



**DECISION of the FEI TRIBUNAL**

**dated 27 March 2017**

**Positive Anti-Doping Case No.:** 2016/BS02

**Horse:** SUR (MABROUK) **FEI Passport No:** UAE01796/QAT

**Person Responsible/NF/ID:** Mohd Butti Ghemran Al Qubaisi/UAE/10092584

**Support Personnel/NF/ID:** Mr. Mohammed Ali Khalifa Al-Attiyah/QAT/10082342

**Event/ID:** CEI1\* 100 Doha, Mesaieed (QAT) - 2016\_CI\_1511\_E\_S\_01\_01

**Date:** 22 April 2016

**Prohibited Substance:** Human Recombinant Erythropoietin (EPO)

**Alleged Violation PR:**

The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample (Article 2.1 EAD Rules)

**Alleged Violation Support Personnel:**

Use or Attempted Use of a Banned Substance or a Banned Method (Article 2.2 EAD Rules)

AND

**Positive Anti-Doping Case No.:** 2016/BS03

**Horse:** CENTURION **FEI Passport No:** 102RM71/QAT

**Person Responsible/NF/ID:** Abdulla Mubarak Rashed Al Khaili/UAE/10076760

**Support Personnel/NF/ID:** Mr. Mohammed Ali Khalifa Al-Attiyah/QAT/10082342

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**I. COMPOSITION OF PANEL**

Mr. Erik Elstad, chair  
Mr. Chris Hodson QC, member  
Ms. Jane Mulcahy QC, member

**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 Files and during the oral hearing in the CENTURION case, as also made available by and to the PRs of both cases and to the Support Personnel.

**3. Oral hearing: 15 February 2017 – via telephone conference call**

Present:

The FEI Tribunal Panel  
Ms. Erika Riedl, FEI Tribunal Clerk

For the PR:

Abdulla Mubarak Rashed Al Khaili, PR in the CENTURION case

For the member of Support Personnel:

Mr. Mohammed Ali Khalifa Al-Attiyah, the Trainer

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel

### III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

#### 1. Relevant Articles of the Statutes/Regulations:

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2016, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2<sup>nd</sup> edition, 1 January 2012 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2<sup>nd</sup> edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13<sup>th</sup> edition, effective 1 January 2016, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible SUR (MABROUK) case:** Mr. Mohd Butti Ghemran Al Qubaisi

**3. Person Responsible CENTURION case:** Mr. Abdulla Mubarak Rashed Al Khaili

**4. Support Personnel (in both cases):** Mr. Mohammed Ali Khalifa Al-Attiyah

#### 5. 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)."

**EAD Rules Art. 2:** "*Persons Responsible and their Support Personnel shall be responsible for knowing what constitutes an EAD Rule violation and the substances and methods which have been included on the Equine Prohibited Substances List and identified as Banned Substances.*"

Where *Banned Substances or Banned Methods* are involved, the following shall constitute *EAD Rule* violations:

2.1 The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample

2.1.1 It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

(...)

2.2 Use or Attempted Use of a Banned Substance or a Banned Method  
2.2.1 It is each *Person Responsible's* personal duty, along with members of their *Support Personnel*, to ensure that no *Banned Substance* enters into the *Horse's* body. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the part of the *Person Responsible*, or member of his or her *Support Personnel* (where applicable), be demonstrated in order to establish an *EAD Rule* violation for *Use* of a *Banned Substance* or *Banned Method*."

**Definition of Support Personnel, Appendix 1 of the EADCMRs:**  
Any coach, trainer, athlete, *Horse* owner, groom, steward, chef d'équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a *Person Responsible* participating in or preparing for equine sports *Competition*. Veterinarians are included in the definition of *Support Personnel* with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an *EADCM Regulation* will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation.

#### **IV. DECISION**

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in the oral hearing. 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 SUR (MABROUK) and CENTURION (the "**Horses**") participated at the CEI1\* 100 in Doha, Mesaieed, Qatar, on 22 April 2016 (the "**Event**"), in the discipline of Endurance. The horse SUR (MABROUK) was ridden by Mr. Mohd Butti Ghemran Al Qubaisi who is the *Person Responsible* in accordance with Article 118.3 of the GRs (the "**PR in the SUR**").

**(MABROUK) case**). The horse CENTURION was ridden by Mr. Abdulla Mubarak Rashed Al Khaili who is the Person Responsible in accordance with Article 118.3 of the GRs (the **"PR in the CENTURION case"**) (together the **"PRs"**).

- 1.2 Plasma samples taken from the Horses at the Event have been analysed at the FEI approved laboratory, the Laboratoire des Courses Hippiques (**"LCH"**) in Verrières le Buisson, France, and resulted in positive findings for Human Recombinant EPO (**"EPO"**) in both cases.
- 1.3 The Prohibited Substance detected is Human Recombinant Erythropoietin. The use of EPO results in erythropoiesis, the stimulation of red blood cell production. EPO can be used for the treatment of anaemia, cancer and heart failure and is classified as Banned Substance under the FEI Equine Prohibited Substances List (the **"FEI List"**). Therefore, the positive finding for EPO in the Horses' samples gives rise to an Anti-Doping Rule violations under the EAD Rules.
- 1.4 Mr. Mohammed Khalifa Ali Al-Attayah (**"Mr. Al-Attayah"** or **"Support Personnel"** or **"Trainer"**) is the registered Trainer of both horses, *i.e.*, the Horses.
- 1.5 Furthermore, Mr. Al-Attayah confirmed in his statement(s) (as outlined further below) that he was next to trainer also the owner of the Horses (different owners owned the Horses at the time of the Event).

## **2. The Further Proceedings**

- 2.1 On 2 June 2016, the FEI Legal Department officially notified each of the PRs separately through the United Arab Emirates National Federation (**"UAE-NF"**), and the Owners of the Horses through the Qatar National Federation (**"QAT-NF"**) of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letters included notice that the PRs were provisionally suspended and granted them the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letters further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horses were provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 2 June 2016, until 1 August 2016. The above Provisional Suspensions of the Horses have not been challenged in either case, and the Horses have served the entire period of Provisional Suspension.

## **3. The B-Sample analysis**

- 3.1 Together with the Notification Letters of 2 June 2016, the PRs and the Owners of the Horses were also informed that they were 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 Neither the PRs nor the Owners of the Horse did ask for the B-Sample to be analysed, and accepted the respective results of the A-Sample analysis.

#### **4. Written submission by and on behalf of the PR in the SUR (MABROUK) case**

- 4.1 Between 6 and 13 June 2016, the PR in the SUR (MABROUK) case provided his explanations for the positive finding. Together with his explanations the PR provided a statement by the Trainer, dated 6 June 2016.

- 4.2 The statement of Mr. Al-Attiyah reads as follows:

*"(...) I, Mr Mohammed Ali Khalifa AL-ATTIYAH owner and trainer of the horse CENTURION and SUR (MABROUK), apologize for the positive cases and the trouble I am putting in the riders Mr Abdulla Mubarak Rashed Al Khaili, Mr Mohd Butti Ghemran Al Qubaisi, my National Federation, the UAE National Federation and the FEI.*

*It was my mistake to give to the horses an injection of 2 ml of EPO, 3 days before the ride. I don't have a lot of experience about medicines and specially the "Prohibited Substances" because it was my first season as an official trainer.*

*I am deeply sorry about this situation and I hope you understand that if I knew that my horses were going to be positive, I will have not done it. 3 weeks before this ride those 2 horses also finished 1<sup>st</sup> and 2<sup>nd</sup> in a CEN 100 km. They were sent to MCP after the rider and the result was negative. (...)"*

- 4.3 The PR in the SUR (MABROUK) case further explained that – following information he received from the Trainer – the horse SUR (MABROUK) had no veterinarian and that Mr. Al-Attiyah was treating the horse in the past year. That no special food was given to the horse, and that the horse was stabled in a private stable. Further, that in the last year the horse was treated within the correct detection time with Finadine and Dexamethasone. Regarding the EPO, the PR in the SUR (MABROUK) case explained that it was administered for the first time to the horse three (3) days prior to the Event. After the Competition, Dexamethasone was administered to the horse against inflammations.
- 4.4 Moreover the PR in the SUR (MABROUK) case explained that prior to the Event he had asked the Trainer whether the horse SUR

(MABROUK) had had any treatment, and that the Trainer had told him no.

## **5. Written submission by and on behalf of the PR in the CENTURION case**

- 5.1 Between 6 and 13 June 2016, the PR in the CENTURION case provided his explanations for the positive finding. Together with his explanations the PR provided the same statement (as previously outlined) by the Trainer, as the PR in the SUR (MABROUK) case.
- 5.2 Further, the PR in the CENTURION case explained that – following information he received from Mr. Al-Attiyah – the horse CENTURION had no veterinarian and that Mr. Al-Attiyah was treating the horse in the past year. That no special food was given to the horse, and that the horse was stabled in a private stable. Further, that in the last year the horse was treated within the correct detection time with Finadine and Dexamethasone. Regarding the EPO, the PR in the CENTURION case explained that the EPO was administered for the first time to the horse CENTURION three (3) days prior to the Event. After the Competition, Dexamethasone was given to the Horse against inflammations.
- 5.3 Moreover the PR in the CENTURION case explained that prior to the Event he had asked the Trainer, whether the horse CENTURION had had any treatment, and that the Trainer had told him no.
- 5.4 Finally, the PR in the CENTURION case submitted a copy of his passport showing that he entered Qatar, *i.e.*, the country where the Event was held, on the day of the Event and left on the day after the Event.

## **6. The Proceedings against the Trainer**

- 6.1 The alleged violation of Use or Attempted Use of a Banned Substance (Article 2.2 EAD Rules) was officially notified to Mr. Al-Attiyah, through the National Federation of Qatar (the "**QAT-NF**") on 5 July 2016. The Notification Letter included notice that Mr. Al-Attiyah was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal.
- 6.2 The Notification Letter reads as follows with regard to the alleged violation of Article 2.2 of the EAD Rules:

*"In the course of the Anti-Doping procedure against the Person Responsible in the above referenced anti-doping case involving the Horse SUR (MABROUK) ("**the Horse**"), you submitted a Statement*

*dated 6<sup>th</sup> June 2016 ("Annex 1"), confirming that you had administered, 3 days before the ride, an injection of 2ml of EPO to the Horse."*

## **7. Response by the FEI**

- 7.1 On 17 November 2016, the FEI submitted separate Responses to the explanations received by each of the PRs and by the Trainer.
- 7.2 With regard to the PRs the FEI submitted in essence that:
- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. 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 EAD Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Samples taken from the Horses at the Event confirmed the presence of EPO in both samples, and constituted "sufficient proof" of the violations of Article 2.1 of the EAD Rules. The PRs did not dispute the presence of the Prohibited Substance in the Horses' samples. Accordingly, the FEI has discharged its burden of establishing that each of the PRs has violated Article 2.1 of the EAD Rules.
  - b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that he bore No Fault or Negligence for that occurrence; or alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PRs failed to discharge this burden, the presumption of intentional administration and performance stood.
  - c) The FEI submitted in this context that the PRs had to provide clear and convincing evidence that proved how the EPO has entered the Horses' samples. In the submissions of the PRs, the Trainer of the Horse admitted to have given the Horse an injection of 2 ml of EPO three (3) days before the ride. The explanation seemed like a plausible explanation of how the substance entered the Horses'

systems and the FEI was therefore satisfied that the PRs have established the source of the Prohibited Substance.

- d) In terms of the degree of Fault and Negligence by the PRs for the rule violations, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PRs for the rule violations was the "*personal duty*" of the PRs following from Article 2.1.1 of the EAD Rules, *i.e.*, their personal duty to ensure that "*no Banned Substance is present in the Horse's body*".
- e) It has been stated in several cases that a PR could not rely on any other person to perform his duty of care. The CAS jurisprudence (CAS 2013/A/3318 Stroman v. FEI) was clear in that "*the duty of caution or due-diligence is non-delegable*." For example, it was not possible for a Person Responsible to rely on or blame any other person, for the positive case.
- f) Further that, according to CAS jurisprudence (CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI), the rider was, no matter what, the Person Responsible for the horse he was competing with, and could not delegate that duty to another person. That the PRs therefore had an obligation to ensure that no Prohibited Substance entered into the Horses' systems, and had to act with utmost caution in order to fulfil this duty. That what the PRs did not do was as fatal to their duty as what they did do, and that a lack of awareness on their part of the relevant rules was no defence to the EAD rule violation in question.
- g) Furthermore, that making the PRs prima facie responsible for the condition of the Horses while competing, subject to their ability to prove they bear No (Significant) Fault or Negligence for the Horses' "doped condition", was a reasonable and justifiable stance. In this respect, CAS has endorsed – in its decision previously mentioned, *i.e.*, CAS 2015/A/4190 – the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows (at para 57):

*"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument*

*"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"*

*The Sole Arbitrator respectfully agrees."*

- h) Moreover, the FEI submitted that the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. In this respect the FEI provided a copy of the Athlete's Guide. That it had to be noted in this context that in the so-called Glenmorgan decision CAS has stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" describing the Athlete's Guide as "*required reading*". Together with its submissions the FEI provided a copy of the "Athlete's Guide".
- i) In the cases at hand, the PRs and their Trainer admitted that the Trainer gave the Horses an injection of 2 ml of EPO three (3) days before the Event, but they did not provide any evidence to support this action, such as the medication logbook or a veterinary prescription. The PRs asked the Trainer whether the Horses had been given any medication before the ride, and the Trainer confirmed - according to the PRs - that they had not been given any. The PRs further explained that the Horses were treated within the correct detection time earlier, when using *i.e.*, Dexamethasone and Finadine, and that the use of EPO was the first time just to try it out. However, neither of the PRs did do any further investigations or require any further information about the Horses. That they were also satisfied with the reply from the Trainer, without checking the medical logbook or any other information of the Horses. That even if the PR in the CENTURION case attached a copy of his passport to show that he entered Qatar the day of the Event and left the next day, to show that he knew nothing about the horse CENTURION, from an FEI perspective the most important was that the PRs could not rely on any other person to perform their duties of care. Therefore, the PRs' explanations did not relieve them from their personal duty and responsibility under the EAD Rules and nor did they provide a valid excuse for the positive finding.
- j) The FEI was of the opinion that the PRs have not proved that they each individually acted with utmost caution in order to avoid the positive findings. They did actually not provide any information or explain the circumstances in relation to: their individual relationship to the respective horse and the Trainer, who takes the daily care of the Horses, their general experience with horses and knowledge about the rules, etc. The FEI submitted that the PRs have not submitted anything in order to show that they were not at fault for the rule violations. Since the PRs have not established that they bore No Fault or Negligence for the rule violations, no reductions of the period of Ineligibility under Article 10.4 or 10.5 of the EAD Rules was possible. The FEI therefore respectfully submitted that the applicable period of Ineligibility had to be two (2) years with respect to both PRs.
- k) Pursuant to Article 9 of the EAD Rules, the results of the PRs and Horses combination obtained in the Competition shall be disqualified

with all resulting Consequences, including forfeiture of any related medals, points and prizes. Furthermore, since these were cases with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible's individual results obtained in that Event, with any and all Horses with which the Persons Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules.

- l) As fairness did not dictate that no fine be levied in the cases at hand, the FEI duly requested that a fine be imposed on the PRs, and that the PRs were ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined each of the PRs in the amount of 2 500 CHF, and ordered each of the PRs to pay the legal costs of 1 000 CHF that the FEI has incurred in these proceedings.

7.3 With regard to the Trainer the FEI submitted in essence that:

- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.2 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.2"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's Sample.
- b) The Trainer of a horse counted as Support Personnel in accordance with the definition outlined in the EADCMRs since he has been *"assisting in any fashion a Person Responsible participating in or preparing for equine sports"* and could therefore be considered as an additional Person Responsible for the Horse. According to Article 2.2.1 of the EAD Rules *"It is each Person Responsible's personal duty, along with members of their Support Personnel, to ensure that no Banned Substance entered into the Horse's body and that no Banned Method is Used"*.
- c) Further, the Trainer admitted that he has administered EPO to both Horses three (3) days before the Event, wherefore Article 2.5 of the EAD Rules, *i.e.*, Administration, could also be applied.
- d) That in any event, the Trainer did not dispute the presence of EPO in the Horses' Samples since he has admitted the violation, injecting both Horses three (3) days before the ride. Accordingly, the FEI respectfully submitted that it had discharged its burden of establishing that the Trainer has violated Article 2.2 of the EAD Rules.
- e) Article 10.2 of the EAD Rules provided that a Person Responsible and/or his Support Personnel with no previous doping offence who

violated Article 2.2 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless he was able to rebut the presumption of fault. And that to do this the rules specified that he must establish to the satisfaction of the Tribunal (it being his burden of proof, on a balance of probability) (i) How the Prohibited Substances entered the Horse's system; and (ii) that he bears No Fault or Negligence for that occurrence; or alternatively (iii) that he bears No Significant Fault or Negligence for that occurrence. If the Trainer as additional Person Responsible failed to discharge this burden, the presumptive two-year ban under Article 10.2 of the EAD Rules applied.

- f) The EAD Rules stipulated, and the jurisprudence of the Tribunal and CAS was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR/and or his Support Personnel proved how the substance entered into the Horse's system. The FEI submitted in this context that the Trainer as additional Person Responsible must provide clear and convincing evidence that proved how the EPO has entered the Horses' system. The FEI was of the opinion that the Trainer has given a convincing and plausible explanation of how the EPO has entered the Horses' system by injecting the Horses with EPO three (3) days before the ride. The FEI was therefore satisfied that the Trainer has fulfilled the requirement of Article 10.4 of the EAD Rules and given a plausible explanation on how the substances entered into the Horses' body.
- g) In terms of the degree of Fault and Negligence for the rule violation, the FEI argued that, the starting point of any evaluation was the "personal duty" of the Support Personnel following from Article 2.2.1 of the EAD Rules, *i.e.*, his personal duty to ensure that "*no Banned Substance enters into the Horse's body*".
- h) Moreover, the FEI submitted that the FEI, through the FEI Clean Sport programme and in particular the "Athlete's Guide" had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. In this respect the FEI provided a copy of the Athlete's Guide. That it had to be noted in this context that in the Glenmorgan decision CAS has stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" describing the Athlete's Guide as "*required reading*".
- i) The FEI further argued, that although it might be the case that the Trainer had little knowledge and experience, he could not claim that he did not know about the EADCMRs or Prohibited Substances. It was the responsibility of each registered Trainer to know about the rules, and there were several means to find them. In this respect the FEI referred to a previous Tribunal Decision (FEI Tribunal 2014/CM01 dated 25 June 2015; para. 9.12).
- j) That in the opinion of the FEI it was further clear that when the Trainer injected the Banned Substances to the Horses, he was

fully aware that the substance was EPO. This substance rang a bell to most people as being related to doping cases. The PRs further explained that the EPO had been given for the first time to the Horses three (3) days before the ride to try it out. That the Trainer has clearly failed in his duty of utmost caution to ensure that the Horses had not been given any Prohibited Substances. Instead, he has willingly given a new substance to try it out on two horses a few days before the competition. Accordingly, the FEI submitted that the level of the Trainer's fault was high and he was highly negligent with regard to his responsibilities under the EAD Rules which has resulted in the two rule violations. That he actually injected two horses with this "new substance" just to try it out, and that this had to be seen as extra negligent.

- k) On this basis, the FEI was of the opinion that no elimination or reduction of the period of Ineligibility in this case was possible under Article 10.4 or 10.5 of the EAD Rules. The FEI therefore respectfully submitted that the applicable period of Ineligibility imposed on the Trainer had to be two (2) years.
- l) As fairness did not dictate that no fine be levied in the case at hand, the FEI duly requested that a fine be imposed on the Trainer, and that the Trainer was ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined the Trainer in the amount of 3 500 CHF, and ordered the Trainer to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings. Finally, the FEI informed that certain parts of the fine contributes to education within Anti-Doping.

### **8. Further submission by and on behalf of the PR in the CENTURION case**

- 8.1 On 8 December 2016, the PR in the CENTURION case further explained that he had been riding for over six (6) years and that he had never broken any rules during that period of time. That he was well aware of the FEI Rules and that he made sure that he always followed them. Further, that he constantly checked for any updates regarding the FEI Rules, and that he attended seminars that were held by the FEI in order to educate himself.
- 8.2 That making sure that the horses he was riding were free of any Prohibited Substances was a priority for him. He has requested the Trainer about the condition of the horse CENTURION and the treatments given to the horse, and that the Trainer had responded that the horse was in good condition and was never given any Prohibited Substances. That he also asked the grooms the same questions, and that they responded the same as the Trainer.
- 8.3 Finally, that he believed that it was unfair that the Trainer hid the truth, and that he was negatively affected because of the mistakes of

others. Further, that he had received a phone call from the Trainer telling him that he received a suspension by the FEI, and that he was the "First Responsible Person" in the case at hand.

- 8.4 On 8 December 2016, Dr. Ali Tweissi, Head of Veterinary Department of the Emirates Equestrian Federation (EEF), confirmed in an email that the PR, who was a well educated university student, had always been asking about new and updated rules, and that he attended the seminars and courses run by their National Federation.

### **9. Further proceedings**

On 25 January 2017, the Tribunal - in accordance with Article 18.12.3 of the IRs - decided to consolidate the three proceedings concerning the PRs and the Trainer.

### **10. Final Hearing in the CENTURION case**

- 10.1 Whereas the PR in the SUR (MABROUK) case waived his right for an oral hearing, the PR in the CENTURION case requested for an oral hearing to be held via telephone conference call. The Trainer also attended the Final Hearing.
- 10.2 During the Final Hearing the PR in the CENTURION case further stated that he was a professional rider and student, and qualified to ride 3\* events. That he had been riding in Qatar, as well as for the Trainer, for the first time at the Event, after having been invited by the Trainer, whom he had met only one time beforehand. That a friend of his had ridden the horse (SUR) MABROUK for the Trainer one month prior to the Event without the horse (SUR) MABROUK testing positive and with good results. That this had encouraged him to ride for the Trainer. Further, that his record showed that he was only riding for the "good" stables in the UAE, and that he selected those which have shown good results in the past. That generally he was more careful when he did not know the stable(s), but that in the case at hand his friend's experience riding for the Trainer had encouraged him to also ride for the Trainer, seen there had been no previous problems.
- 10.3 Moreover, that he had only arrived on site four (4) hours prior to the competition, and that knowing that it was his duty, he had asked – as previously explained - everyone from the stables, *i.e.*, the Trainer and owner of the horse CENTURION, as well as the grooms, whether the horse CENTURION had been given any medication, and whether it was clean. That each single person had assured him that no medication had been administered to the horse CENTURION. That he had not requested to see the horse's passport and Medication Logbook, as it had already been with the organisers when he arrived on site.
- 10.4 Furthermore, the PR stated that he had never heard of EPO prior to

the positive finding. That he always checked the FEI List, and the newest updates on the FEI List.

- 10.5 Finally, the PR explained that he knew from his family, who was also in camel racing, that unregistered or "doping medicines" were available "under the table" in pharmacies, and that many camels tested positive for doping. That he suspected that this might have been also the case for the Trainer in the pharmacy where he acquired the EPO.
- 10.6 The Trainer confirmed the PR's explanations. He further stated that both Horses ended up in first and second place during the Event. That both of them were champions and had won races without medications beforehand.
- 10.7 Regarding how the EPO entered the Horses' systems the Trainer explained that he had bought the EPO from a pharmacy, which had informed him that it did not concern doping. That this had been the last competition of the season and that he wanted to try out this "medicine" for the following season. That he had already had very good results for his first year of training, and that he wanted to be the best in the following season. That he would not talk with anybody about his training methods, as any trainer should keep some secrets in this regard. Further that he did he tell anyone – not even his grooms – that he had injected the Horses with EPO. That he also denied having given any medication to the Horses, after the PRs had requested him. That, since he believed that the EPO would be out of the systems of the Horses at the time of the Event, he did not think that informing the PRs of the EPO administration was necessary.
- 10.8 Moreover, the Trainer confirmed that he had injected the Horse with EPO during the night, so no one would see him doing it. He further explained that he injected the EPO intravenously to the Horses. That he was not a veterinarian, and did not know about medicines, but that he had helped a veterinarian beforehand, who had taught him how to inject horses, including intravenously.
- 10.9 Furthermore, the Trainer explained that he did not register the EPO in the Horses' Medication Logbooks as no one had to know about the injections. Therefore, the PRs would not have discovered in the medication records that the Horses had been administered EPO.
- 10.10 Finally, the Trainer stated that he had made a big mistake in believing the pharmacy, and in not doing any further research with regard to the EPO. Following the positive finding he had found out that EPO was a "dangerous medicine". That he felt truly sorry for what he did, especially for the PRs. That – at the time of the Final Hearing - he was no longer owner of the Horses, as he had given them to his brother, and that he was neither a trainer. He was now only a horse breeder for his brother.
- 10.11 With regard to the (SUR) MABROUK case the Trainer confirmed that

the PR in the (SUR) MABROUK case had arrived – together with his father and older brother – the day prior to the Event, and that all three of them had inquired whether the horse (SUR) MABROUK was “doping- free”, which he had confirmed to them. That the PR in the (SUR) MABROUK case was currently fulfilling his national army service, and was therefore – next to his poor English – unable to attend the Final Hearing.

- 10.12 The FEI argued that the FEI can be satisfied that it had been established by the PR in the CENTURION case (and that it believed it was similar in the (SUR) MABROUK case) and the Trainer how the EPO entered the Horses’ systems. The FEI left it for the Tribunal to decide on the degree of fault of the PRs.
- 10.13 With regard to the Trainer, the FEI argued that he had been very negligent in trying a new medication just three (3) days prior to a competition, without recording it anywhere and without telling anyone. That the Trainer had the intent to make the Hoses run faster. As a result, no reduction of the applicable period of Ineligibility was warrant for the Trainer.

## **11. Jurisdiction**

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

## **12. Persons Responsible**

The PRs are the Persons Responsible for the Horses, in accordance with Article 118.3 of the GRs, as they were the riders of the Horse at the Event.

## **13. The Support Personnel**

- 13.1 The institution of Support Personnel is defined in Appendix 1 of the EADCMRs as:

“Any coach, trainer, athlete, Horse owner, groom, steward, chef d’équipe, team staff, official, veterinarian, medical, or paramedical personnel assisting in any fashion a Person Responsible participating in or preparing for equine sports Competition. Veterinarians are included in the definition of Support Personnel with the understanding that they are professionals subject to professional standards and licences. An allegation that a veterinarian violated an EADCM Regulation will only be made where the factual circumstances surrounding the case indicate a likelihood that the veterinarian was involved in the violation.”

- 13.2 The Tribunal takes note that the Trainer was the trainer and - at

some point in time after the Event and prior to the Final Hearing – also the owner of both Horses. The Trainer therefore qualifies as a member of the Support Personnel in accordance with the EADCMRs. Finally, the Tribunal also takes note that the Trainer has not disputed his status as Support Personnel in the matters at hand.

#### **14. The Decision**

- 14.1 As stated in Articles 2.1.2 and 2.2.2 of the ECM Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample where the PR waives analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Samples reflect that the analytical tests were performed in an acceptable manner and that the findings of the LCH are accurate. The Tribunal is satisfied that the test results evidence the presence of EPO in the samples taken from the Horses at the Event. Neither one of the PRs nor the Trainer did contest the accuracy of the test results or the positive finding. EPO is classified as a Banned Substance under the FEI List.
- 14.2 The FEI has therefore established Adverse Analytical Findings, and has sufficiently proven the objective elements of offences, for both PRs, as well as for the Trainer, in accordance with Articles 2.1 and 2.2 of the EAD Rules.
- 14.3 Regarding the alleged rule violation of the Trainer, the Tribunal holds that the FEI has, in addition, discharged its burden of establishing that the Trainer has violated Article 2.5 of the EAD Rules (Administration or Attempted Administration of a Banned Substance). The Tribunal finds that the statements by the Trainer himself regarding his administration of 2 ml of EPO three (3) days prior to the Event to both Horses evidences a violation by the Trainer of Article 2.5 of the EAD Rules. The Tribunal further takes note that the Trainer did not contest the Rule violation alleged by the FEI.
- 14.4 In cases brought under Articles 2.1 and 2.2 of the EAD Rules a strict liability principle applies as described in Articles 2.1.1 and 2.2.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR and a member of Support Personnel have the burden of proving that they bear "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules.
- 14.5 To start with the Tribunal takes note of the PRs' and Trainer's explanations on how the EPO had entered the Horses' systems, namely by the Trainer administering 2 ml of EPO intravenously three (3) days prior to the Event to both Horses, without recording it or informing anyone about it. The Tribunal believes that it is more likely than not that the EPO entered the Horses' systems as explained by the PRs and Trainer. The Tribunal is therefore satisfied that the PRs, as well as the Trainer, have established – by a balance of probability, as required by

the EAD Rules – how the EPO had entered the Horses’ systems.

- 14.6 In a second step the Tribunal needs to examine the question of “No Fault or Negligence” or “No Significant Fault or Negligence” of the PRs and of the Trainer for the rule violations.
- 14.7 In accordance with Articles 2.1.1 and 2.2.1 of the EAD Rules, the Tribunal considers that it is the PR’s and Trainer’s personal duty to ensure that no Banned Substance is present in the Horse’s body at any time. Under the EAD Rules the PR and his or her support personnel are held strictly liable for the condition of the horse. CAS (CAS 2015/A/4190 - Mohammed Shafi Al Rumaithi v. FEI) has confirmed the FEI’s policy in making the rider the Person Responsible. The Tribunal agrees with CAS and the FEI’s policy. The Tribunal therefore also holds that *“making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play.”* Furthermore, the Tribunal also finds that *“It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay apprised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse”.*
- 14.8 Furthermore, both - CAS, as well as the FEI Tribunal - have accepted this reasoning in the past and upheld the lawfulness of this approach, and thus rejected riders’ arguments that they should not be held responsible for the condition of the horse if they can show that they did not control the horse’s care and preparation for competition. The Tribunal finds that this is necessary in order to achieve the imperatives underlying the EAD Rules.
- 14.9 However, the degree of fault must be decided individually for the PR and for his support personnel, *i.e.*, the Trainer in the case at hand. In its decision (CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI) CAS noted as follows (at paras 153 and 159):
- “The fact that riders will be that riders will be in different situations and having varying degrees of involvement with the horse and its preparations is inevitable and the rules can no doubt produce harsh outcomes in certain circumstances”.*
- 14.10 In the case mentioned, CAS took comfort that the provisions for mitigation of sanctions of No Significant Fault or Negligence could be applied to mitigate such outcomes.
- 14.11 The Tribunal finds in the present case that the PRs and the Trainer have acted at different degrees of fault/negligence in performing their duties as riders and member of Support Personnel as outlined below.
- 14.12 With regard to the PRs, the Tribunal takes note that the PRs requested the Trainer, as well as the grooms, whether the Horse had been

administered any medication, *i.e.*, Prohibited Substances –, which was confirmed as being negative. The Tribunal takes further note that the Trainer has not recorded the EPO administrations anywhere, nor informed anyone about it. In fact – as the Trainer confirmed himself – apart from him, no one knew, should have and could have known about the EPO administrations. The Tribunal however finds that it is not sufficient for a Person Responsible to merely ask a trainer, horse owner or other person whether the respective horse is clean.

- 14.13 In line with its previous decisions, the Tribunal holds that the PRs cannot be totally discharged from their duties – their personal duty as riders – even when not having been in charge of preparing the Horse, and even when not having had any connection to the Horse prior to the Event, which seems to be the case in the cases at hand. It is the PRs' duty as competitors to make inquiries whether the Horse was free of Prohibited Substances, and put measures in place to assure that they are informed of all medication administered to the Horses. In the cases at hand the Tribunal finds that the PRs could have made further inquiries and put such measures in place, which they did not. The Tribunal however also finds that the PRs would not have found out, even when making further inquiries, such as reviewing the Medication Logbooks of the Horses, that the Horses had been administered EPO prior to the Event.
- 14.14 While the Tribunal finds that the PRs have been negligent with their personal duty of care in assuring that no Prohibited Substance was present in the Horses' systems during the Event, the Tribunal also finds that the negligence of the PRs was not significant, when viewed in the totality of the specific circumstances in the cases at hand. The Tribunal comes to this conclusion taking into account that (i) the Trainer has actively misled the PRs, and the PRs could not have known – even when further inquiring – that the Horses had been administered EPO, or that the Horses' systems contained EPO; (ii) the PR in the CENTURION case inquired with his friend about the Trainer and his experience riding for the Trainer; and (iii) the PR in the CENTURION case was well aware of the FEI Rules and Regulations and kept himself up to date in this regard.
- 14.15 Accordingly, the Tribunal finds that the PRs have acted with No Significant Fault or Negligence in performing their duties as competitors. The Tribunal therefore concludes that a reduction of the otherwise applicable period of Ineligibility in accordance with Article 10.5 of the EAD Rules is warranted.
- 14.16 In deciding the length of the period of Ineligibility for the PRs, the members of the Hearing Panel have come to a split decision. Two members of the Hearing Panel – Ms. Mulcahy and Mr. Hodson – found that, given the circumstances in the cases at hand, the length of the period of Ineligibility for the PRs shall be one (1) year, *i.e.*, in applying Article 10.5.2 of the EAD Rules, the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. The Hearing Panel Chair – Mr. Elstad – found that, in taking

into consideration previous decisions by the Tribunal and by CAS, notably the Glenmorgan decision, the period of Ineligibility of the PRs shall be eighteen (18) months. Pursuant to Article 19.41 of the IRs, the Hearing Panel shall make its Decision by a Simple Majority. Hence, the period of Ineligibility of the PRs in the cases at hand shall be one (1) year.

- 14.17 With regard to the Trainer, the Tribunal holds that he was for several reasons reckless in performing his duties as a member of Support Personnel. The Tribunal finds that the Trainer has actively and potentially also dangerously doped the Horses. The Tribunal finds that the Trainer furthermore intentionally kept the EPO administration a secret, and in the absence of any medical record the PRs were incapable of discovering the EPO administration to the Horses.
- 14.18 The Tribunal believes that the Trainer had a clear intention to enhance the performances of the Horses. It seems to the Tribunal that the Trainer was seeking to win competitions at almost any cost. In the cases at hand he was prepared to take the risk to try a new "medicine" for the first time prior to the Event, without knowing anything about it, and furthermore aiming to also use it for the following season.
- 14.19 In addition, the Tribunal finds that the Trainer even dangerously experimented with EPO, without the necessary knowledge regarding the "medicine", and having potentially put in danger the welfare of the Horses.
- 14.20 As a result, the Tribunal has to consider whether aggravating circumstances are present in the case at hand, and whether Article 10.7 of the EAD Rules is applicable. Regarding the application of this article, the Tribunal finds that the Trainer did not prove to the comfortable satisfaction of the Tribunal – as required –, that he did not knowingly commit the EAD Rule violation. He injected the Prohibited Substance intentionally allegedly without knowing that EPO was a Banned Substance on the FEI List, but the Tribunal finds that he could have easily known or suspected that this "medicine" was prohibited, and the administration of the EPO resulted to EAD Rule violations. The Trainer nonetheless took the risk to administer it to not only one, but two Horses for the sole purpose of performance enhancement just days prior to the Event. However, the Tribunal finds that the Trainer, after having been confronted by the FEI with the alleged EAD Rule violation, admitted the violation promptly. The Tribunal therefore decides not to apply Article 10.7 of the EAD Rules in the present case.

## **15. Disqualification**

For the reasons set forth above, the Tribunal disqualifies the Horses and the PRs combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the EAD Rules.

## 16. Sanctions

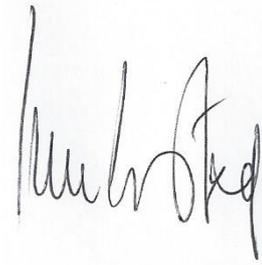
- 16.1 Articles 10.2 and 10.3 of the EAD Rules foresee a sanction of two (2) years period of Ineligibility for an Article 2.1, 2.2 and 2.5 EAD Rule violation. With regard to the PRs the Tribunal finds that they bore No Significant Fault or Negligence for the rule violations. A reduction of the otherwise applicable period of Ineligibility in accordance with Article 10.5 of the EAD Rules is therefore warranted.
- 16.2 The Tribunal therefore imposes the following sanctions on the PRs and the Trainer, in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:
- 1) The **PR in the SUR (MABROUK) case** – Mr. Mohd Butti Ghemran Al Qubaisi - shall be suspended for a period of **one (1) year**. The period of Provisional Suspension, effective from 2 June 2016, the date of imposition of the Provisional Suspension, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR in the SUR (MABROUK) case will be ineligible **through 1 June 2017**.
  - 2) The PR in the CENTURION case – Mr. Abdulla Mubarak Rashed Al Khaili - shall be suspended for a period of **one (1) year**. The period of Provisional Suspension, effective from 2 June 2016, the date of imposition of the Provisional Suspension, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the PR in the CENTURION case will be ineligible **through 1 June 2017**.
  - 3) The Trainer – Mr. Mohammed Ali Khalifa Al-Attiyah - shall be suspended for a period of **two (2) years** for the present rule violation. The period of Provisional Suspension, effective from 5 July 2016, shall be credited against the period of Ineligibility imposed in this decision. Therefore, the Trainer will be ineligible **through 4 July 2018**.
  - 4) A fine in the amount of **two thousand Swiss Francs (CHF 2'000,-)** shall be imposed on the PR in the SUR (MABROUK) case.
  - 5) A fine in the amount of **two thousand Swiss Francs (CHF 2'000,-)** shall be imposed on the PR in the CENTURION case.
  - 6) A fine in the amount of **three thousand five hundred Swiss Francs (CHF 3'500,-)** shall be imposed on the Trainer.
  - 7) The PR in the SUR (MABROUK) case shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of this procedure.

- 8) The PR in the CENTURION shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of this procedure.
- 9) The Trainer shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of this procedure.
- 16.3 No Person Responsible or member of the Support Personnel, who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity at an Event, or in a Competition or activity that is authorized or organized 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 at an Event or in a Competition authorized or organized by any international or national-level Event organization (Article 10.11.1 of the EAD Rules).
- 16.4 Where a Person Responsible or member of the Support Personnel who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.2 of the EAD Rules).
- 16.5 According to Article 168 of the GRs, the present Decision is effective from the date of written notification to the persons and bodies concerned.
- 16.6 In accordance with Article 12 of the EAD Rules, all Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

**V. DECISION TO BE FORWARDED TO:**

- a. The PRs and the Support Personnel: Yes**
- b. The President of the NFs of the PRs and the Support Personnel: Yes**
- c. Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read "Erik Elstad", is centered on the page. The signature is written in a cursive style with a large initial 'E'.

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**THE CHAIR, Mr. Erik Elstad**