



DECISION of the FEI TRIBUNAL
on Appeal by Mr. António Vaz Freire
dated 14 October 2016

In the matter of

Mr. António Vaz Freire (“Mr. Freire” or “the Appellant”)

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI” or “the Respondent”)

I. COMPOSITION OF PANEL

Mr. Ludovic de Villèle, single member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The Tribunal duly took into consideration the Parties’ written submissions and communications received to date.
- 2. Appellant:** Mr. António Vaz Freire, represented by Ms. Cecília Anacoreta Correira and Mr. Alexandre Miguel Mestre of Abreu Advogados, Lisbon, Portugal.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Statutes/Regulations:

Statutes 23rd edition, effective 29 April 2014 (“**Statutes**”).

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016 (“**GRs**”).

Internal Regulations of the FEI Tribunal, 2nd edition, effective 1 January 2012 (“**IRs**”).

FEI Endurance Rules, Updated 9th edition, effective 1 January 2016 (“**ERs**”).

2. The relevant Legal Provisions

GRs Article 118: “1. The Person Responsible for a Horse has legal responsibility for that Horse, including responsibility under the GRs and the VRs and unless otherwise stated is liable under the Legal System (Chapter VIII).

(...)

3. The Person Responsible shall be the Athlete who rides, vaults or drives the Horse during an Event, but the Owner and other Support Personnel including but not limited to grooms and veterinarians may be regarded as additional Persons Responsible if they are present at the Event or have made a relevant Decision about the Horse. (...)”

GRs Article 156.4.: “Any Officials acting at or in relation to an International Event are acting on behalf of the FEI (..)”.

GRs Article 159.5.: “The Ground Jury may impose the following penalties and sanctions:

5.1. A Warning;

5.2 A Yellow Warning Card;

5.3 A fine of a maximum of CHF 5,000;”

GRs Article 159.7.: “There is no Appeal against Decisions of the Ground Jury arising from the field of play, which are final and binding, such as but not limited to:

(...)

7.4. The imposition of a Warning without additional penalties or of a Yellow Warning Card;”

GRs Article 163.3.: “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. (..)”

GRs Article 163.4.: “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.

4.5. Protests challenging the procedures followed in the application or implementation of any FEI rule. Such Protests must be filed no later than thirty (30) minutes after the notification of the application or implementation of such rule.”

GRs Article 165: " 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 (see paragraph 2 below):

(....)

2. An Appeal is not admissible:

2.1 Against Decisions by the Ground Jury in cases covered by Article 159.7.1-4 (or in cases in relation to the arena, an obstacle or the course if there is no Appeal Committee);"

GRs Article 169: "(...)

7.1: The President of the Ground Jury, the President of the Appeal Committee, the Chief Steward or the Technical Delegate must notify the Person Responsible during the Period of the Event that he will receive a Yellow Warning Card, which will be delivered either by hand or by any other suitable means. If after reasonable efforts the Athlete cannot be notified during the Period of the Event that he has received a Yellow Warning Card, the Athlete must be notified in writing within fourteen (14) days of the Event.

7.2 Should the same Person Responsible receive one (1) more Yellow Warning Card at the same or any other International Event within one year of the delivery of the first Yellow Warning Card, the Person Responsible shall be automatically suspended for a period of two (2) months after official notification from the FEI Secretary General."

IRs Article 17.1: "In accordance with Article 36 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, those matters specified in Article 163 (Protests) and Article 165 (Appeals) of the FEI General Regulations and all disputes and procedures arising under the Equine Anti-Doping and Controlled Medication Regulations."

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 Pursuant to the FEI Database the Appellant (FEI ID 10054267) is registered as an Athlete, Trainer and Official. From 30 June 2013 to 13 July 2016 the Appellant has also been registered as an FEI Permitted Treating Veterinarian. The Appellant's administering National Federation is the Portuguese National Federation ("**POR-NF**"). Furthermore, the Appellant is an experienced rider who competed for the Portuguese Team at the WEG 2014 and the European Championships 2015.
- 1.2 The Appellant competed at the CEI3* in Rio Frio, Portugal on 2 July 2016 (the "**Event**") with the horse TIBETE (the "**Horse**"). The Appellant and the Horse were eliminated for veterinary reasons at gate 4 (FTQ – gate 4 ga).
- 1.3 The following people officiated at the Event:
- Rui Pedro Amante (PGJ – President of the Ground Jury)
 - Joaquim Marçal (CS- Chief Steward)
 - Miguel Pinheiro (GJM- Ground Jury Member)
 - Fernando Carillo (TD - Technical Delegate and GJM)
 - Tomé Fino (VP - Vet Panel)
 - Pierre Juliènne (VP - Vet Panel)
 - Marco Villamor Reguero (AS - Assistant Steward)
- 1.4 During the Event, the Appellant received two Yellow Warning Cards for incorrect behaviour against officials.
- 1.5 On 13 July 2016, the FEI Secretary General notified the Appellant that he was automatically suspended for two (2) months, *i.e.*, from 13 July 2016 to 12 September 2016, due to the two Yellow Warning Cards (the "**Secretary General Notification**"). The Notification Letter reads as follows:

"We have received information that at the CEI3, Rio Frio (POR), which took place 2 July 2016, you have received two Yellow Warning Cards for incorrect behavior (in accordance with 169.6.3 of the General Regulations, 23th edition, 1 January 2009, updates effective 1 January 2016). The first yellow card was received since your support personnel, Mr José Maria Vaz Freire, was insulting the officials at the Vet gate. The second yellow card was received since you and your support personnel were verbally insulting and physically assaulting the President of the Ground Jury, Mr Rui Pedro Amante. To be noted also that you are not only and Athlete and Trainer, but an FEI Permitted Treating Veterinarian.*

This is to advise you that an automatic suspension of a period of two (2) months, starting after official notification from the FEI Secretary General, shall be imposed should the same Person Responsible receive two Yellow Warning Cards at the same or any other International Event within one year of the delivery of the first Yellow Warning Card for the same offence (Article 169.7.2 of the FEI General Regulations).

Therefore you are to be automatically suspended for a period of two (2) months following the present official notification.

Consequently, your two (2) month suspension is in effect as of the date of this letter, i.e. 13 July 2016 and will terminate on 12 September 2016, at midnight ("Period of Suspension").

(...)"

2. Procedural Background

- 2.1 On 15 July 2016, the Appellant - pursuant to Article 165 of the GRs and Article 17 of the IRs - lodged an Appeal with the FEI Tribunal.
- 2.2 On 8 August 2016, the FEI provided its Answer to the Appeal. Among others the FEI argued that the Appeal was not admissible.
- 2.3 On 30 August 2016, the Tribunal informed the Parties that, given that the admissibility of the Appeal is disputed, it will decide the matter at hand in two steps, namely on the admissibility of the Appeal first, and on the merits of the case only in a second step, provided the Tribunal accepts the admissibility of the Appeal. The Tribunal further granted the Appellant with the opportunity to respond in writing to the FEI Answer to the Appeal regarding – and limited to – the admissibility of the Appeal.
- 2.4 On 13 September 2016, the Appellant provided further arguments with regard to the admissibility of the Appeal.

3. Written submissions by the Appellant

- 3.1 In essence, the Appellant requested the Tribunal to grant the Appeal and to revoke the appealed decision, *i.e.*, the Secretary General Notification of 13 July 2016, as it was unlawful and unjust.
- 3.2 To start with the Appellant claimed that he was not notified during the Event that he received a Yellow Warning Card. That therefore, the notification of 13 July 2016 by the FEI Secretary General had the effect of the mandatory written notification pursuant to Article 169.7.1 of the GRs.
- 3.3 The Appellant argued that the decision has to be considered unlawful for prior breach of the Appellant's procedural rights, since he was not offered an opportunity to be heard on the Ground Jury's decision to deliver the two Yellow Warning Cards.
- 3.4 Furthermore, the Appellant argued that he was not the Person Responsible for the incidents referred to in the Secretary General Notification. He was not at the Vet gate or at the Crew area when the alleged incidents occurred, but rather headed to the box (200 meters from the Vet gate) after the Horse was disqualified, in order to give saline to the horses, and that several witnesses could testify the foregoing.

- 3.5 Regarding the first Yellow Warning Card the Appellant argued that he was not the Person Responsible for any of the facts on which the first Yellow Warning Card was based. The Secretary General Notification itself stated that the facts on which the alleged first Yellow Warning Card was based were allegedly committed by his father, who was at the Event in the capacity as his groom. Under Article 118.5 of the GRs he was only liable for acts done by third parties if those acts were "*Performed in the stables to any horse under his jurisdiction*", which was not the case in the case at hand. As he was not the Person Responsible for the facts referred to in the Secretary General Notification, the decision had to be considered "unlawfulness for illegitimate target".
- 3.6 Regarding the second Yellow Warning Card the Appellant argued that from a legal standpoint, *i.e.*, pursuant to FEI Rules, a "Support Person" was individually liable for his or her own acts. That this was the case, firstly, as Article 18.12.10 of the IRs provided for personal/separate penalty for "support personnel". That penalizing the Appellant as notified was a breach of Article 165 of the GRs, when read in conjunction with Article 18.12.10 of the IRs. Secondly, that Article 118.3 of the GRs foresaw for the purposes of liability or penalties, that a "support person" was an "additional Person Responsible". That both articles made abstract provision for more than one PR, which precluded that the Athlete – as the Appellant in the case at hand - was liable for acts done exclusively by his "support personnel" outside of the scope of Article 118.5 of the GRs. The Secretary General Notification, however, did not include any legal basis that would render lawful the suspension on the Appellant based on the actions by third parties. The regulatory requirement for imposing the automatic suspension on the Appellant had not been satisfied. Finally, that under the Statutes, the GRs and the Sport Rules, an athlete's liability for the acts of others was an exceptional situation which had to be especially provided for by law, which was not the case in the case at hand. In summary, the Appellant argued that he was not a legitimate party insofar as it related to the automatic suspension penalty because he was not responsible for the facts on which the Yellow Warning Cards referred to in the Secretary General Notification.
- 3.7 In addition, the Appellant argued that there was a lack of grounds in the decision for not indicating the circumstances of what happened, how it happened and who acted. Further, that if there was no indication as to the circumstances surrounding the facts, the legality of the choice of penalty imposed was not safeguarded. That Article 157.2 of the GRs required for Yellow Warning Cards – as opposed to less onerous penalties such as a simple "warning" or "fine" – the relevant body prior to reaching a Decision on any Protest or Appeal to examine the available evidence. That however the total absence of evidence – as it seemed to be the case in the case at hand, since no recordings (videos or photographs) have been provided – breached Article 157.4 of the GRs, and Article 159.6 of the GRs.

4. Answer by the FEI

- 4.1 The FEI requested the Tribunal to:
- "(a) Confirm the two months automatic suspension as notified by the Secretary General;*
 - (b) Dismiss the Appeal and the Appellant's prayers for relief in their entirety;*
 - (c) Uphold the Decision of the Ground Jury; and*
 - (d) Determine that the Appellant shall bear the costs of the Appeal proceedings and make a contribution towards the FEI's legal costs."*
- 4.2 In essence, the FEI submitted that the Appeal was not admissible and that the Tribunal did not have jurisdiction to overturn the decisions of the Ground Jury Members to give a Yellow Warning Card. Article 159.6 of the FEI General Regulations clearly stated that the decisions of the Ground Jury arising from the field of play were final and binding and not subject to appeal. Article 165.2.1 of the GRs confirmed that *"An Appeal is not admissible against Decisions of the Ground Jury in cases covered by Articles 159.6.1-4"*. Further that, according to Article 159.7 of the GRs *"There is no Appeal against Decisions of the Ground Jury arising from the field of play, which are final and binding, such as, but not limited to 7.4. The imposition of a Warning without additional penalties or of a Yellow Warning Card;"*.
- 4.3 The FEI argued that the CAS jurisprudence was very clear that the rules of game defined how a game must be played, and who should adjudicate upon the rules, and that *"The referee's bona fide exercise of judgement or discretion Is beyond challenge otherwise than in so far as the rules of the game themselves provide. ... This is a fundamental element of sports law, most fully elucidated in the jurisprudence of CAS"*. Further that these conditions had been confirmed in several Tribunal and CAS cases. The Tribunal, in a case with similar circumstances of Yellow Warning Cards (Merel Blom v FEI, Decision (Abridged), of 6 June 2012), confirmed that the Appeal was not admissible. In relying on previous case law (NAOC v IAAF and USOC, 2008/A/1641; and CAS 2015/A/4208 Horse Sport Ireland & O' Connor v FEI), the FEI argued that, unless evidence of arbitrariness, malicious intent or bad faith are present – which has not been adduced by the Appellant in the case at hand -, field of play decisions cannot be interfered with. CAS, in its decision CAS 2015/A/4208, has confirmed that *"a challenge to a "field of play" decision on the ground of arbitrariness does not allow a review on the merits"*, and that in the absence of these elements, *i.e.*, malicious intent or bad faith of officials, *"field of play" decisions enjoyed a "qualified immunity from review"*. In this respect the FEI submitted an extract of the NAOC v IAAF and USOC decision referenced above which reads:

"Field of play decisions may only be reviewed under very strict conditions, where evidence suggests that the sporting officials have made abusive or arbitrary use of their discretion, showed malicious intent or bad faith in the making of the decision (corruption), or severely breached the athlete's

procedural rights in making the decision. Furthermore the Tribunal accepts that this is a high threshold for the athlete to overcome."

- 4.4 Moreover, the FEI argued that, even if the Tribunal was to hold that it was possible to challenge the decision to give a Yellow Warning Card, no Protest against the procedure of the Yellow Warning Card has been submitted within the required deadline under Article 163.4.5 of the GRs, namely thirty (30) minutes after the notification of the Yellow Warning Cards.
- 4.5 Regarding the merits of the Appeal, the FEI regarded incorrect behaviour through verbal and physical assaults against officials as a very serious offence. The FEI argued that FEI Officials were at the events in order to safeguard the welfare of the horse, the horses' fitness to compete, fair play and the spirit of sport and they should be treated with respect. That in this respect Article 169.6.3 of the GRs foresaw sanctions for "Incorrect behaviour towards (a) Event Officials", and that the FEI reserved the right to open a separate procedure against the Appellant and the members of his Support Personnel in relation to the incident pursuant to this article.
- 4.6 Together with its Answer the FEI provided the two Yellow Warning Cards against the Appellant from the Event for "Incorrect behaviour" (GRs Article 169.6.3), signed by two different Officials; neither of the two Yellow Warning Cards has been signed by the Appellant. The FEI further submitted a statement by Mr. Marçal, as well as emails by Mr. Amante and Mr. Pinheiro providing explanations of the incidents at the Event.
- 4.7 Mr. Amante explained that while having been President of the Ground Jury at the Event he has been physically and verbally assaulted by two members of Support Personnel of the Appellant, namely his brother Mr. João Vaz Freire (the "**Appellant's brother**") and his father (who is also the owner of the Horse) Mr. José Maria Vaz Freire (the "**Appellant's father**"). More specifically, Mr. Amante explained that on 2 June 2016¹, at around 4.45 pm after the Horse has been eliminated at the Vet gate 4, the Appellant's father stormed through the Vet Gate insulting all the officials, who were examining the horses of the riders. Therefore he approached the Appellant's father and requested him to leave the Vet Gate area, a place he should not have entered unless he was accompanying a horse. After leaving the Vet Gate area the Appellant's father leaned over the fence and shouted and insulted the officials further. Mr. Amante further explained that after witnessing this behaviour he approached the Appellant's father, confirmed that he was a member of the "crew team" of the Appellant, and on that basis, informed the Appellant's father that he would give a Yellow Card to the Appellant in his capacity as Person Responsible.
- 4.8 Moreover, Mr. Amante explained that around ten minutes later he went to the horses' recovery area since he wanted to contact the Appellant in order to explain the reasons for the Yellow Warning Card and to notify him directly of the incident. In the recovery area the Appellant's brother and the

¹ Mr. Amante's statement refers to 2 June 2016, instead of 2 July 2016, when the Event took place. It is however clear from his statement that he meant the incidents during the Event, and thus 2 July 2016.

Appellant's father were packing when he had approached them. While he explained the Yellow Card procedure, the Appellant's brother and the Appellant's father were physically and verbally assaulting him. The Appellant's brother grabbed his neck using both hands, pulling the Appellant's head against his head, giving several head butts. At the same time the Appellant's brother pulled his shirt and punched him on the cheek. Due to this situation he left, and told the other officials what happened. Mr. Camarillo immediately approached the Appellant in order to give him a second Yellow Warning Card. The Appellant refused to sign the Yellow Warning Card.

- 4.9 Mr. Marçal explained that when he was at the finish line with the PGJ, *i.e.*, Mr. Amante, and the TD, Mr. Pinheiro, a member of the GJ had called them because the Appellant was protesting inside the Vet Gate against two Vet Panel members (Dr. Tomé Fino and Dr. Pierre Juliènne) after the Horse was eliminated. When the PGJ, the TD, and he arrived at the Vet Gate, the Appellant was no longer there, but the Appellant's father was. Mr. Marçal confirmed the incident at the Vet Gate as explained by Mr. Amante. He further stated that Mr. Amante has reported to him the second incident at the horses' recovery area. That due to the physical and verbal assault to the PGJ it has been decided to give the Appellant a second Yellow Warning Card. The TD, and GJM and the Assistant Steward went to find the Appellant and notified him of the second Yellow Warning Card. Mr. Pinheiro explained that he was at the Vet Gate at the time of the elimination of the Horse, and that he saw the Appellant protesting against everybody, including timing officials.
- 4.10 The FEI argued that the Appellant's statement that he was not notified of the Yellow Warning Cards was not correct or accurate. The statement by the PGJ specifically stated that the Appellant was notified, but that he "refused to sign". Further that the CS's report also referred to this notification.
- 4.11 Regarding the Appellant's complaint about the "lack of evidence" provided that would justify the imposition of the Yellow Warning Cards, and him questioning why there were no video recordings or photographs taken, the FEI argued that the Yellow Warning Card system was intended to be applied in a quick and efficient manner. It was not the intention that a full legal/disciplinary process has to be applied every time a Yellow Warning Card is given, much like a yellow card in football after a player engaged in foul play. Further, that the FEI Officials needed to act promptly and efficiently when applying the rules.
- 4.12 The FEI further submitted that the Secretary General Notification was merely a notification and administrative in nature, and not a "decision". That since the imposition of the two month suspension was an automatic result of receiving a second Yellow Warning Card, the FEI Secretary General, when notifying an athlete, was not taking a disciplinary decision herself but rather was merely informing that Athlete of the consequences of the receipt of two Yellow Warning Cards. Therefore there was no reason to explain in detail or to justify why the Yellow Warning Cards have been issued, nor was there any requirement to do so under the rules.

- 4.13 With regard to the Appellant's submission that it was incorrect to hold him responsible for the actions of members of his Support Personnel, the FEI submitted that particularly in the discipline of Endurance, it was not out of the ordinary for the PR to be held responsible for the actions of third parties. Article 807.7.8 of the Endurance Rules read for example "*Accepting any intervention by a third party, whether solicited or not, with the object of giving advantage to the Athlete or their Horse under penalty of a Yellow Warning Card and disqualification.*" The FEI argued that the Appellant's father and brother, by their actions, attempted to exert pressure on the FEI Officials with a view to having them reverse their decision. The Person Responsible, in this case the Appellant, had to take some responsibility for this in order to ensure that such situation did not recur.
- 4.14 Finally, the FEI argued that, even if the Tribunal was of the opinion that the Yellow Warning Cards were incorrectly given, something which the FEI strongly denied, these "field of play" decisions could not be overturned on appeal, simply because the rules clearly stated that those decisions are not subject to appeal.

5. Written submission by the Appellant regarding admissibility of the Appeal

- 5.1 On 13 September 2016, the Appellant responded in writing to the FEI Answer to the Appeal regarding – and limited to – the admissibility of the Appeal.
- 5.2 To start with the Appellant argued that he agreed with the FEI's argument that decisions of the Ground Jury arising from the field of play are final, binding and not subject to appeal. That this did however not mean that the Appeal was not admissible as the Appeal did not aim to overturn the two Yellow Warning Card decisions by the Ground Jury Members, but the "decision" by the FEI Secretary General that the Appellant was "*automatically suspended for a period of two (2) months following the present official notification*". That it was however clear that the recent field of play doctrine established that a suspension forbidding a person from participating his job for some time, such as him in the case at hand, was considered as a "rule of law" and not as a "rule of game", *i.e.*, field of play rule, so that Article 159.7 of the GRs could not be applied, which meant that he had a right to appeal.
- 5.3 That the "decision" of suspension by the Secretary General sustained to be invalid as the suspension was unlawful (i) for prior breach of his procedural rights of being heard on the facts; (ii) as he was not the Person Responsible for the facts referred in the respective notification; and (iii) since the notification did not fully indicate the circumstances of what happened, how it happened and who acted. That therefore the Secretary General Notification did not fulfil the prerequisites established in the GRs, and that therefore the effects of the suspension decision were unlawful and had to be declared null and void.

- 5.4 He further requested the Tribunal to decide whether a legal basis exists which sustained that he could be considered as notified of two Yellow Warning Cards, even if there was no notification of the first Yellow Warning Card directly to him, but only to his support personnel, considering Article 169.7.1 of the GRs. And furthermore whether a legal basis exists which made him individually responsible for the facts exclusively practiced by his support personnel.
- 5.5 The Appellant argued that the Appeal did not concern "sporting issues" but disciplinary and ethical issues related to his fundamental rights breaches, *i.e.*, the right to be heard on the facts that sustained the decision, and the right of not being hold liable for acts done by a third party. That he did not want to discuss technical decisions from professional referees, but he only wanted to see his rights respected, connected to a fair application of a disciplinary sanction, which was independent from "rules of the game" and, because of that, was appealable.
- 5.6 Finally, the Appellant argued that in his long-serving sports experience as Athlete and FEI Permitted Treating Veterinarian he has never taken part in any disciplinary process, and that the "suspension decision" affected him in a very damaging manner. That facing a suspension penalty – the most serious of all disciplinary penalties applicable to this category of sports athletes – he had to have, as a matter of principle, the right to appeal. That in case this right was denied, according to recent CAS jurisprudence (CAS ad hoc Division (O.G. Sydney) 00/13 Bernardo Segura/International Amateur Athletic Federation (IAAF), award of 30 September 2000) this was considered as a denial of Justice.

6. Jurisdiction

The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs.

7. Admissibility of the Appeal

- 7.1 As previously directed to the Parties, with the present decision, the Tribunal will solely decide on the admissibility of the Appeal. If the Tribunal had accepted the admissibility of the Appeal, proceedings on the merits of the Appeal would continue and the Tribunal would issue a separate decision on the merits of the case.
- 7.2 However, the Tribunal finds that the Appeal is inadmissible, for the reasons outlined below. Thus the Tribunal will not decide the Appeal on its merits in a second step.
- 7.3 To start with the Tribunal notes that the Appellant has chosen to lodge an Appeal under Article 165 of the GRs. The Tribunal further notes the subject of the Appeal is the Secretary General Notification of 13 July 2016, informing the Appellant that – pursuant to Article 169.7.2 of the GRs - he

was automatically suspended for two (2) months, *i.e.*, from 13 July 2016 to 12 September 2016, due to two Yellow Warning Cards. Moreover, the Tribunal notes that the nature of the Secretary General Notification remains disputed by the Parties. The Appellant claims that the Secretary General Notification has to be considered as a "decision". Whereas, the FEI argues that the Secretary General Notification is merely a notification and administrative in nature, and cannot be considered as a "decision".

- 7.4 Pursuant to Article 165.1 of the GRs 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. The main question for the Tribunal to decide is therefore, whether the Secretary General Notification can be considered as a "Decision", and thus whether Article 165.1 of the GRs can be applied, *i.e.*, allowing for an Appeal to be lodged in the case at hand.
- 7.5 Pursuant to Article 169.7.2 of the GRs the Secretary General shall "automatically" suspended a Person Responsible for a period of two (2) months after official notification, in the case a Person Responsible receives two (2) Yellow Warning Cards within one year, either at the same or more International events within that period of time. The Tribunal finds that the wording of Article 169.7.2 of the GRs is very clear and does not leave any room for interpretation. In the opinion of the Tribunal the word "automatic" does not allow for any discretion of the Secretary General to decide whether or not to suspend a Person Responsible, or with regard to the length of such suspension. The only discretion the Secretary General might have is to choose the date when exactly to "officially notify" a Person Responsible of the automatic suspension, resulting from having received two Yellow Warning Cards within the time frame of a year. The Tribunal therefore agrees with the FEI that the "official notification" of an "automatic suspension" pursuant to Article 169.7.2 of the GRs cannot be considered as a "decision" in the meaning of Article 165.1 of the GRs. Since the Secretary General Notification cannot be considered as a "Decision", the Appeal in the case at hand has to be dismissed.
- 7.6 Furthermore, the Tribunal does not agree with the Appellant's claim that the Secretary General did not fulfil the prerequisites established in the GRs when officially notifying the Appellant of the automatic suspension due to two Yellow Warning Cards. In fact the only prerequisite required under Article 169.7.2 of the GRs is that the Appellant has received two Yellow Warning Cards – decisions that have been final when notifying the Appellant, as outlined below - within the time frame of one year, which in fact were recorded against him.
- 7.7 In addition, the Tribunal finds that verbal and physical violence against members of the Ground Jury are serious offences that could lead to criminal charges. Therefore a sanction of a two (2) months automatic suspension is certainly justified.
- 7.8 As previously mentioned, the Tribunal finds that the decisions to give two Yellow Warning Cards have been final when the Secretary General notified the Appellant of the automatic suspension. The Tribunal comes to this

conclusion as the remedy for the Appellant to use with regard to procedural issues – as claimed by the Appellant in the present Appeal, *i.e.*, breach of procedural rights of being heard on the facts, and him not being the Person Responsible for the incidents during the Events - concerning the Yellow Warning Cards would have been – if any - Protest(s) pursuant to Article 163.4.5 of the GRs. The time limit foreseen to file such protest(s) is no later than thirty (30) minutes after the notification of the Yellow Warning Cards. As a result the Tribunal does not have to decide, nor has it jurisdiction to decide, whether the alleged procedural issues occurred.

- 7.9 In this respect the Tribunal has taken note that the Appellant claims that only his Support Personnel and not he himself has been notified of the first Yellow Warning Card. In its Appeal Brief the Appellant also claimed that the Secretary General Notification had the effect of the “mandatory written” notification of the Yellow Warning Card. To start with the Tribunal finds that Article 169.7.1 of the GRs does not require a notification in writing for a Yellow Warning Card. In fact the wording of the rule states as follows:

“The President of the Ground Jury, the President of the Appeal Committee, the Chief Steward or the Technical Delegate must notify the Person Responsible during the Period of the Event that he will receive a Yellow Warning Card, which will be delivered either by hand or by any other suitable means. If after reasonable efforts the Athlete cannot be notified during the Period of the Event that he has received a Yellow Warning Card, the Athlete must be notified in writing within fourteen (14) days of the Event.”

- 7.10 In the view of the Tribunal the wording “*by any other suitable means*” can be interpreted as allowing the notification of a Yellow Warning Card to the Support Personnel of a Person Responsible during the Event. Furthermore, in the opinion of the Tribunal, it is likely that the Appellant in the case at hand was aware of the first Yellow Warning Card when refusing to sign the second Yellow Warning Card. According to the Appellant himself the attempt to explain the Yellow Warning Card by a Ground Jury member allegedly caused the actions of the Appellant’s brother and the Appellant’s father that lead to the imposition of a second Yellow Warning Card. Furthermore, the Tribunal finds that the Ground Jury members in the case at hand seemed to have gone at length to satisfy themselves with regard to the notification of the first Yellow Warning Card. Next to notifying the Support Personnel of the Yellow Warning Card in the first place, they further attempted to explain the implications of such a Yellow Warning Card.

8. Decision

8.1 Based on the foregoing, the Tribunal thus decides as follows:

1. **The Appeal of Mr. António Vaz Freire is inadmissible, and thus the Tribunal has not to decide on the merits. The Appeal is therefore rejected.**
2. **No deposit shall be returned to the Appellant. In addition, Mr. António Vaz Freire shall contribute five hundred Swiss Francs (CHF 500,-) towards the costs of this procedure.**

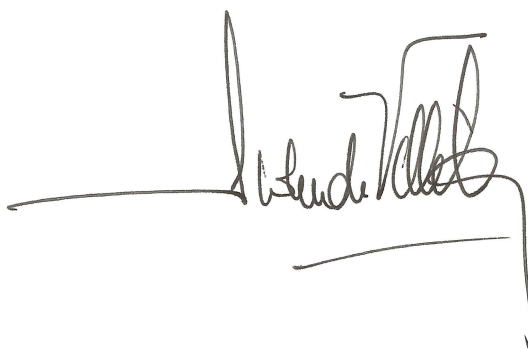
8.2 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.

8.3 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. **The Parties: Yes**
- b. **Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Ludovic de Villèle', is written over a horizontal line. The signature is stylized and cursive.

One member panel, Mr. Ludovic de Villèle