DECISION of the FEI TRIBUNAL
dated 16 October 2019

Positive Anti-Doping Cases No.: 2017/BS33

Horse: 8 MINUTE FEI Passport No: 104BW22/UAE

Person Responsible/NF/ID: Khalifa Ali Khalfan AL JAHOURI/UAE/10093885

Event/ID: CH-M-YJ-E 120 – Valeggio sul Mincio (ITA)/2017_CH-M_0002_E_YJ_01_01

Date: 22 – 24 September 2017

Prohibited Substance: Nandrolone, Stanozolol and EA-ESTRANE-3B,17A-DIOL

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, chair
Ms. Harveen Thauli, member
Mr. Cesar Torrente, member

II. 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 2017, Arts. 118, 143.1, 161, 168 and 169 ("GRs").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("IRs").

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


FEI Code of Conduct for the Welfare of the Horse.


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.”

EAD Rules Art. 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.”

EAD Rules Art. 7.6.1: “At any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3.”
III. DECISION

1. The Parties

1.1 The Person Responsible ("PR"), Mr. Khalifa Ali Khalfan Al Jahouri, is an Endurance rider for the United Arab Emirates (UAE).

1.2 The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).

2. Factual Background

2.1 On 23 September 2017, in-competition samples were collected from the Horse 8 Minute (the "Horse"), ridden by the PR. Subsequent analysis of those samples revealed, and confirmed, the presence of Nandrolone and its metabolite.

2.2 On 28 November 2017, the FEI notified the PR of an adverse analytical finding and alleged a violation of Article 2.1 of the EAD Rules. Together with the Notification Letter the PR was informed that he was provisionally suspended, and provided with the opportunity to request for a Preliminary Hearing.

2.3 On 1 February 2018, the FEI informed the PR that the analysis of the B-Sample confirmed the results of the A-Sample analysis, i.e., the presence of Nandrolone and its metabolites.

3. Preliminary Decision

3.1 On 30 November 2018 the PR applied for the Provisional Suspension to be lifted. On 21 December 2018, after a Hearing on 14 December 2018, the Preliminary Hearing Panel issued a Preliminary Decision, and decided to maintain the Provisional Suspension of the PR. The relevant parts of the Preliminary Decision read as follows:

"7.11 The Preliminary Hearing Panel finds that – at this stage in the proceedings – the PR has not established that his explanations of the source of the Nandrolone are more likely than not. The Preliminary Hearing Panel therefore finds that the PR has not – on a balance of probability, as required under the EADCMRs – established how the Nandrolone entered the Horse’s system."
7.12 It therefore follows that the Preliminary Hearing Panel does not find – as the case file stands – that the PR will at the final hearing obtain a decision of No Significant Fault or Negligence. The Preliminary Hearing Panel therefore finds that – as the case stands – there is little risk that the Provisional Suspension served by the PR to date results in a longer period than the final period of Ineligibility imposed on him.

7.13 The Preliminary Hearing Panel does not find that exceptional circumstances exist that warranted the lifting of the Provisional Suspension at this point in time in the proceedings. The Preliminary Hearing Panel has taken note of the PR’s argument that his age at the time of the Event, i.e., him being 19 years old, and had he been five (5) months younger, the provisions for Minors provided for in the EADCMRs would have applied, had to be regarded as exceptional circumstances. The Preliminary Hearing Panel however does not agree that this is an exceptional circumstance, and finds that any (potential) age consideration, and proportionality of the sanction considerations are to be taken into account at the time of the final determination of the case and upon decision of the final sanction (if any).

7.14 As a result, the Preliminary Hearing Panel finds therefore that, so far, none of the requirements of Article 7.4.4 of the EAD Rules for the lifting of the Provisional Suspension have been met.”

4. Further proceedings

4.1 On 8 January 2019, the FEI Tribunal Chair nominated a panel for the case at hand, and on 12 January 2019, the PR accepted the constitution of the panel, whereas the FEI did not bring any objections within the deadline provided.

4.2 On the same day, the Tribunal proposed to hold a joint final hearing for the present case, as well as for the case concerning the Trainer, which has been charged by the FEI for the same rule violations (in conjunction with two additional rule violations).

4.3 On 28 January 2019, the FEI informed the Tribunal that the final hearing was cancelled in agreement with the Parties, as the Parties were close to reaching an Agreement for both cases, the case at hand, and in the case of the Trainer.

4.4 On 17 May 2019, the panel requested the Parties to keep the panel up to date on the proceedings in the merits of the case(s) to be decided by the FEI Tribunal. None of the Parties responded to the Tribunal’s request.

4.5 On 9 October 2019, the FEI informed the Tribunal that the Parties had
reached an agreement in the context of the case 2017/BS33 8 MINUTE, and submitted the Agreement to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EAD Rules.

5. Agreement between Parties

5.1 On 30 September 2019, the Parties reached the following Agreement:

*** Quote ***

2.1 Mr Al Jahouri

(a) admits a violation of Article 2.1 of the EADR;
(b) waives his right to a final hearing;
(c) agrees to pay a fine of CHF 7,500; and
(d) agrees to pay the cost of the B sample analysis.

2.2 The FEI agrees that:

(a) the period of ineligibility imposed on Mr Al Jahouri shall be of 2 years duration;
(b) in accordance with Article 10.10.2 of the EADR (“Delays Not Attributable to the Person Responsible and/or member of the Support Personnel”)¹ the period of Ineligibility shall be deemed to have commenced on 23 September 2017; and
(c) all the results of the PR from sample collection (23 September 2017) until the date of the provisional suspension (28 November 2017) shall be disqualified.

2.3 Mr Al Jahouri’s period of ineligibility shall, therefore, terminate on 22 September 2019.

2.4 The parties agree that each party will bear its own legal and other costs incurred in connection with these proceedings.

¹ Article 10.10.2 of the EADR provides as follows:

10.10.2 Delays Not Attributable to the Person Responsible or member of the Support Personnel

Where there have been substantial delays in the hearing process or other aspects of the Doping Control not attributable to the Person Responsible and/or member of the Support Personnel alleged to have committed the EAD Rule violation, the Hearing Panel may start the period of Ineligibility at an earlier date commencing as early as the date of Sample collection or the date on which another EAD Rule violation last occurred. All competitive results achieved during the period of Ineligibility including retroactive Ineligibility shall be Disqualified.
2.5 The terms set out in this Agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings. Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

2.6 Notwithstanding the foregoing, the FEI may refer to and take account of the sanction imposed pursuant to this Agreement for the purpose of Article 10.8 (Multiple Violations) of the FEI Equine Anti-Doping Rules in relation to any future violation by the PR of the EADCM Regulations within 10 years of the date of this Agreement.

2.7 This Agreement is made in accordance with Article 7.6.1 of the EADR and is subject to the approval of the FEI Tribunal. The parties hereby request that the FEI Tribunal issues a Decision incorporating the terms of this Agreement. The parties acknowledge and agree, pursuant to Article 13.3 of the EADR, that the Decision will be made public by the FEI.

2.8 The Decision will be communicated to the legal persons with a right of appeal in accordance with Article 12.2 of the EADR. Each of the parties to this agreement hereby waives its/his rights to appeal against or otherwise challenge this Decision in any forum.

***End Quote***

6. Jurisdiction

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

6.2 As a member of the UAE National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.

6.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.

6.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

7. Approval of Agreement

7.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal accepts it as a
reasonable means of settling this proceeding; in the particular circumstances of this case, and not as a precedent for any future cases, the Agreement is approved.

7.2 However, the Tribunal draws the parties’ attention to the history of this proceeding, as outlined throughout this Decision. This unseemly period of over two years in what should have been a routine case, even given the initial scientific dispute, is to be deprecated. The Tribunal invites the parties and their advisers to take notice accordingly.

7.3 In addition, the Tribunal also notes that the Parties agreed for the period of Ineligibility to start from the day of sample collection for reasons of Delays Not Attributable to the PR. The Tribunal has however not been provided with any further explanations in this respect, and does not know why the two months’ period has been allowed.

7.4 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2017/BS33 8 MINUTE.

8. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Khalifa Ali Khalfan Al Jahouri, concerning the case 2017/BS33 8 MINUTE is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 5 above are incorporated into this Decision.

2) This Decision is subject to appeal in accordance with Article 12.2 of the EAD Rules. The Parties however agreed to waive their right to appeal, as set out in Article 5 above.

3) This Decision shall be published in accordance with Article 13.3 of the EAD Rules.
IV. DECISION TO BE FORWARDED TO:

a. The Person Responsible: Yes
b. The President of the NF of the Person Responsible: Yes
c. The Organising Committee of the Event through his NF: Yes
d. Any other: No

FOR THE PANEL

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Mr. Chris Hodson QC, FEI Tribunal panel chair