



**DECISION of the FEI TRIBUNAL**  
**on Appeal by Mr. Vincent Gaudriot**  
**dated 15 August 2017**

**In the matter of**

**Mr. Vincent Gaudriot (“Mr. Gaudriot” or “the Appellant”)**

**vs.**

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

**I. COMPOSITION OF PANEL**

Mr. Erik Elstad, one member panel

**II. SUMMARY OF THE FACTS**

- 1. Case File:** The Tribunal duly took into consideration the Parties’ submissions in writing, as well as the oral pleadings during the hearing.
- 2. Appellant:** Mr. Vincent Gaudriot, represented by Ms. Stéphanie Moutet-Fortis of SCP MOUTET-LECLAIR, Bayonne, France.
- 3. Oral hearing:** On 14 August 2017 via telephone conference call.

Present:

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

For the Appellant:

Ms. Stéphanie Moutet-Fortis, Legal Counsel  
Mr. Alain Granier, assistant to the Legal Counsel

For the FEI:

Ms. Anna Thorstenson, FEI Legal Counsel

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

#### **1. Relevant Statutes/Regulations:**

Statutes 23<sup>rd</sup> edition, effective 29 April 2014 ("**Statutes**").

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2017 ("**GRs**").

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

FEI Endurance Rules, Updated 9<sup>th</sup> edition, effective 1 January 2017 ("**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."

**IRs Article 19.23.:** "The Claimant shall have the burden of proving that the Respondent committed the infringements alleged in the Claim."

**IRs Article 19.24.:** "Unless otherwise stated in the relevant rules, the standard of proof on all questions to be determined by the *Hearing Panel* shall be by the balance of probabilities."

#### **IV. DECISION**

The below presents a summary of the relevant facts, allegations and arguments based on the Parties' written submissions, pleadings and evidence adduced during 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 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 10018523) is registered as an Athlete and Trainer. The Appellant's administering National Federation is the French National Federation ("**FRA-NF**"). The Appellant is an experienced rider who, according to the FEI Database, has been competing in FEI competitions since 2005. Furthermore, as outlined by the FEI further below, the Appellant has qualified to compete at the FEI European Championships 2017 and is on the nominated list.
- 1.2 The Appellant competed at the CEI3\* 160 in Pisa, San Rossore, Italy, from 14 to 16 July 2017 (the "**Event**") with the horse USAAD D'ACQUI (the "**Horse**"). The Appellant and the Horse were eliminated for veterinary reasons at gate 6 (FTQ – Gate 6 ME).
- 1.3 The following people officiated at the Event:
  - Rui Pedro Amante (TD – Technical Delegate)
  - Valter Murino (CS – Chief Steward)
  - Fernando Carillo (Foreign Judge)
  - Fabio Zuccolo (Time Keeper/working for the Organiser – OC)
- 1.4 During the Event, the Appellant received two Yellow Warning Cards for Incorrect Behaviour towards Event Officials (Article 169.6.3 of the GRs).
- 1.5 On 7 August 2017, the FEI Secretary General notified the Appellant that he was automatically suspended for two (2) months, *i.e.*, from 7 August 2017 to 6 October 2017, due to the two Yellow Warning Cards (the "**Secretary General Notification**"). The Notification Letter reads as follows:

*"We have received information that, you Mr Vicente Gaudriot FEI ID: 10018523, at the CEI3\* 160 - Pisa, San Rossore (ITA), which took place*

on 14 to 16 July 2017, have received two Yellow Warning Cards for Incorrect Behaviour towards Event Officials (in accordance with 169.6.3 of the General Regulations, 23th edition, 1 January 2009, updates effective 1 January 2017).

The Yellow Warning Cards were distributed to you due to breaches of Art. 169.6.3: "Incorrect behaviour towards (a) Event Officials or any other party connected with the Event (other Athlete, journalist, public etc.)"

Both Yellow Warning Cards were received at CEI3\* 160 - Pisa, San Rossore (ITA) on 16 July 2017.

The first Yellow Warning Card was distributed to you since you protested against the high pulse elimination of your horse, despite the fact that all the officials present at that moment in the Vet Gate asked you to calm down and they also explained to you the entire pulse protocol. You still continued to protest and was informed by the Technical Delegate that you would receive a Yellow Warning Card due to this incorrect behavior. You refused to sign the Yellow Warning Card.

The second Yellow Warning Card was distributed to you since you returned to the Vet Gate about 15 minutes later, and started to shout to the Officials that your horse had the pulse below 64 bpm and that it had been wrongly eliminated. The Technical Delegate went to you and asked you to calm down, but instead you made an offensive gesture and you were informed that you would receive a second Yellow Warning Card. You also refused to sign this second Yellow Warning Card.

The fact that you refuse to sign the Yellow Warning Card does not make such Yellow Warning Card invalid, as long as you have been duly notified about the Yellow Warning Card in accordance with Article 169.7.1 GRs.

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. **7 August 2017 and will terminate on 6 October 2017**, at midnight ("Period of Suspension").

Please be informed that during the Period of Suspension, you may not take part in Competitions or Events as an Athlete or Official or in the organisation of, or participation in, any Event under the jurisdiction of the FEI or any Event under the jurisdiction of an NF in accordance with the Statutes. (...)"

## **2. Procedural Background**

- 2.1 On 10 August 2017, the Appellant - pursuant to Article 165 of the GRs and Article 17 of the IRs - lodged an Appeal with the Tribunal. Moreover, the Appellant requested the Tribunal to "*confirm the suspensive nature*" of the Appeal and to "*validate the participation of Vincent Gaudriot to the race of Bruxelles next 19th of august.*"
- 2.2 On 11 August 2017, the Tribunal nominated a panel, and proposed expedited proceedings to the Parties. The FEI expressly agreed on the nomination of the panel and to expedited proceedings; the Appellant did not object to either of them.
- 2.3 On 14 August 2017, the FEI provided its written Answer to the Appeal.
- 2.4 On 14 August 2017, upon request by the Appellant, a hearing was held.

## **3. Written submissions by the Appellant**

- 3.1 In essence, the Appellant requested the Tribunal to grant the Appeal and to nullify the second Yellow Warning Card, which made the two (2) months automatic suspension null and void.
- 3.2 To start with the Appellant argued that the Appeal was admissible, since in the present case the conditions of the automatic sanction under 169.7 of the GRs were not satisfied, as the Appellant had not been aware of the second Yellow Warning Card. Thus, he had been "*deprived of the possibility to refer – within the thirty (30) minutes of the notification – to the representative authorities of the FEI which were present on the site of the event, in order to press his claim.*"
- 3.3 The Appellant further argued that he had admitted the first Yellow Warning Card, and that therefore he did not contest that sanction immediately. However, – in his view - he had not been notified of the second Yellow Warning Card during the Event. As such, he did not have the opportunity to contest the second Yellow Warning Card.
- 3.4 In this respect, the Appellant provided several witness statements (8 in total) of persons allegedly being present when the incident occurred, *i.e.*, related to the second Yellow Warning Card. In essence, the witnesses confirmed that the Appellant had exited the vet gate with the Horse after the Horse had been disqualified for metabolic reasons, and after receiving the first Yellow Warning Card. That one to two minutes later the Appellant had returned to discuss his disqualification with the same FEI Official who had disqualified him and who had given him the first Yellow Warning Card. That the FEI Official had then threatened the Appellant with the second Yellow Warning Card, but that no such Yellow Warning Card had been issued.
- 3.5 Furthermore, the Appellant argued that the notification of 7 August 2017 by the FEI Secretary General had the effect of the mandatory written

notification pursuant to Article 169.7.1 of the GRs. Thus, he had not been notified within the 14 days pursuant to Article 169.7 of the GRs. He argued as follows: *"As this notification occurred after the limit period, the sanction is null and void. As a result, the suspension measure cannot be applied."*

- 3.6 In addition, the Appellant argued that if he had been aware of the second Yellow Warning Card, which leads to an automatic suspension of two (2) months, he would not have entered and paid an entry fee of 650 Euros for the competition on 19 August 2017 in Brussels.
- 3.7 Finally, the Appellant argued that the *"same series of facts cannot be punished twice"*. That in the case at hand he had contested his elimination and had received a sanction through the notification of a yellow warning card, *i.e.*, the first Yellow Warning Card. The second Yellow Warning Card had been justified by exactly the same facts, and that it had been pointed out wrongly that 15 minutes had passed between the two incidents.

#### **4. Answer by the FEI**

- 4.1 In its Answer the FEI requested the Tribunal to:

*"(a) Confirm that the Appeal is inadmissible so that the decisions of the Technical Delegate and the notification issued by the FEI Secretary General are left undisturbed; or*  
*(b) Only if the FEI Tribunal decides to admit the Appeal, to dismiss the Appeal on its merits and the Appellant's prayers for relief in their entirety;*  
*and*  
*(c) 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 Technical Delegate to give a Yellow Warning Card. Article 159.6 of the GRs 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 Therefore, it was not for the Tribunal to decide on the Yellow Warning Card and its validity. This was a field of play decision and the FEI Officials present on site had responsibility for all field of play decisions. Therefore, once a Ground Jury has decided upon a field of play matter, that decision was considered final and binding, with no further right of appeal.
- 4.4 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."*

- 4.5 Moreover, the FEI argued that, even if the Tribunal was to decide 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. That this had also been confirmed by the Tribunal in a previous case (George von Stein v FEI, Tribunal Decision dated 29 January 2014).
- 4.6 Finally, the FEI argued that the case at hand was similar to another case decided by the Tribunal (António Vaz Freire v FEI, Tribunal Decision dated 14 October 2016), where the Tribunal concluded that the appeal was not admissible. That in accordance with this case law, due to the fact that (i) the decisions of the Technical Delegate to impose the Yellow Warning Cards cannot be appealed, (ii) the fact that no protest was submitted within the time limit, (iii) the automatic two (2) months suspension cannot be lifted by the Tribunal, since the two (2) month suspension, arising from the Appellant receiving two (2) Yellow Warning Cards within a 12 month period, became final as soon as the notification of such suspension was made by the FEI Secretary General, and this was not a matter over which the FEI Secretary General has any discretion. The FEI submitted that therefore the Appeal of the Appellant was inadmissible and that the FEI Tribunal did not have jurisdiction to overturn the field of play decisions to impose the two (2) Yellow Warning Cards.
- 4.7 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 in relation to the incident pursuant to this article.

- 4.8 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 the same Official; neither of the two Yellow Warning Cards has been signed by the Appellant. Both Yellow Warning Cards include a note as follows: "*the PR refuse to sign*". The FEI further also submitted an extract of the "*Report of Foreign Judge/Technical Delegate Endurance – 2017*" which lists the Appellant as having received "2 Yellow cards", and states that the Athletes have been "*made aware of the listed irregularities before leaving the show ground*". In addition, the FEI provided an explanation of the TD concerning the Yellow Warning Cards. The TD explained as follows:

*"Yes I confirm the 2 yellow cards. This rider began by protesting screaming into the VG when his horse was eliminated and because that he received a yellow card. Shortly afterwards and from outside the VG he again protested loudly and offended the officials who were inside the VG, so a second yellow card was shown. The official who showed the 2 yellow cards was me."*

*"About this issue, the first YC was shown after exuberant protests against high pulse elimination. All the officials present at that moment in the VG asked for the rider to calm his protests and explained the entire pulse protocol. Even so the rider continued to protest and was informed by me, as TD, that he would have a YC due to his incorrect behaviors. The rider refused to sign that YC."*

*"About 15 minutes later, the rider returned to the Vet Gate and started shouting to the officials that his horse had the pulse below 64 bpm and that he had been wrongly eliminated. I went to him and asked him to calm down. He made an offensive gesture with his middle finger and I informed him that I would give him a second yellow card. He also refused to sign this second YC."*

- 4.9 Furthermore, the FEI provided answers by the TD to questions the FEI had asked to him, namely as follows:

*"1. Where did the second incident take place? The incidente took place on the top right side of the VG near the fence. I was inside the VG and the rider was outside. It was near the timekeeping tent and because we was near this tent, Mr Fabio Zuccolo from the timekeeping team was present."*

*"2. What happened exactly? The rider was eliminated for high pulse on his final vet inspection and he protested about this elimination because he didn't believed in the pulse machines. Because his protest about the elimination and because that protests were offensive to officials he received the 1st YC and the rider refuse to sign it. About 15 minutes later, the rider returned near the fence of the Vet Gate and started shouting again to the officials that*

*his horse had the pulse below 64 bpm outside the VG and that he had been wrongly eliminated. I went to him and asked him to calm down. I asked if he want to recieve a second YC about that seconte episode, he answer me like "You do what you want!!!!" and at that moment he made an offensive gesture with his middle finger and I informed him that I would give him a second yellow card. I pick the YC from my pocket and I ask if the rider also refuse to sign that second YC. He also refused to sign this second YC.*

*3. Were there any other people from the public or officials present in the near surrounding that could have seen anything? Mr Fabio Zuccolo from the timekeeping team was present and I think Mr Fernando Carrillo (GJ).*

*4. How did you notify the rider? What was his reaction? Orally but with the YC in my hand. He walked away.*

*5. Can we be sure that he understood that he received a 2nd YC? Yes, I'm sure.*

*6. Do you have any doubt he is not aware of the 2nd YC?□No, I don't have ny doubt. Maybe the rider thought it was only a threat and I did not realize it, but after the gesture with the finger, he understood that he recieved a second card."*

4.10 Moreover, the FEI provided an explanation by the Foreign Judge, who stated as follows:

*"I was not in Vet Gate at that moment, but I asked what had happened. That rider was eliminated and he insulted the vets so he was given a YC.*

*Next, when the rider continued insulting vets out loud and the TD threatened him with another YC if he didn't shut up and the rider answer with his finger up and answering him "yes, another one". That is the reason why he has two YC. "*

4.11 Finally, the FEI explained that Mr. Zuccolo confirmed that the Appellant received two Yellow Warning Cards, and Mr. Murino confirmed that Mr. Amante normally duly informs riders of yellow warning cards given.

4.12 The FEI argued that the Appellant's statement that he was not notified of the second Yellow Warning Card was not correct or accurate. The statement by the TD specifically stated that the Appellant was orally notified, but that he "refused to sign". That this was also duly noted on both the first and second Yellow Warning Card, and the TD has also reported the Yellow Warning Cards in his report. The FEI has no doubt that the Appellant was duly notified of the Yellow Warning Cards at the Event, and therefore there was no need to send a written notification of either of the Yellow Warning Cards within the 14 day period after the Event (as per Article 169.7 of the GRs).

4.13 Furthermore, 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.

- 4.14 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.
- 4.15 Moreover, 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.
- 4.16 Regarding whether the Appellant could participate in the FEI European Endurance Championships in Brussels from 17 to 19 August 2017, the FEI explained that the Appellant was on the nominated list of entries of 17 July 2017. That the final entry date for the definite entries was on 8 August 2017. Despite the fact that the FRA-NF listed the Appellant as a candidate on their final definite list, the FEI could not enter the Appellant since he was suspended and not eligible; the definite list of entries cannot be changed by the FEI nor by the FRA-NF after the final date of entry, *i.e.*, 8 August 2017. The FEI was of the opinion that, due to the fact that the Appellant was not eligible on that date, he cannot be on the definite list of entries, and as a consequence not participate in the event.

## **5. Hearing**

- 5.1 During the hearing the Parties had ample opportunity to present their cases, submit their arguments and answer to the questions posed by the Tribunal. After the Parties' submissions, the Tribunal closed the hearing and reserved its final decision. The Tribunal heard carefully and took into consideration in its discussion and subsequent deliberation all the evidence and the arguments presented by the Parties even if they have not been summarized herein.
- 5.2 In essence both Parties maintained their submissions in writing. The Appellant further once more argued that he did not know about the second Yellow Warning Card, and that he had only realised that he had received such second Yellow Warning Card at the Event when notified by the FEI Secretary General of the two (2) months automatic suspension on 7 August 2017. That any sanction had to have the possibility of review, and that he had been deprived from such during the Event. Hence the only way to ask for such review was now with the Tribunal; therefore, the Appeal had to be admissible.

- 5.3 That the important point in the case at hand was whether the Appellant had been notified of the second Yellow Warning Card or not. That in this respect the TD had threatened the Appellant with another Yellow Warning Card but not given it to him. The Appellant confirmed that there had been a discussion about the second Yellow Warning Card, after he had given applause towards the veterinarians. The TD had asked him "*you want a second Yellow Warning Card*", whereupon the Appellant had answered "*do what you want*", but the TD had not given him the second Yellow Warning Card. The Appellant alleges that after the Event, the TD must have decided to give the Appellant a second Yellow Warning Card. The TD's explanations were not clear, for example he stated once "*shortly afterwards*" and thereafter "*15 minutes later*".
- 5.4 The Appellant argued that all his witnesses (8 in total) confirmed that he was notified of the first Yellow Warning Card, but only threatened with the second Yellow Warning Card, and did not receive such second Yellow Warning Card. The FEI on the other hand had only provided a statement by the TD. That Mr. Zuccolo, who apparently witnessed the incident, did not provide any further explanations, and that the Foreign Judge confirmed that he had not witnessed the incident first hand.
- 5.5 Finally, the Appellant argued that the Tribunal – in accordance with Article 18.12 of the IRs – had jurisdiction to decide on provisional measures in a first step, *i.e.*, on the lifting of the two (2) months suspension, in order for the Appellant to be able to compete at the event in Brussels. In this regard the Appellant clarified that the event in question, *i.e.*, the one he was entered to compete in Brussels, concerned the World Championships of Young Horses.
- 5.6 During the hearing, the FEI argued that the FEI sanctioned many competitions, especially in the discipline of Endurance, and that many FEI Officials were working at those competitions, simply trying to do their job; they had nothing to gain when giving Yellow Warning Cards. That the FEI had never had any doubts that the Appellant received two Yellow Warning Cards during the Event, especially also since the Yellow Warning Cards itself mention that "*the PR refuse to sign*"; according to case law oral notification was sufficient. Further, the FEI had no doubts about the integrity and the decision of the TD.
- 5.7 In addition, the FEI argued that Yellow Warning Cards were published on the FEI website, and that this was known to international riders. In case the Appellant had any doubts about whether he had been given the second Yellow Warning Card, he could have verified on the FEI website. Both Yellow Warning Cards of the Appellant have been published on the FEI website on 25 July 2017.
- 5.8 The Tribunal has further taken note of the Appellant's allegation that the FEI allowed him to enter for the event in Brussels, as well as of the FEI's explanation that the FEI only learned about the Yellow Warning Cards of the Appellant when receiving the TD report and publishing them on the FEI website on 25 July 2017. The Tribunal has further also taken note of the Parties' discussions with regard to entries for the event in Brussels, and

whether the Appellant could still be entered at this point in time. However, given the decision in the case at hand – as outlined further below -, the Tribunal does not need to include any of those discussions in the present decision.

## **6. Jurisdiction**

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

## **7. Admissibility of the Appeal**

- 7.1 In a first step, the Tribunal has to decide on the admissibility of the Appeal. Only if the Tribunal accepts the admissibility of the Appeal, the Tribunal will decide on the merits of the case in a second step.
- 7.2 However, the Tribunal finds that the Appeal is inadmissible, for the reasons outlined below. Thus, the Tribunal does not have to 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 second Yellow Warning Card by the TD, and consequently also the Secretary General Notification of 7 August 2017, informing the Appellant that – pursuant to Article 169.7.2 of the GRs - he was automatically suspended for two (2) months, *i.e.*, from 7 August 2017 to 6 October 2017, due to two Yellow Warning Cards.
- 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. As a starting point the Tribunal has to decide 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. In line with its previous decisions, 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. In line with its previous decisions the Tribunal finds 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. Moreover, the Tribunal notes that the nature of the Secretary General Notification, *i.e.*, administrative in nature, and not to be considered as a “decision”, as such

is not disputed by the Parties, and that both Parties agree that a two (2) months suspension is automatic, where two Yellow Warning Cards have been registered against a rider.

- 7.6 The Appellant however argues that the Appeal was nonetheless admissible in the case at hand, since the conditions of the automatic sanction under 169.7 of the GRs were not satisfied, as the Appellant had not been aware of and duly notified of the second Yellow Warning Card, and thus he had been *"deprived of the possibility to refer – within the thirty (30) minutes of the notification – to the representative authorities of the FEI which were present on the site of the event, in order to press his claim."*
- 7.7 The Tribunal however finds that 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.
- 7.8 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 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.
- 7.9 In this respect the Tribunal has taken note that the Appellant claims that he had not been notified of the second Yellow Warning Card, that in fact he had only been threatened by the TD to receive a second Yellow Warning Card, but that such Yellow Warning Card had not been issued to him, as also his witnesses had confirmed.
- 7.10 While the Tribunal recognises that there might be some differences from the various statements by the FEI Officials, the Tribunal is also comfortably satisfied that the second Yellow Warning Card has been duly notified to the Appellant during the Event. The Tribunal comes to this conclusion, given the existence of the two Yellow Warning Cards, and since the Report of Foreign Judge/Technical Delegate Endurance – 2017" clearly lists the Appellant as having received "2 Yellow cards", and clearly indicated that the Athletes – including the Appellant - had been *"made aware of the listed irregularities before leaving the show ground"*.
- 7.11 In this respect, the Tribunal takes also note of the allegation by the Appellant that the TD must have decided after the Event to give the Appellant the second Yellow Warning Card. The Appellant has however neither provided any motives for such an action, let alone any evidence for this allegation. The Tribunal considers the witness statements confirming that no second Yellow Warning Card had been issued to the Appellant as not sufficient evidence in this regard. The TD is quite clear with his explanations that it did not only concern a threat but a second Yellow Warning Card. The allegation by the Appellant has therefore to be dismissed by the Tribunal.

- 7.12 For the avoidance of any doubt the Tribunal wishes to clarify that Article 169.7.1 of the GRs does not require the notification of a Yellow Warning Card to be in writing in those cases where the Athlete has been delivered the Yellow Warning Card during the Event, which was the case in the case at hand, as previously accepted by the Tribunal. Consequently, and contrary to the Appellant's claim, the notification of the FEI Secretary General cannot be considered as notification of the second Yellow Warning Card. In addition, and as previously outlined, the decision of the second Yellow Warning Card had already been final at this point in time.
- 7.13 Moreover, the Tribunal finds that verbal and physical violence against members of the Ground Jury are serious offences. In this regard, the Tribunal finds that the Appellant's actions when approaching the FEI Official are unacceptable. The Appellant was clearly warned that he would receive a second Yellow Warning Card, which he ultimately did. In the view of the Tribunal, the Appellant should have been more cautious of his actions. The Tribunal also agrees with the FEI that the Appellant should have clarified with the TD whether he received a second Yellow Warning Card if he was not sure of it.
- 7.14 Finally, even if the Tribunal does not have to decide on the merits of the case, it wishes to clarify that decisions by the Ground Jury, and in the case at hand by the TD, including regarding Yellow Warning Cards, are considered as so-called "field of play" decisions. No matter whether those decisions have been taken rightly or wrongly, unless evidence of arbitrariness, malicious intent or bad faith are present – which has not been adduced by the Appellant in the case at hand -, those decisions cannot be overturned by the Tribunal; neither has the Appellant argued in this direction.
- 7.15 In this respect the Tribunal has also taken note of the Appellant's argument that the "*same series of facts cannot be punished twice*", and that the two Yellow Warning Cards had been justified by the same facts. However, since Yellow Warning Cards are field of play decisions, and for reasons outlined above, the Tribunal cannot decide on this point in the present decision. The FEI Officials have obviously considered the Appellant's behaviour as two different incidents.

## **8. Decision**

- 8.1 Based on the foregoing, the Tribunal thus decides as follows:
- 1. The Appeal of Mr. Vincent Gaudriot is inadmissible. The Appeal is therefore rejected, and the decisions of the Technical Delegate and the notification issued by the FEI Secretary General are left undisturbed.**
  - 2. No deposit shall be returned to the Appellant. No further contribution towards the costs of this procedure is imposed on the Appellant.**

- 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 'Erik Elstad', is centered on the page. The signature is written in a cursive, flowing style.

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**One member panel, Mr. Erik Elstad**