



DECISION of the FEI TRIBUNAL

Dated 16 September 2015

Positive Controlled Medication Case No.: 2013/FT28

Horse: OPIUM DE BREUIL

FEI Passport No: 103AK12

Person Responsible/NF/ID: Muriel Judic/FRA/10014428

Event: CEI2* 120 – Argentan (FRA)/2013_CI_0368_E_S_02_01

Date: 20 – 21 July 2013

Controlled Medication Substance: Morphine

I. COMPOSITION OF PANEL

Ms. Randi Haukebø

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 8 November 2012 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2013, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("IRs").

FEI Equine Anti-Doping and Controlled Medication Regulations ("EADCMRs"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2013.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2013, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Muriel Judic

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

ECM Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Controlled Medication Substance* is present in the *Horse* body during an *Event* without a valid *Veterinary Form*. *Persons Responsible* are responsible for any *Controlled Medication Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.5 *ECM Rules* where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing *Use* be demonstrated in order to establish an *ECM Rule* violation under Article 2.1."

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 OPIUM DE BREUIL (the "Horse") participated at the CEI2* 120 in Argentan, France, from 20 to 21 July 2013 (the "Event"), in the discipline of Endurance. The Horse was ridden by Ms. Muriel Judic, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").

- 1.2 The Horse was selected for sampling on 20 July 2013.
- 1.3 Analysis of urine and blood sample no. 5523142 taken from the Horse at the Event was performed at the FEI approved laboratory, the Horseracing Forensic Laboratory, Sport Science ("HFL") in the United Kingdom by R. Schiller, Senior Scientist, under the supervision of Mr. Steve Maynard, Director. The analysis of the urine sample revealed the presence of Morphine.
- 1.4 The Prohibited Substance detected is Morphine. Morphine provides potent pain relief in cases of severe pain. Morphine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Morphine to the Horse, and no Veterinary Form had been provided by the PR for the use of the substance on the Horse. Therefore, the positive finding for Morphine in the Horse's sample at the Event gives rise to a Controlled Medication Rule violation under the EADCMRs.

2. The Proceedings

- 2.1 The presence of the Prohibited Substance following the laboratory analysis, the possible Rule violation and the potential consequences, were officially notified to the PR, through the Federation Française d'Equitation ("FRA-NF"), by the FEI Legal Department on 19 September 2013.
- 2.2 The proceedings were initiated under the Administrative Procedure (otherwise referred to as the "Fast Track" procedure) insofar as the respective prerequisites under Article 8.3 of the ECM Rules were fulfilled. The PR was afforded the opportunity to accept the following administrative sanctions: (i) Disqualification of herself and the Horse from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of thousand five hundred Swiss Francs (CHF 1,500), and (iii) the payment of thousand Swiss Francs (CHF 1,000) in costs. The PR was further informed that in case she did not accept the administrative sanctions offered, the case would be submitted to the FEI Tribunal procedure, and, provided the presence of the substance was established, the Tribunal would impose penalties which would be more or less severe than the administrative sanctions offered.
- 2.3 The PR, and after having been made fully aware of the potential risks and consequences of declining the administrative sanctions by the FEI, did not accept the administrative sanctions offered, and the case at hand was submitted to the FEI Tribunal procedure.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 19 September 2013, the PR was also informed that she was entitled: (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 The PR did not request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

4. Proceedings

- 4.1 By letter dated 4 October 2013, the PR provided her explanations for the positive finding, in French language. To start with the PR argued that she had previously been advised that the analysis results of the sampling at the Event would be available within three weeks from the Event, and that therefore she could not have imagined being notified of the positive finding only eight weeks after the Event. She further explained that being from an amateur stable, they did not have the financial means to request the B Sample analysis. Furthermore that since the beginning of the season, the Horse had received various treatments, but that both her veterinarian, as well as an additional expert had confirmed that none of these treatments included any Morphine; that moreover she had never used any Morphine in general, or on the Horse. Moreover, the PR questioned whether a contamination with Morphine could have caused the positive finding, listing several potential incidents. Specifically that upon arrival at the Event, the box designated for the Horse had already been used by a different horse beforehand, and that the stables at the Event had been freely accessible day and night. That contamination with Morphine could also have potentially occurred insofar as her dogs and herself had been treated with Morphine mid-June 2013, and on 19 May 2013, respectively. The PR concluded that she was not able to provide any rational explanation as to how the Morphine had entered the Horse's system.
- 4.2 On 16 December 2013, the FEI explained that in its opinion the explanations provided by the PR until that date did not provide a clear answer as to the source of the Prohibited Substance, and that the explanations had to be classified as pure allegations and assumptions.
- 4.3 Despite several reminders by the FEI, the PR did not provide any further explanations with regards to positive finding.
- 4.4 On 23 February 2015, the FRA-NF provided evidence that by letter of 7 January 2015, the PR had been informed of a final deadline of 16 February 2015 for any further submissions, and that following that deadline the Case File would be submitted to the FEI Tribunal for adjudication and decision.
- 4.5 The PR did not make any further submissions.

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and ECM Rules.

6. The Person Responsible

- 6.1 The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as she had competed with the Horse at the Event.

7. The Decision

- 7.1 As set forth in Article 2.1.2 of the ECM Rules, in cases where the PR waives analysis of the B-Sample and the B-Sample is not analysed, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample without a valid Veterinary Form. The Tribunal is satisfied that the laboratory report of the A-Sample reflects that the analytical tests were performed in an acceptable manner and that the findings of the HFL are accurate. The Tribunal is satisfied that the test results evidence the presence of Morphine in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. Morphine is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 7.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules.
- 7.3 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that she bears "No Fault or Negligence" for the rule violation, to satisfy Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence", as set out in Article 10.4.2 of the ECM Rules.
- 7.4 However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Controlled Medication Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4 of the ECM Rules.
- 7.5 The Tribunal, having taken account of the PR's explanations, finds that the PR has not established - by a balance of probability as required - how the Morphine had entered the Horse's system. The Tribunal holds that the PR has only provided pure allegations and assumptions, which in the opinion of the Tribunal are not sufficient to establish the source of the Prohibited Substance. In fact even the PR herself has explained that she was not able to find a rational explanation as to how the Morphine had entered the Horse's system.

- 7.6 Accordingly, the Tribunal does not need to address the question of whether the PR has established that she bears No Fault or Negligence for the Rule violation. Furthermore, given the lack of information provided by the PR, the Tribunal finds that the degree of Fault or Negligence of the PR for the rule violation is impossible to assess. The Tribunal therefore concludes that no reduction or elimination of the otherwise applicable period of Ineligibility under Article 10.4 of the ECM Rules is warranted.

8. Disqualification

- 8.1 For the reasons set forth above, the Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the ECM Rules.

9. Sanctions

- 9.1 The FEI Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:

- 1) The PR shall be suspended for a period of **six (6) months** to be effective immediately and without further notice from the date of the notification. Therefore, the PR shall be ineligible through **15 March 2016**.
- 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
- 3) The PR shall contribute **five hundred Swiss Francs (CHF 500,-)** towards the legal costs of the judicial procedure.

- 9.2 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.9.1 of the ECM Rules). Under Article 10.9.2 of the ECM Rules, specific consequences are foreseen for a violation of the period of Ineligibility.

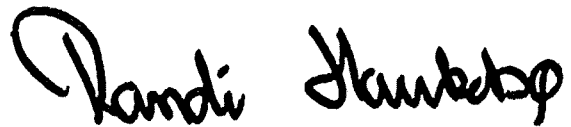
- 9.3 According to Article 168.4 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.

- 9.4 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport ("CAS") within 30 days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink that reads "Randi Haukebø". The signature is written in a cursive, flowing style.

One member panel, Ms. Randi Haukebø