



DECISION of the FEI TRIBUNAL

dated 24 May 2016

Positive Controlled Medication Case No.: 2014/FT02

Horse: RALPH

FEI Passport No: 1030L42

Person Responsible/NF/ID: David Barradas/POR/10085733

Event: CEI1* 80 – Elvas, Santa Eulalia (POR)/2014_CI_1452_E_S_01_01

Date: 25 January 2014

Controlled Medication Substance: Phenylbutazone

I. COMPOSITION OF PANEL

Mr. Chris Hodson, QC, one member panel

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 to the PR. The PR contributed no material.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Articles of the Statutes/Regulations:

Statutes 23rd edition, effective 7 November 2013 ("Statutes"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2014, 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 2014.

FEI Equine Controlled Medication Rules ("ECM Rules"), 1st edition, effective 5 April 2010, updates effective 1 January 2014.

Veterinary Regulations ("VRs"), 13th edition, effective 1 January 2014, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. David Barradas

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 a *Rule* violation under Article 2.1."

IV. DECISION

The below presents a summary of the relevant facts, allegations and arguments 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 fully 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 RALPH (the "Horse") participated at the CEI1* 80 in Elvas, Santa Eulalia, Portugal, on 25 January 2014 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. David Barradas, who is the Person Responsible in accordance with Article 118 of the GRs (the "**PR**").

- 1.2 The Horse was selected for sampling on 25 January 2014.
- 1.3 Analysis of blood sample no. 5523398 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. The analysis of the blood sample revealed the presence of Phenylbutazone and Oxyphenbutazone (metabolite of Phenylbutazone).
- 1.4 The Prohibited Substance detected is Phenylbutazone. Phenylbutazone is a non-steroidal anti-inflammatory drug (NSAID) used as pain relieving and anti-inflammatory medication. Phenylbutazone is classified as a Controlled Medication Substance under the Equine Prohibited Substances List.
- 1.5 No request had been made to administer Phenylbutazone 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 Phenylbutazone 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 Portuguese National Federation ("**POR-NF**"), by the FEI Legal Department on 14 February 2014.
- 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 himself and the Horse from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of one 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 he did not accept the administrative sanctions offered, the case would be submitted to the 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 Tribunal procedure.

3. The B-Sample Analysis

- 3.1 Together with the Notification Letter of 14 February 2014, the PR was also informed that he 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 On 24 March 2014, the POR-NF confirmed that the PR has received the Notification Letter by registered mail on 7 March 2014.
- 4.2 On 13 April 2016, the FEI provided its submission. To start with the FEI outlined, that the PR – despite several reminders and extensions of deadlines during a two-year period – has failed to reply. Further, that on 16 February 2016, the POR-NF was informed that the FEI Legal department granted the PR a new last deadline of 26 February 2016 and if no response was submitted by such deadline, the case was submitted to the Tribunal for consideration and adjudication.
- 4.3 Furthermore, the FEI submitted that:
 - a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal.
 - b) The elements of an Article 2.1 violation were straightforward. "*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*". Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's Sample.
 - c) The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Phenylbutazone, together with the waiver of the B-Sample analysis, constitute "sufficient proof" of the violation of Article 2.1 of the ECM Rules.
 - d) Accordingly, the FEI had discharged its burden of establishing that the PR has violated Article 2.1 of the ECM Rules.
 - e) In the case at hand, there was neither information nor reply given by the PR in response to the charge. It has not been established how the Prohibited Substance entered the Horse's system; and no explanation of the PR's degree of fault according to Article 10.4 and Article 10.5 of the ECM Rules has been provided. The FEI

respectfully submitted that the applicable period of Ineligibility should therefore be six (6) months.

- f) Furthermore, the FEI requested the Tribunal to disqualify the result of the Horse and the PR combination obtained in the Competition, and the consequent forfeiture of all medals, points, prize money, etc. won, pursuant to Article 9 of the ECM Rules.
 - g) Finally, the FEI requested the Tribunal to fine the PR in the amount of at least CHF 1 500; and to order the PR to pay the minimum legal costs of CHF 1 000, that the FEI had incurred in proceedings in the case at hand.
- 4.4 On 19 April 2016, - upon receipt of the Case File in the instant case - the Tribunal granted the PR a final deadline to provide his written explanations to the alleged rule violation. The Tribunal further requested the PR to inform it whether he wished for a hearing to be held; and that - in case of failure to request a hearing within the deadline provided - the PR shall be deemed to have waived his right for a hearing.
- 4.5 The PR did not provide any explanations to the positive finding, or request for a hearing to be held.

5. Jurisdiction

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

6. The Person Responsible

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 Phenylbutazone 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. Phenylbutazone 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 he 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 takes note that the PR did not provide any information on how the Phenylbutazone entered the Horse's system, and therefore holds that the PR has not established how the Controlled Medication Substance entered the Horse's system. Accordingly, the Tribunal does not need to address the question of whether the PR has established that he 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 holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.
- 7.6 In accordance with Article 10.2 of the ECM Rules, the period of Ineligibility shall be commensurate with the seriousness of the offence taking into account the underlying objectives and rationale of the ECM Rules and the FEI Medication Code, as well as principles of fair play. Therefore the period of Ineligibility imposed on the PR shall be six (6) months. In this respect the Tribunal takes note that the PR has not at any stage engaged in the proceedings and has provided no explanation for what appears to be a clear rule violation. The Tribunal finds that this could potentially be considered as aggravating circumstances in the meaning of Article 10.5 of the ECM Rules. The Tribunal however also takes into consideration the length of the proceedings in the instant case, *i.e.*, over two years since notification of the positive finding. Considering all circumstances in the case at hand, the Tribunal decides to therefore impose a period of Ineligibility of six (6) months on the PR.

8. Disqualification

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 **23 November 2016**.
 - 2) The PR is fined **one thousand five hundred Swiss Francs (CHF 1'500,-)**.
 - 3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** 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 thirty (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, appearing to read "Hodson", is centered on the page. The signature is written in a cursive style with a long, vertical tail on the final letter.

One member panel, Mr. Chris Hodson, QC