



DECISION of the FEI TRIBUNAL

dated 21 June 2017

Positive Controlled Medication Case No.: 2017/CM05

Horse: MARUCO

FEI Passport No: 104RI21/URU

Person Responsible/NF/ID: Sebastian Landriel/URU/10091163

Event/ID: CEI2*120 Costa Azul, Canelones (URU) – 2016_CI_0495_E_S_02_01

Date: 16 – 18 December 2016

Prohibited Substances: Caffeine, Theophylline

I. COMPOSITION OF PANEL

Ms. Jane Mulcahy QC, one member panel

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Summary information provided by Person Responsible (PR):

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

3. Oral hearing: None.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**"), Arts. 1.4, 38 and 39.

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

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012

("IRs").

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

FEI Controlled Medication Regulations ("ECM Rules"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("VRs"), 13th edition 2015, effective 1 January 2017, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Mr. Sebastian Landriel.

3. Justification for sanction:

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

GRs Art. 118.3: "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. In vaulting, the lunger shall be an additional Person Responsible."

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

EADCMRs APPENDIX 1 – Definitions:

"Fault. Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an Person Responsible and/or member of the Support Personnel's degree of Fault include, for example, the Person Responsible's and/or member of the Support Personnel's experience, whether the Person Responsible and/or member of the Support Personnel is a Minor, special considerations such as impairment, the degree of risk that should have been perceived by the Person

Responsible and/or member of the Support Personnel and the level of care and investigation exercised by the Person Responsible and/or member of the Support Personnel in relation to what should have been the perceived level of risk. In assessing the Person Responsible's and/or member of the Support Personnel's degree of Fault, the circumstances considered must be specific and relevant to explain the Person Responsible's and/or member of the Support Personnel's departure from the expected standard of behaviour. Thus, for example, the fact that the Person Responsible would lose the opportunity to earn large sums of money during a period of Ineligibility, or the fact that the Person Responsible only has a short time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2."

"No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse; or the Horse's system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system."

"No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules and Article 2.1 of the ECM Rules, the Athlete must also establish how the Prohibited Substance entered his or her system."

IV. DECISION

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

1. Factual Background

- 1.1 MARUCO (the "**Horse**") participated at the CEI2*120 in Costa Azul, Canelones, Uruguay, from 16 to 18 December 2016 (the "**Event**"), in the discipline of Endurance. The Horse was ridden by Mr. Sebastian Landriel who is the Person Responsible in accordance with Article 118.3 of the GRs (the "**PR**").
- 1.2 The Horse was selected for sampling on 17 December 2016.
- 1.3 Analysis of the blood sample B18028 taken from the Horse at the Event was performed at the FEI-approved Laboratory, the U.S. Equestrian Federation Equine Drug Testing and Research Laboratory (the "**Laboratory**") in Lexington KY, USA. The analysis of the sample revealed the presence of Caffeine and Theophylline in the plasma.
- 1.4 The Prohibited Substances detected are Caffeine and Theophylline. Caffeine is a stimulant that stimulates the central nervous system. Theophylline is a bronchodilator used in treatment of respiratory disease. Caffeine can be a direct metabolite of Theophylline. Both substances are classified as Controlled Medication Substances under the FEI Equine Prohibited Substances List. Furthermore, no valid Veterinary Form exists for the respective substances. Therefore, the positive finding for Caffeine and Theophylline in the Horse's sample gives rise to a Controlled Medication Rule violation under the EADCMRs. Both substances are classified as "Specified Substances" on the FEI Equine Prohibited Substances List.

2. The Further Proceedings

- 2.1 On 8 February 2017, the FEI Legal Department officially notified the PR and the Owner of the Horse through the Uruguay National Federation ("**URU-NF**"), of the presence of the Prohibited Substances following the laboratory analysis, the possible rule violation and the possible consequences.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 8 February 2017, the PR and the Owner of the Horse 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 PR nor the Owner of the Horse asked for the B-Sample to be analysed, and accepted the results of the A-Sample analysis.

4. Written submission by and on behalf of the PR

- 4.1 On 15 February 2017, the PR provided a joint statement by himself and by the Owner of the Horse. The two individuals stated as follows:

"(...) We have held several meetings with Maruco's veterinarian (Dr. Caorsi) in order to determine why the horse tested positive. These meetings allowed us to deduce that contamination through food is not a possibility, as we have fed Maruco with the same feed since it started to participate in endurance riding competitions. In the cases where the horse won, the tests were never positive.

It is our belief that contamination was caused by some product given to the horse the night before the race, by a person unrelated to Maruco's team. We maintain that the episode took place that night as the horse has always received products that contain allowed substances, at all times with the veterinarian's prior consent. Besides, the horse has never experienced physical problems that required treatment with unauthorized substances to be resolved. We are fully aware of the peculiarity of this hypothesis, and the difficulty to prove it, but we firmly believe in it.

In Uruguay, it is very simple to have access (24 hours a day) to the boxes where the horses remain the night before the competition, and this is a fact that we would like you to confirm.

The issue is that in our country endurance racing horses have become highly priced in dollars and many people make a living from their sale. This was a very good opportunity to qualify a horse to race in Dubai, and obtain a good sale in that country.

We are convinced that we are hostages of a situation that is alien to us, which hurt us deeply, especially when we do not make a living from this. We practice this sport because of our love of it and horses.

We would like to inform you that we are NOT going to request the opening of the second sample, and we will abide by the final decision reached by the Tribunal, but we do request that you consider the explanations we have provided on this case. (...)"

5. Written Response by the FEI

- 5.1 On 5 April 2017, the FEI provided its Response to the explanations provided by and on behalf of the PR.
- 5.2 In essence the FEI submitted that:
- a) Article 3.1 of the ECM Rules made it the FEI's burden to establish all of the elements of the ECM Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article

2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an ECM Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Controlled Medication Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Caffeine and Theophylline, and together constituted "sufficient proof" of the violation of Article 2.1 of the ECM Rules. In any event, the PR did not dispute the presence of those Prohibited Substances in the Horse's sample. Accordingly, the FEI had discharged its burden of establishing that the PR had violated Article 2.1 of the ECM Rules.

- b) Where a Controlled Medication Substance was found in a horse's sample without a valid Veterinary Form, a clear and unequivocal presumption arose under the ECM 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 ECM Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the ECM Rules was subject to a period of Ineligibility of six (6) months, unless he was able to rebut the presumption of fault. 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 bore No Fault or Negligence for that occurrence; or, alternatively (iii) that he bore No Significant Fault or Negligence for that occurrence. If the PR failed to discharge this burden, the presumptive six-month ban under Article 10.2 of the ECM Rules applied.
- c) The ECM Rules stipulated, and the jurisprudence of the Tribunal and the Court of Arbitration for Sport ("**CAS**") was very clear: it was a strict threshold requirement of any plea of No (or No Significant) Fault or Negligence that the PR proved how the substance(s) entered into the Horse's system. The FEI submitted in this context that the PR must provide clear and convincing evidence that proved how the Caffeine and Theophylline had entered the Horse's system. The FEI submitted that, so far in the proceedings, the PR had not provided any proof of how the alleged contamination could have taken place, it was only mere speculations without any supporting evidence. The PR had therefore not established how the substances entered the body of the Horse.
- d) In order to evaluate the PR's degree of fault, the definitions of fault, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence, clarified the factors to be taken into consideration.
- e) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation was the "*personal duty*" of the PR following from Article 2.1.1 of the ECM Rules, *i.e.*, his personal duty to ensure that "*no Controlled Medication Substance is present in the Horse's body*".

- f) The FEI argued that, through the FEI Clean Sport programme and in particular the "Athletes Guide"¹, it had gone to considerable lengths to communicate relevant information on the EADCMRs to Athletes. It should be noted that, in the Glenmorgan decision², CAS had stated that the Athlete's Guide "*contains straightforward advice both to PRs and Support Personnel in a non-technical, non-legal form*" and described the Athlete's Guide as "*required reading*".
- g) The FEI reminded the PR that it was for him to show how the substance entered the body of the Horse and to explain his case. It was his personal duty to ensure that no Controlled Medication Substance is present in the Horse's body. The FEI could potentially apply the rules for Specified Substances, if there were any such proof of how the substance entered the body of the Horse, and the period of ineligibility should then be between a reprimand and six (6) months, in accordance with Article 10.5.1 ECM Rules. However, in the case at hand and so far in the proceedings, the information submitted by the PR in response to the charge had not given any proof or established how the Prohibited Substance entered the Horse's system. Further, the PR's explanation alleging the positive finding to be contamination was in the FEI's opinion not enough in order to establish no (significant) fault or negligence. The FEI therefore submitted that the applicable period of Ineligibility should be six (6) months, unless the PR submitted further information proving that he was not at fault and/or establishing the alleged contamination.
- h) The PR and Horse combination obtained in the Competition should be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. Furthermore, since this was a case with a Controlled Medication Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, all of the Person Responsible's individual results obtained in that Event, with any and all Horses with which the Person Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, should be disqualified in accordance with Article 10.1.2 of the ECM Rules.
- i) As fairness did not dictate that no fine be levied in the case at hand, the FEI requested that a fine be imposed on the PR, and that the PR be ordered to pay the legal costs that the FEI had incurred in pursuing this matter. The FEI requested that the Tribunal fine the PR in the amount of 1 500 CHF, and order the PR to pay the legal costs of 1 000 CHF that the FEI had incurred in these proceedings.

¹ Athlete's Guide to the Equine Anti-Doping and Controlled Medication Regulations, effective 5 April 2010

² CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI

6. Further proceedings

On 9 June 2017, the Panel provided the PR with the opportunity to provide further explanations/evidence with regard to the rule violation. The PR did however not provide any further information/evidence within the deadline set.

7. Jurisdiction

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

8. The Person Responsible

The PR is the Person Responsible for the Horse, in accordance with Article 118.3 of the GRs, as he was the rider of the Horse at the Event.

9. The Decision

- 9.1 As stated in Article 2.1.2 of the ECM Rules, sufficient proof of an ECM Rule violation is established by the presence of a Controlled Medication Substance in the Horse's A-Sample where the PR and the Owner of the Horse waive analysis of the B-Sample and the B-Sample is not analysed. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Caffeine and Theophylline in the sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive finding. These substances are classified as Controlled Medication Substances under the Equine Prohibited Substances List. The presence of Caffeine and Theophylline during an Event without a valid Veterinary Form is prohibited under Article 2.1 of the ECM Rules.
- 9.2 The FEI has therefore established an Adverse Analytical Finding, and has sufficiently proved the objective elements of an offence by the PR, in accordance with Articles 2.1 of the ECM Rules.
- 9.3 In cases brought under Article 2.1 of the ECM Rules a strict liability principle applies as described in Articles 2.1.1 of the ECM Rules. Once an ECM Rule violation has been established by the FEI, the PR has the burden of proving that he bore "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the ECM Rules.
- 9.4 However, in order to benefit from any elimination or reduction of the

applicable sanction under Article 10.4 or 10.5 of the ECM Rules, the PR must first establish how the Controlled Medication Substances entered the Horse's system. This element is a prerequisite to the application of Article 10.4 or 10.5 of the ECM Rules.

- 9.5 The Tribunal takes note of the PR's and Owner's explanations for the positive finding, namely alleging that an unknown person outside the Horse's team must have administered the Prohibited Substances to the Horse on the night prior to the Event. However, no further evidence has been provided to support this allegation. In the view of the Tribunal, this is not sufficient in order to establish how the Prohibited Substances entered the Horse's system. The PR has to provide clear and convincing evidence, and has not done so.
- 9.6 As a result, the Tribunal holds that the PR has not established how the Controlled Medication Substances entered the Horse's system.
- 9.7 Accordingly, the Tribunal does not need to address the question of whether the PR has established that he bears No (Significant) Fault or Negligence for the rule violation. Furthermore, given the lack of information provided by the PR, the Tribunal finds that the degree of Fault or Negligence of the PR for the rule violation is impossible to assess.
- 9.8 As a result of the foregoing, the Tribunal holds that no reduction or elimination of the otherwise applicable period of Ineligibility is warranted.

10. Disqualification

For the reasons set out above, the Tribunal disqualifies the Horse and the PR from the Competition and the entire Event and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the ECM Rules.

11. Sanctions

- 11.1 As a result of the foregoing, the period of Ineligibility imposed on the PR shall be six (6) months.
- 11.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the ECM Rules:
 - 1) The PR shall be suspended for a period of **six (6) months**, commencing on the date of this decision. Therefore, the PR shall be ineligible **through 20 December 2017**.
 - 2) The PR is fined **thousand five hundred Swiss Francs (CHF 1'500,-)**.

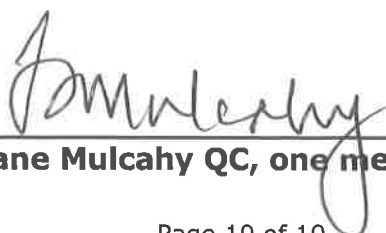
3) The PR shall contribute **one thousand Swiss Francs (CHF 1'000,-)** towards the costs of the judicial procedure.

- 11.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the ECM Rules).
- 10.4 Where a Person Responsible 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 10.11.3 of the ECM Rules).
- 10.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
- 10.6 In accordance with Article 12 of the ECM Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

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

FOR THE PANEL



Ms. Jane Mulcahy QC, one member panel