pursuant to Article R48 of the CAS Code:

*“The Appellant shall submit to CAS a statement of appeal containing:*

- the name and full address of the Respondent(s);*
- a copy of the decision appealed against;*
- the Appellant’s request for relief;*
- the nomination of the arbitrator chosen by the Appellant from the CAS list, unless the Appellant requests the appointment of a sole arbitrator;*
- if applicable, an application to stay the execution of the decision appealed against, together with reasons;*
- a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to CAS.*

*Upon filing the statement, the Appellant shall pay the CAS Court Office fee provided for in Article R64.1 or Article R65.2.*

*If the above-mentioned requirements are not fulfilled when the statement of appeal is filed, the CAS Court Office may grant a one-time-only short deadline to the Appellant to complete its statement of appeal, failing receipt of which within the deadline, the CAS Court Office shall not proceed.”*

49. Article R49 of the CAS Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties.”*

50. Article 165 of the GR provides as follows:

*“165.6.1. Appeals to the CAS together with supporting documents must be dispatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS code of Sports-related Arbitration:*

*165.6.2. So as to reach the CAS within twenty-one (21) 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.”*

51. The appeal was filed within the deadline of 21 days from the date of receipt of the Appealed Decision. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fees.
52. It follows that the appeal is admissible.

## **VII. APPLICABLE LAW**

53. Pursuant to Article R58 of the CAS Code:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

54. The Panel further notes that Article 38.3 of the FEI Statutes provides that:

*“All disputes shall be settled in accordance with Swiss law.”*

55. The Panel, therefore, notes that the relevant FEI rules and regulations apply primarily, and in particular the GR and the ER. Swiss law applies subsidiarily.
56. The Panel further notes that the Appellant argues that the general principles of law applied by the CAS as part of the *lex sportiva*, in particular the principle *contra proferentem*, the principle of proportionality and the right to equal treatment also apply in the present matter. The Respondent did not object to these contentions by the

Appellant. The Panel shall revert on the applicability of these specific principles in the section regarding the merits, if needed.

## VIII. MERITS

### A. Preliminary remarks and relevant FEI regulations

57. The case at hand concerns an alleged abuse of horse. The Panel finds it important to stress, as a preliminary matter, that issues relating to the welfare of horses is of vital importance for the Respondent. Indeed, as was stated by the Respondent, equestrian sport is unique because it involves two athletes, the rider and the horse and, as a result, the FEI rules and regulations cover the interests of both the rider and the horse. As such, protecting the welfare of the participating horses is an integral element of the competition - especially with respect to disciplines like endurance. Protecting the welfare of the participating horses is even more a key factor for the Respondent that, in equestrian sport, one of the two athletes involved - i.e. the horse – is ‘voiceless’: it cannot decide by itself if and how to compete but rather competes under the instructions of the rider.
58. More fundamentally, as provided under Article 1 of the Statutes, one of the objectives of the FEI is to “*protect and preserve the welfare of the [h]orse*”. Hence, not only is the welfare of the horses a substantial element of the competition, but it is also of paramount importance for the FEI and the reputation of equestrian sport, in general. As such, the FEI establishes and represents a worldwide process for fostering welfare of the horses and ensuring competitions do not occur at the expense of the horses’ welfare. Welfare of the horse, therefore, lies at the centre of the sports rules and regulations adopted by the FEI. This is especially so with respect to Article 142 of the GR, which defines abuse of horses and provides procedural rules as to how horse abuse should be reported for determination of whether it occurred, and if so, the imposition of disciplinary sanctions.
59. The relevant provisions of the GR and the ER are quoted hereafter.
60. The relevant sections of Article 163 of the GR read as follows:
- “1. Protests may be lodged against any person or body involved in any capacity in an International Event or otherwise subject to the jurisdiction of the FEI including for failure to observe the Statutes, GRs or Sport Rules or violation of the common principles of behaviour, fairness, or accepted standards of sportsmanship, whether occurring during or in connection with an International Event or at any other time.*
- 2. Protests may only be lodged by the FEI, Presidents of NFs, Officials, Chefs d’Equipe or, if there is no Chef d’Equipe, by a Person Responsible or a Team Veterinarian responsible for Horses taking part in the Event. Protests for abuse of Horses may be lodged by any person or body.*
- 3. Unless otherwise specified, Protests must be lodged before the end of the period of jurisdiction of the body that has the competence to hear the relevant Protest. This is true even if the person or body lodging the Protest is not present at the Event. The relevant body does not have jurisdiction to hear the Protest prior to any required deposit being paid.*

*4. Protests in the following matters can only be lodged with the Ground Jury:*

*[...]*

*4.4. Protests concerning irregularities or incidents during a Competition, or the results of a Competition. Such Protests must be filed no later than thirty (30) minutes after the announcement of the results of the relevant Competition.*

*[...]*

*5. Protests for matters not listed in Article 163.4 must be lodged with the Appeal Committee or with the Ground Jury if there is no Appeal Committee.*

*6. Protests regarding matters which have not occurred during or in direct connection with an International Event and which were not known until after the end of the Event, shall be lodged with the FEI Tribunal through the Secretary General. Such Protests shall be filed no later than fourteen (14) days after the end of the relevant Event. A case shall be deemed to occur in direct connection with an Event if it occurs during the journey towards the Event or, after arrival, including during the period of quarantine, training or acclimatisation.*

*[...]*

*9. Notwithstanding anything to the contrary, the FEI, at its sole discretion, may open a disciplinary case against a person(s) in the event that conduct brings equestrian sport, and the FEI in particular, into disrepute and/or in the case of match fixing, betting, bribery and/or corruption and/or in the case of an Abuse of a Horse and/or in the case of any other breach of the FEI Rules and Regulations without the payment of a deposit.[...]"*

61. Article 142 of the GR reads as follows:

*"1. No person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to:*

- (i) To whip or beat a Horse excessively;*
- (ii) To subject a Horse to any kind of electric shock device;*
- (iii) To use spurs excessively or persistently;*
- (iv) To jab the Horse in the mouth with the bit or any other device;*
- (v) To compete using an exhausted, lame or injured Horse;*
- (vi) To "rap" a Horse;*
- (vii) To abnormally sensitise or desensitise any part of a Horse;*
- (viii) To leave a Horse without adequate food, drink or exercise;*
- (ix) To use any device or equipment which causes excessive pain to the Horse upon knocking down an obstacle.*

*2. Any person witnessing an Abuse must report it in the form of a Protest (Article 163) without delay. If an Abuse is witnessed during or in direct connection with an Event, it should be reported as a Protest (Article 163) to an Official. If the Abuse is witnessed at any other time it should be reported as a Protest (Article 163) to the Secretary General who, following a review of the Protest, shall take a Decision as to whether or not to refer the matter to the FEI Tribunal."*

62. The relevant sections of Article 807 of the ER reads as follows:

*“807.7 Forbidden Assistance: the types of activities set out below at Articles 807.7.1 to 807.7.8 (inclusive) are forbidden and the Athlete and/or the Registered Trainer is subject to the sanction applicable to each activity, as listed beside each activity [...]*

*807.7.6. Someone on course encouraging the Horse by any means whatsoever under penalty of a Yellow Warning Card and disqualification.”*

**B. Issues for Resolution**

63. Based on the Parties’ respective submissions, the Panel will address and resolve the following issues:

- a.) Whether the Protest was admissible;
- b.) If so, whether the “field-of-play” doctrine should have prevented the FEI Tribunal from determining the existence of a horse abuse by the Appellant;
- c.) If not, whether the Appellant committed an abuse of the Horse; and
- d.) If so, what is an appropriate and proportionate sanction.

***a.) Admissibility of the Protest***

64. The Appellant argues that the Protest was filed in violation of the provisions of Article 163 of the GR, and that, as a result, the Appealed Decision must be set aside. The Respondent submits, to the contrary, that the FEI Tribunal correctly decided that the Protest was admissible pursuant to Articles 142.2 and 163.2 of the GR.
65. The Panel has noted the respective arguments of the Parties as to the correct reading of these provisions, which it has carefully reviewed, in a case of alleged horse abuse by a rider made by a third party not in attendance at the Event. In essence, the Appellant argues that because the Protest concerned an “*incident during a Competition*”, the Protest had to be filed with the Ground Jury no later than 30 minutes after the announcement of the results of the said competition pursuant to Article 163.4.4 of the GR. Appellant asserts that this requirement must be satisfied because Article 142.2 of the GR refers back to Article 163 of the GR. The Appellant also contends that if the Panel finds any ambiguity regarding the protest procedure to be followed, it must construe such ambiguity against the Respondent as the drafter of the subject protest rules and determine the Protest to be inadmissible. The Respondent argues, however, that Article 163 of the GR is the *lex generalis* and that article 142.2 of the GR, which applies only in case of alleged horse abuse, is a *lex specialis* that applies with priority. As a result, there are no compulsory conditions for the filing of a protest alleging horse abuse after the competition ended except that it must be filed “*without delay*”.
66. Article 163 of the GR details the general procedures for protests and disciplinary cases. In particular, the Panel notes that Article 163.2 of the GR expressly provides that “*Protests for abuse of Horses may be lodged by any person or body*”. Article 163.3 of the GR, which concerns the timing of a Protest, provides that “*unless otherwise specified, Protests must be lodged before the end of the period of jurisdiction of the body*

*that has competence to hear the relevant Protest”.*

67. Article 142 of the GR applies specifically to cases of alleged horse abuse. Article 142.1 of the GR defines horse abuse. Article 142.2 of the GR provides that horse abuse witnessed at any time other than during the competition should be reported “*to the [FEI] Secretary General who, following review of the Protest, shall take a Decision as to whether or not to refer the matter to the FEI Tribunal*”.
68. In the Panel’s view, the wording “*unless otherwise specified [...]*” in Article 163.3 of the GR clearly indicates that this rule is only *lex generalis*. Based on its express language and the FEI’s objective of establishing a global process for protecting the welfare of horses and preventing their abuse, the Panel concludes that Article 142.2 of the GR, which provides that “*any person witnessing an Abuse*” other than “*during or in direct connection with an Event*” “*must report it [...] without delay*” to the FEI Secretary General, clearly applies as *lex specialis* to this case. The Panel determines that the phrase “*unless otherwise specified*” in Article 163.3 encompasses Article 142.2’s applicable *lex specialis* provision. It is undisputed that after reviewing a video of the Event, Clean Endurance’s Ms Pauline van Drumpt promptly reported Appellant’s alleged horse abuse within six days to the FEI Secretary General, who referred the matter to the FEI Tribunal. The reference to Article 163 in the third sentence of Article 142.2, which expressly applies to horse abuse witnessed other than “*during or in direct connection with an Event*”, does not create any ambiguities requiring application of the principle of *contra proferentem* and acceptance of Appellant’s argument that the Protest is inadmissible.
69. As mentioned above, the Panel’s finding in this respect is supported by the FEI’s objective of establishing a global process for protecting the welfare of the horses and preventing their abuse. Indeed, in order to reach this objective, the Panel finds it only logical that the procedural conditions to bring a protest against alleged horse abuses be kept flexible.
70. The Panel rejects Appellant’s contention that in accordance with Article 163.6 of the GRs and *Von Stein v. FEI* (2014): “Only if a protest concerns matters which did not occur either during or in direct connection with an ‘*International Event*’ and which were not known until after the end of the Event, can a protest be validly filed by lodging it with the Secretary General within 14 days of the end of the Event”. Reading Article 142.2 and all paragraphs of Article 163 together, the Panel finds that Article 142.2 applies as *lex specialis* regarding protests alleging horse abuse that are made to the FEI Secretary General and referred to the FEI Tribunal. Otherwise it would not be possible for alleged horse abuse during an international endurance race but not discovered by third parties until thereafter to be protested “*by any person or body*” pursuant to Article 163.2 by reporting it to the FEI Secretary General in accordance with Article 142.2. *Von Stein v. FEI*, in which the FEI Tribunal held that a rider’s protest of the results of a horse race in which he participated was inadmissible, is inapplicable to the facts in this case and does not support Appellant’s contention that a protest alleging horse abuse filed with the FEI Secretary General is inadmissible pursuant to Article 163.6.



71. Considering the above, the Panel finds that the Protest is admissible. The Panel's finding in this respect is also supported by *Cuckson & Higginson v. FEI & Al Khalifa* (2014). In this decision, the FEI Tribunal decided that the protest alleging horse abuse witnessed after video review of race, which is filed 19 days after race in accordance with Articles 142.2 and 163.2 of the GRs with the FEI Secretary General for referral to the FEI Tribunal, is admissible.

***b.) "Field-of Play" doctrine***

72. The Appellant contends that by not determining that he breached the prohibition against horse abuse in Article 142.1 of the GRs, the Ground Jury (the expert body that observed and was responsible for the overall judging of the Event) determined that his riding of Sarab did not violate any FEI rules and regulations. In support of his position, Appellant relies on the witness statement of the President of the Ground Jury, Mustapha Mafoudi, stating: "*he was watching the Appellant and SARAB at the time when the alleged horse abuse is supposed to have taken place; he did not witness any behaviour from the Appellant that would constitute horse abuse; neither he, nor any other member of the Ground Jury, witnessed any behaviour from the Appellant that would constitute a breach of any FEI rules; and he has since reviewed the footage lodged by the Protestor, and stands by his original assessment that there was no rule violation or horse abuse*". This determination is a field-of-play decision by the Ground Jury, which was not subject to appeal by the post-Event Protest and review by the FEI Tribunal. Its determination that Appellant violated Article 142.1 is contrary to Article 159.7 of the GRs, which provides that "*there is no appeal against Decisions of the Ground Jury arising from the field of play, which are final and binding*", and applicable FEI and CAS case law, which ruled that field-of-play decisions cannot be reviewed unless there is evidence of bad faith on the part of the on-field decision maker – an allegation that has not been made in the present matter. Specifically, Appellant cites *Cuckson & Higginson v. FEI & Al Khalifa* (2014), in which the FEI Tribunal stated "*[I]t was for the Ground Jury to decide whether a horse abuse had been committed [which] qualified as a field-of-play decision [that] could only be reviewed . . . in cases where the Ground Jury members had acted in bad faith or in an arbitrary manner, or otherwise maliciously neglected fundamental rights of the Rider*" (para. 9.3). During the hearing, Appellant also cited *Von Stein v. FEI* to support his argument that the Ground Jury did not find that he engaged in horse abuse, which is a nonreviewable field of play decision.
73. Acknowledging that field-of-play decisions by sports event officials generally cannot be appealed or protested, the Respondent argues that this case does not involve a field-of-play decision and Article 159.7 of the GRs is inapplicable because the Ground Jury did not affirmatively and explicitly determine that Appellant did not engage in horse abuse during the Event. It also asserts that *Cuckson & Higginson v. FEI & Al Khalifa* and *Von Stein v. FEI*, which provide examples of nonreviewable field-of-play decisions, involve readily distinguishable underlying facts and are inapplicable to a case of alleged horse abuse not observed, reported, or sanctioned by the Ground Jury. In addition, the Respondent asserts that Article 163.9 of the GRs, which provides "*[n]otwithstanding anything to the contrary, the FEI, at its sole discretion, may open a disciplinary case against a person (...) in the case of an Abuse of a Horse*", permitted it to bring a disciplinary proceeding against the Appellant for horse abuse even if the Ground Jury did not observe such an offense. Therefore, the FEI Tribunal was authorized to review

the Protest's horse abuse allegations against Appellant when the FEI Secretary General referred the matter to it.

74. At the outset, the Panel notes that the Appellant effectively is asserting that only the Ground Jury is empowered to determine whether or not horse abuse in violation of Article 142.1 of the GRs occurred during an endurance race. The Panel rejects this contention, which if accepted, would negate the explicit language of Article 163.2 providing that “[p]rotests for abuse of Horses may be lodged by any person or body” and severely limit the FEI's ability to effectively protect the health and welfare of horses competing in endurance races, which is an objective of paramount importance for the FEI and the reputation of equestrian sport.
75. Article 159.7 of the GR provides that “[t]here is no Appeal against Decisions of the Ground Jury arising from the field of play, which are final and binding” and provides a non-exclusive illustrative list of examples, including “a factual observation of performance during a Competition or the awarding of marks for performance”; “the Elimination or Disqualification of a horse for veterinary reasons”; the *Elimination or Disqualification of an Athlete or medical reasons/fitness to compete*; “imposition of a Warning without additional penalties or of a Yellow Warning Card”; and “Elimination and/or Disqualification during an Event”. Each illustration provides an example of an affirmative action by FEI officials observing and overseeing an equestrian event. This article does not expressly reference abuse of a horse; nor does it imply from any of the listed examples that the Ground Jury's failure to observe, report, or sanction abuse of a horse is a field-of-play decision.
76. The Panel shares the view of other CAS Panels that the principle according to which field-of-play decisions cannot be subject of a judicial review, with some few exceptions in cases of blatant bad faith, corruption, etc. is of crucial importance for the functioning of the whole sports system. There are indeed strong sporting rationales in support of the idea that the scrutiny of decisions concerning the “rules of the game” shall be confined to exceptional circumstances (CAS OG16/028; CAS OG 00/012; CAS OG 96/006; CAS 2004/A/727). Although there is a substantial body of CAS general field-of-play jurisprudence with well-settled parameters and sound reasoning, the Panel observes that this case presents a matter of first impression because the Parties have not cited any cases squarely on point or involving substantially similar or analogous facts.
77. There also is not any definitive FEI Tribunal jurisprudence regarding whether the Ground Jury's determination that no horse abuse occurred during a competition is generally a nonreviewable field-of-play decision. In *Cuckson & Higginson v. FEI & Al Khalifa*, the rider was given a Yellow Warning Card and fined CHF 500 for horse abuse during a 120 km race by the Ground Jury, but it did not disqualify his competition results. After the race, a protest was filed that alleged that his competition results should have been disqualified because of his horse abuse. The FEI Tribunal characterized the Ground Jury's determination that horse abuse had occurred as a nonreviewable field-of-play decision, and held that it acted arbitrarily by not disqualifying the rider's competition results, which is a mandatory sanction for horse abuse during an event pursuant to Article 811.1 of the ERs. This case, however, does not hold that a Ground Jury's failure to observe or provide any disciplinary sanction for horse abuse during an event is a field-of-play decision not subject to a post-event protest alleging horse abuse

that is referred by the FEI Secretary General to the FEI Tribunal for adjudication.

78. In *Von Stein v. FEI*, the FEI Tribunal characterized a rider's protest of competition results reflecting two knock downs by his horse based on video of the event showing only one knock down as an inadmissible challenge to the "results of a competition" within the Ground Jury's exclusive jurisdiction (*Von Stein v. FEI*, para. 6.4). Although it did not specifically reference to Article 159.7 of the GR, the FEI Tribunal's decision implicitly recognizes the rider's protest sought to challenge a nonreviewable field-of-play decision. The Panel, however, declines to broadly construe *Von Stein v. FEI* as precluding the FEI Tribunal from imposing disciplinary sanctions, including disqualification of race results, based on its finding that a rider abused his horse, which arose out of post-event allegations of horse abuse by a third party.
79. The Panel notes that, pursuant to Article 159.7 of the GR, field-of-play decisions from the Ground Jury cannot be appealed against. The question arises as to whether the fact that the Ground Jury did not sanction the Appellant at the Event constitutes a field-of-play decision in the meaning of Article 159.7 of the GR. Whereas the Respondent argues that there was no field-of-play decision in the present matter, the Appellant submits to the contrary that there was a field-of-play decision and that it would lead to absurd results if Article 159.7 of the GR only applied with respect to decisions that sanction an Athlete and/or the horse – which, as a result, could not be appealed against – to the exclusion of decisions that do not sanction, for which an appeal could still be open.
80. The Panel recognizes that drawing the line between what constitutes a field-of-play decision and what does not, is not always a straightforward thing to do. Quite the reverse, defining with precision the boundaries of the playing field can constitute a complicated task, which is subject to the specific circumstances of each case. The question as to whether a certain decision – whether implicit or not – is subject to review must be primarily ascertained by consulting the applicable sports regulations (CAS 2018/A/5916, para. 53; CAS 2017/A/5373, para. 50 ff).
81. In doing so, the Panel first wishes to highlight that Article 159.7 of the GR contains a non-exhaustive list of decisions falling within the ambit of the "field-of-play" doctrine. Considering the non-exhaustive character of such list though, the Panel finds that it cannot draw any specific conclusion from the fact that the absence of decision by the Ground Jury for horse abuse is not included in that list.
82. The Panel then turns to Article 163.9 of the GR, which provides that the FEI may "*at its sole discretion*" and "*notwithstanding anything to the contrary [...] open a disciplinary case against a person(s) in the event that conduct brings equestrian sport, and the FEI in particular, into disrepute [...] and/or in the case of an Abuse of a Horse [...]*". Based on this provision, it appears clear to the Panel that the absence of sanctioning of an athlete at a specific event by the Ground Jury could – in specific cases, including in the case of abuse of horse – still be overruled by the FEI. Indeed, in the Panel's view, Article 163.9 of the GR grants the FEI with a statutory right to act against horse abuse, independently of the Ground Jury's finding. In the Panel's view, the Appellant's reading and implementation of the relevant provisions of the GR would mean that there is no possibility whatsoever to review any finding on the field that horse abuse was committed – or was not. In the Panel's view, this would be incompatible with Article 163.9 of the

GR.

83. More fundamentally, as mentioned above, the Statutes of the Respondent expressly provide that one of the FEI's paramount objectives is to preserve and protect the welfare of the horses, which is an essential value for the Respondent. This could only be done if there is a legal process that ensures the possibility for the FEI to take action in view of sanctioning the concerned athletes. Hence, because the preservation and protection of the welfare of the horse represents such an important statutory objective of the FEI, it not only has a statutory right to act against horse abuse but also a statutory obligation to do so. In the Panel's view, the Appellant's reading of the relevant provisions of the GR – according to which only the Ground Jury would be able to observe, determine, and sanction cases of horse abuse – is incompatible with the FEI's laudatory goal of establishing a worldwide uniform process for ensuring the protection and preservation of the welfare of the horses rather than solely potentially fragmented determinations by local Ground Juries. Acceptance of Appellant's assertion would create an unjustifiable gap in the FEI's regulatory system for the legal protection of the horses.
84. As a result, the Panel finds that the fact that the Ground Jury did not observe or sanction the Appellant for horse abuse at the Event does not constitute a field-of-play decision. As a result, the FEI Tribunal could validly consider and adjudicate the Protest, and this Panel is empowered to review its decision *de novo*.

***c.) Alleged violation of the FEI rules and regulations***

85. The Appellant contends that it did not commit any violation of the FEI rules and regulations that the FEI Tribunal determined that he did violate. The Respondent submits that the Appealed Decision correctly found that the Appellant violated Article 142.1 of the GR by abusing the Horse. Respondent also submits that the Appellant is responsible his support personnel's violation of Article 807.7 of the ER ("Forbidden Assistance"), which constitutes an aggravating factor in determining the Appellant's disciplinary sanction for horse abuse.
86. The Panel shall examine first, whether the Appellant committed an abuse of the Horse within the meaning of Article 142.1 of the GR, and second, whether Appellant's support personnel provided forbidden assistance within the meaning of Article 807.7 of the ER.
87. With respect to the alleged abuse of the Horse by the Appellant, the Respondent relies on the written expert opinion of Dr Goran Åkerström, FEI Veterinary Director, according to which the videos of the Event show that the Appellant committed abuse of the Horse by violent extensive long-lasting kicking and flapping with the legs, recurrent forceful pulling up and down of the reins, as well as raising the hand high in the air and flicking the reins in the air, all of which on a Horse that showed signs of exhaustion. The Appellant in turn raises the fact that (i) the type and extent of these actions is commonplace in the context of Endurance race, (ii) the Horse successfully passed 6 veterinary checks including at the end of the Endurance race, (iii) none of the officials of the Event raised any concern as to the Appellant's riding of the Horse, even after the end of the Event (iv) other competitors at the same Event and in other competitions have adopted the same actions without being sanctioned, and finally (v) the Appellant stopped kicking the Horse once it became clear that it was having no effect.

88. Having carefully reviewed the videos produced by the Parties, the Panel finds that – contrary to what the Appellant contends – these videos clearly show that, despite the Horse’s lack of response from the Appellant’s initial instructions clearly visible during the finishing of the race, the Appellant is seen repetitively kicking and flapping forcefully with the legs, powerfully pulling up and down the reins as well as raising the hand high in the air and flicking the reins in the air. In addition, as to the state of exhaustion of the Horse, the Panel notes that, despite the Horse having passed the veterinary checks at the Event, according to the written expert opinion of Dr Goran Åkerström, FEI Veterinary Director, “[a]n exhausted horse does not respond forward when encouraged/forced and is not able to maintain its speed and balance”. On this basis, the Panel concludes that the videos show without doubt that the Horse is clearly exhausted. The Panel concludes that the Appellant’s actions at the Event caused pain and/or unnecessary discomfort to the Horse both physically and mentally, in the meaning of Article 142.1 of the GR.
89. The Panel strongly disagrees with the Appellant’s submission that such actions are common place and accepted practices in Endurance racing. Again, the Panel relies on the written expert opinion of Dr Goran Åkerström, FEI Veterinary Director, who confirmed that the Appellant’s above-mentioned actions were causing or were likely causing pain or unnecessary discomfort to the Horse, which is not acceptable according to the FEI rules and regulations. In addition, even if other riders’ actions at the Event or other recent endurance races were similar to the Appellant’s actions – an issue that it need not resolve in this proceeding –, the Panel has authority to determine only whether Appellant’s conduct during the Event constitutes horse abuse (an issue that cannot be determined based solely or even primarily on the other riders’ behaviour or actions).
90. Based on the above considerations, the Panel finds to its comfortable satisfaction that the Appellant committed an abuse of the Horse in violation of Article 142.1 of the GR.
91. Regarding the alleged forbidden assistance by the Appellant’s support personnel, the Respondent argues that they were clapping their hands and chasing the Horse despite not being allowed to be on the Event course, which violates Article 807.7 of the ER. Because the Appellant, as rider, is responsible for the acts of his support personnel, their actions constitute an aggravating factor appropriate for consideration in determining his sanction for horse abuse. The Appellant contends that his support personnel were not chasing the Horse nor seeking to encourage the Horse, but rather they were running towards their crew car (permissible conduct under FEI rules); therefore, they did not violate Article 807.7 of the ER.
92. Having carefully reviewed the videos produced by the Parties, the Panel finds that the support personnel clearly are clapping their hands and chasing the Horse in order to encourage it. This conduct constitutes a violation of Article 807.7 of the ER to the comfortable satisfaction of the Panel. The Appellant is responsible for these actions of his support personnel. Consequently, the Panel finds that the Appellant committed a violation of Article 807.7 of the ER, which is potentially relevant only as an aggravating factor in determining the length of his disciplinary sanction for contemporaneously violating Article 142.1 of the GR.

***d.) Sanction***

93. The Panel now determines the appropriate and proportionate disciplinary sanction to be imposed on the Appellant for violating Article 142.1 of the GR and 807.7 of the ER. The Appellant submits that the duration of the 12-month suspension imposed upon him in the Appealed Decision is disproportionate, and should be limited to a maximum of three months. The Respondent, in turn, contends that the FEI Tribunal correctly imposed a suspension of twelve months upon the Appellant, even though it had requested a maximum six-month suspension.
94. The Panel notes that pursuant to Article 169.6.2 and 169.7 of the GR, abuse of a horse shall entail a suspension of a minimum of three (3) months up to life and a fine of up to CHF 15,000 (fifteen thousand Swiss Francs), or alternatively, a yellow warning card for cases of a less severe nature. In addition, Article 807.7.6 of the ER provides that the Athlete and/or the Registered Trainer shall be sanctioned by a yellow warning card and disqualification from the event.
95. The Panel notes that the FEI requested that the FEI Tribunal impose a suspension of three (3) to six (6) months on Appellant; whereas before this Panel, it submits that the Appealed Decision – which provides for a suspension of twelve (12) months – should be confirmed. The Panel also notes that the FEI Tribunal, without providing any explanation, decided to impose upon the Appellant a suspension twice as long as the maximum requested by the FEI. In the Appealed Decision, the FEI Tribunal did not explain its reasons for imposing a 12-month suspension on the Appellant other than stating that it considered this sanction to be “*proportionate*”.
96. In the Panel’s view, the FEI Tribunal is not precluded from imposing a disciplinary suspension longer than the length requested by the FEI. The FEI Tribunal has a reasonable degree of discretion to fix the duration of the suspension with the range permitted by the FEI’s rules that it considers appropriate and proportionate under the circumstances, taking into account relevant mitigating and aggravating factors (e.g., rider’s history of FEI rules violations; nature and severity of the rule violation(s); the effects on the horse’s health and welfare, etc.). However, the FEI Tribunal must state explicitly the reasons for the disciplinary sanction imposed, particularly when it imposes a suspension longer than length sought by the FEI, like in the present case.
97. With respect to the appropriate length of suspension to be imposed upon the Appellant in the present matter, the Panel first notes that there are no consistent FEI Tribunal precedents regarding the length of suspensions to be imposed upon riders in cases of horse abuse, nor is there any precedent identifying any mitigating and aggravating factors to be considered in determining appropriate and proportionate disciplinary sanctions. Of course, to ensure the equal treatment of all riders, the FEI Tribunal must treat like situations similarly and impose consistent disciplinary sanctions for rules violations, including horse abuse.
98. In the case at hand, the Panel finds that several mitigating factors need to be taken into account in determining the length of the Appellant’s suspension. Not only is this the Appellant’s first violation of FEI rules, but in addition, this is not an obvious case of horse abuse: the Horse successfully passed all veterinary checks during the Event, including at the end of the race; the Ground Jury, present at the Event, did not observe

any horse abuse in the Appellant's actions; and the FEI has not initiated any disciplinary proceeding against any members of the Ground Jury for not observing and sanctioning Appellant's horse abuse during the Event. Furthermore, in the Panel's view, the violation of Article 807.7 of the ER constitutes an aggravating factor in determining the length of a rider's suspension if it caused or is likely to have caused pain or unnecessary discomfort to a horse. However, under the facts of the present case, because there is no finding in the Appealed Decision that the support staff's actions caused or were likely to cause pain or unnecessary discomfort to the Horse, the Panel finds that the Appellant's violation of Article 807.7 of the ER is not an aggravating factor to be considered in determining the length of the suspension to be imposed upon him.

99. Considering the above and exercising *de novo* review, the Panel finds that the suspension of the Appellant shall be reduced to eight (8) months starting from 26 June 2019, which is the date of the Appealed Decision.

#### IX. COSTS

100. The Panel observes that Article R65 of the CAS Code provides the following:

*"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. [...]"*

*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.*

*R65.4 If the circumstances so warrant, including whether the federation which has rendered the challenged decision is not a signatory to the Agreement constituting ICAS, the President of the Appeals Arbitration Division may apply Article R64 to an appeals arbitration, either ex officio or upon request of the President of the Panel."*

101. Since the present appeal is lodged against a decision of an exclusively disciplinary nature rendered by an international federation, no costs are payable to CAS by the Parties beyond the Court Office fee of CHF 1,000 paid by the Appellant with the filing of his Statement of Appeal, which is in any event retained by CAS.

102. Furthermore, pursuant to Article R65.3 of the CAS Code, having taken into account the outcome of the arbitration, the conduct of the Parties in the arbitration, and the respective financial resources, the Panel notes that the Respondent was not assisted by an external legal Counsel and decides that a contribution in the amount of CHF 3,000 (three thousand Swiss Francs) towards the Respondent's expenses incurred in connection with the present proceedings shall be awarded.



## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed on 17 July 2019 by Mr Abdul Rahman Saeed Saleh Al Ghailani against the Fédération Équestre Internationale with respect to the Decision of the Tribunal of the Fédération Équestre Internationale dated 26 June 2019 is partially accepted.
2. Item 4 (four) of the operative part of the Decision of the Tribunal of the Fédération Équestre Internationale dated 26 June 2019 is amended as follows:  
  
*“Mr. Al Ghailani shall be suspended for a period of eight (8) months starting from the date of the present decision.”*
3. The award is pronounced without costs, except for the Court Office fee of CHF 1,000 (one thousand Swiss Francs) paid by the Appellant, which is retained by the Court of Arbitration for Sport.
4. Mr Abdul Rahman Saeed Saleh Al Ghailani shall pay to the Fédération Équestre Internationale a contribution in the amount of CHF 3,000 (three thousand Swiss Francs) to its legal fees and expenses incurred in connection with the present proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 4 June 2020

Operative part of the Award notified on 5 February 2020

## THE COURT OF ARBITRATION FOR SPORT



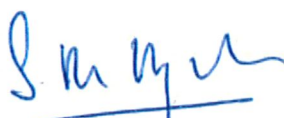
Franco Frattini  
President of the Panel



Matthew Mitten  
Arbitrator



Lars Nilsson  
Arbitrator



Stéphanie De Dycker  
CAS Clerk