

DECISION of the FEI TRIBUNAL

dated 25 October 2019

Positive Anti-Doping Cases No.: 2017/BS26

Horse: DALTON DES HAYETTES

FEI Passport No: 104TD71/BEL

Person Responsible/NF/ID: Pascal Van Laethem/10044685/BEL

Event/ID: CSI2* – Deauville (FRA)/2017_CI_1421_S_S_02

Date: 15 – 18 June 2017

Prohibited Substance: O-Desmethyiltramadol

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

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 Equine Anti-Doping Rules ("**EAD 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. Pascal Van Laethem, represented by Mr. Christian Franck and Mr. Vincent Cassiers, lawyers in Brussels, Belgium.

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. Pascal Van Laethem, is a jumping rider for Belgium.
- 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 The PR competed with the horse DALTON DES HAYETTES (the "**Horse**") at the CSI2* in Deauville, France, from 15 to 18 June 2017 (the "**Event**").
- 2.2 During the Event in-competition samples were collected from the Horse. Subsequent analysis of the samples revealed the presence of O-Desmethyiltramadol.
- 2.3 On 7 August 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.

3. Preliminary Decisions

- 3.1 On 13 September 2017, the Tribunal issued a Preliminary Decision not to grant the PR's request to conduct proceedings in French.
- 3.2 On 16 November 2017, the Tribunal issued a Preliminary Decision not to lift the Provisional Suspension of the PR and to maintain it.
- 3.3 On 17 August 2018, the Tribunal issued another Preliminary Decision, and decided to lift the Provisional Suspension of the PR for reasons outlined in the case summary of this Decision.

4. Further proceedings

- 4.1 On 21 October 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2017/BS26 DALTON DES HAYETTES, 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.

- 4.2 On the same day the FEI Tribunal Chair nominated a panel for the case at hand. Both Parties confirmed that they agreed with the constitution of the panel.

5. Agreement between Parties

- 5.1 On 21 October 2019, the Parties reached the following Agreement:

*** Quote***

- 5.1 All capitalised terms used in this Agreement but not defined herein shall have the meaning ascribed to such term in the the FEI Equine Anti-Doping Rules ("EAD Rules")
- 5.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from, Mr. Pascal Van Laethem's horse DALTON DES HAYETTES (the "Horse") at the CSI2* in Deauville (FRA), from 15-18 June 2017 (the "Event"). Mr. Pascal Van Laethem (the "PR") and the Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties") agree, in accordance with Article 7.6.1 (*Agreement between Parties*) of the EAD Rules, on the following:
- 1) The **Presence of the Banned Substance(s) in the Horse's sample** constitutes a violation of Article 2.1 of the EAD Rules.
 - 2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.5.2 of the EAD Rules (*Reduction of the Period of Ineligibility based on No Significant Fault or Negligence*) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be reduced to one (1) year.
The PR already served a Provisional Suspension from 7 August 2017 until 17 August 2018, which should be credited in the final ineligibility period, hence there is no further suspension to be served by the PR.
 - 3) **Provisional Suspension of the Horse:**
The PR has not contested the Provisional Suspension imposed on the Horse and therefore accepts that it remained in place until 6 October 2017.

- 4) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horse at the Event are disqualified, including forfeiture of medals, points and prizes.
- 5) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Mr. Pascal Van Laethem, including the horse DALTON DES HAYETTES.
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.
- 6) **Fine and Legal Costs:**
(a) The PR shall contribute with a fine of 3 000 CHF and the legal costs of 500 CHF.
(b) No further Sanctions than those mentioned in this agreement should apply to the PR in relation to the above mentioned cases.
(c) Each of the Parties shall bear their own legal costs.
- 7) **Right of Appeal:**
This Agreement will constitute the decision for this case. Consequently it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.
- 8) **Public Disclosure:**
This agreement is subject to approval of the FEI Tribunal, who will issue a final decision in the case. All final decisions of the FEI Tribunal are published on the FEI website.

End Quote

- 5.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:

"3. CASE SUMMARY

- 3.1 The PR took part with his horse DALTON DES HAYETTES (the "Horse") at the CSI2* in Deauville (FRA), from 15-18 June 2017 (the "Event"). As a member of the Royal Belgian Equestrian Federation (the "BEL NF"), the latter being a member of the FEI, the PR was bound by the EAD Rules.

- 3.2 The Horse was selected for testing on 16 June 2017. The resulting samples were transported to the FEI approved the LGC Newmarket Road Laboratory ("LGC") in Fordham, Cambridgeshire, UK, for analysis.
- 3.3 By notification letter dated 7 August 2017 the FEI informed Mr. Pascal Van Laethem, in his capacity as the Person Responsible, and the BEL NF of an alleged violation by Mr. Pascal Van Laethem of Article 2.1 (*The Presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules, a Provisional Suspension had been imposed on him following (i) the positive finding of the Banned Substance O-Desmethylnaltradol in the A Sample of the Horse.
- 3.4 O-Desmethylnaltradol is an opioid analgesic used in humans for the control of moderate to severe pain and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. A positive finding for O-Desmethylnaltradol in a Horse's Sample constitutes a *prima facie* Equine Anti-Doping Rule violation.
- 3.5 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 6 October 2017, had been imposed on the Horse.
- 3.6 In the Notification Letter of 7 August 2017, the PR was informed that he had the right to request that the Horse's B Sample be analysed. The PR did not request for the B Sample analysis. According to Art. 7.1.4 (c) of the EADCM Regulations the right to promptly request the B sample analysis has been given and by failing such request the B sample analysis is deemed waived.
- 3.7 In a Preliminary Decision of 13 September 2017, the FEI Tribunal Chair dismissed the PR's request to conduct the proceedings in French. (Annex 1)
- 3.8 On 16 November 2017, the FEI Tribunal rendered a second Preliminary Decision in order to maintain the Provisional Suspension of the PR, since none of the requirements in Article 7.4.4 EAD Rules were applicable. (Annex 2)
- 3.9 On 17 August 2018, the FEI Tribunal rendered a third Preliminary Decision where the Provisional Suspension of the PR, was lifted due to the following: (Annex 3)

"The Preliminary Hearing Panel takes note of the PR's explanation of how the Banned Substance had entered the Horse's system, namely through the PR's sweat from his hand, as he had given sugars to the Horse before and after the Competition, and since he had been taking Tramadol. Furthermore, the Preliminary Hearing Panel takes note that the FEI accepts the PR's explanations as being scientifically plausible. The Preliminary Hearing Panel finds that it is possible that these explanations might be the cause of the positive finding, also taking into account the experts' statements in this regard. As a result, and depending on the further evidence and explanations provided throughout the proceedings, the Preliminary Hearing Panel can therefore not exclude that the period of Ineligibility otherwise imposed, might be reduced. Given that the PR has been provisionally suspended for 1 year, the Preliminary Hearing Panel finds that the lifting of the Provisional Suspension pending a Final Decision of the FEI Tribunal is warranted at this point in time in the proceedings."

3.10 The PR submitted several different submissions on 20 September 2017 and on 16 August 2018, which are summarised below:

- The PR initially believed that he had dropped Tramadol in the box of the Horse, and that the Horse somehow was contaminated by either chewing the pill or contaminating the hay/straw close to such pill. (Annex 4)
- The PR has been prescribed Tramadol over an extended period of time, at a high dosage. (Annex 5a-d)
- The PR performed testing of his urine and his sweat after ingestion of Tramadol at his daily dosage and the conclusion was that Tramadol was present in high percentage in both urine and sweat. (Annex 6)
- Full explanations of this situation was submitted and also with scientific articles to support the sweat theory. (Annex 7)

3.11 Further, the FEI submitted an expert opinion of Professor Stuart Paine, who explained that the explanations provided were scientifically plausible. (Annex 8)

3.12 Based on the submissions, the FEI finds that in accordance with the analysis of the PR's sweat by Professor Pierre Wallemacq, and the opinion of the expert Professor Stuart Paine, contamination through the sweat of the PR to the Horse is the most likely source

of the substance O-Desmethyltramadol.

4. FULL REASONING FOR THE AGREEMENT

- 4.1 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6, two years. A fine of up to CHF15,000 shall also be imposed and appropriate legal costs.
- 4.2 Article 10.4 of the EAD Rules states *"If the Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he/she bears No Fault or Negligence for the EAD Rule violation, the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) shall be eliminated in regard to such Person. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Banned Substance entered the Horse's system in order to have the period of Ineligibility and other Sanctions eliminated. In the event this Article is applied and the period of Ineligibility otherwise applicable is eliminated, the EAD Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for multiple violations under Article 10.6 below."* Article 10.4 of the EAD Rules also states that it *"only applies in exceptional circumstances"*.
- 4.3 No Fault or Negligence is defined as follows: *"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 the Horse's system."*
- 4.4 Based on the evidence and documentation supplied by the PR (as described in Section 3 above), and the scientific information in the case, the FEI has evaluated whether or not Article 10.4 was applicable.

- 4.5 The FEI has considered if the PR has established by a balance of probabilities, a plausible explanation of how the Banned Substance had entered the Horse's system. In this regard, the FEI finds that there is a plausible explanation as to how the Banned Substance entered the Horse's system based on the information that the PR has used Contramal (Tramadol) over an extended period of time. The analysis of the PR's urine and sweat showed high presence of Tramadol. Hence some kind of contamination of the horse through sweat is likely. The FEI is therefore satisfied that the sweat contamination, is the most likely and plausible explanation for how the Prohibited Substance entered the Horse's system. The FEI is thus satisfied that the requirement of establishing, by a balance of probabilities, how the Prohibited Substance entered the Horse's system, has been fulfilled.
- 4.6 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The PR has been on Tramadol treatment for pain relief for an extended period of time. The PR also takes a high daily dosage of Tramadol, namely the intake per day was 400mg. A PR who is taking a medication that is a Banned Substance, needs to pay extra precaution and have steps in place to avoid any kind of contamination. The PR explained in his first statement that he normally carried some Contramal pills in his pocket also in the stables, and that perhaps one of those could have fallen out. His wife also explained that she had found a chewed plate of Contramal in the Horse's box. The FEI is of the opinion that only carrying around a Banned Substance in the pocket in the stables is a very high risk. The PR could easily have kept his pills at home and gone back there in case need be. This behaviour must be seen as very negligent. The FEI is of the opinion that to just risk that such a pill could fall out in the stables is not to act with utmost caution and Article 10.4 can therefore not be applicable in the case at hand.
- 4.7 Article 10.5.2 of the EAD Rules states: *"If a Person Responsible and/or member of the Support Personnel (where applicable) establishes in an individual case that he bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility and other Sanctions (apart from Article 9) may be reduced in regard to such Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable. When a Banned Substance and/or its Metabolites or Markers is detected in a Horse's Sample in violation of Article 2.1 (presence of a Banned Substance or its Metabolites or Markers), the Person alleged to have committed the EAD Rule violation must*

also establish how the Banned Substance or its Metabolites or Markers entered the Horse's system in order to have the period of Ineligibility reduced."

- 4.8 No Significant Fault or Negligence is defined as follows: *"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 the Horse's system."*
- 4.9 The FEI has further evaluated the plausible explanation where the source was from sweat of the PR touching the Horse. A PR who is taking medication that is a Banned Substance for horses, needs to pay extra precaution when handling his horses in order to avoid any contamination.
- 4.10 The FEI understands that the PR perhaps could not have suspected that the Tramadol could transfer to the Horse through his sweat, despite the fact that this has been reported in equestrian media. On the other hand, he was himself medicated with a Banned Substance for horses, and should have paid extreme caution and have had procedures in place in order to prevent any positive findings through contamination in his horses. To the FEI's knowledge the PR had no such procedures in place. Considering the combination of these facts, the FEI is satisfied that the PR has demonstrated that he bears No Significant Fault or Negligence for the anti-doping rule violation.
- 4.11 The FEI is satisfied that the criteria for the application of Article 10.5.2 of the EAD Rules had been met in that (i) the PR has established how the Banned Substances came to enter the Horse's system, (ii) the PR has demonstrated that he bore No Significant Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be reduced by one half, hence the ineligibility period imposed on the PR should be one (1) year. The PR already served a Provisional Suspension from 7 August 2017 until 17 August 2018, which should be credited in the final ineligibility period, hence there is no further suspension to be served by the PR.

- 4.12 In addition, the Disqualification of the Horse's results at the Event in accordance with Article 9, 10.1.4 and 11 of the EAD Rules should apply.
- 4.13 Article 10.2 of the EAD Rules provides that a Person Responsible for an Articles 2.1 violation should also be fined up to CHF 15,000 '*unless fairness dictates otherwise*' and should be ordered to pay '*appropriate legal costs*'. The FEI respectfully submits that fairness does not dictate that no fine be levied in this case, and duly requests that a fine of 3 000 CHF be imposed on the PR, and that the PR be ordered to pay the legal costs of 1 000 CHF that the FEI has incurred in pursuing this matter, in accordance with *the FEI Guidelines For Fines and Contributions Towards Legal Costs*¹."

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 Belgian 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 has – among others – taken note, that the FEI, and its scientific expert, accepted that the explanations provided by the PR with regard to the source of the positive finding are plausible, and the FEI accepted that the PR has established – on a balance of probability, as required under the rules - how the Prohibited Substance entered the Horse's system.
- 7.2 Furthermore, the Tribunal notes that the FEI accepts that the PR has demonstrated that he bore No Significant Fault or Negligence for the rule violation.
- 7.3 Following from Articles 10.5.2 of the EAD Rules, where a PR establishes that he bears No Significant Fault or Negligence, then the otherwise

¹ https://inside.fei.org/sites/default/files/FEI_Guidelines_Legal_Costs.pdf

applicable period of Ineligibility may be reduced in regard to such Person, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable, *i.e.*, not less than 1 year.

- 7.4 However, the Tribunal wishes to clarify that it did not evaluate the degree of fault of the PR, nor did it take into account previous case law.
- 7.5 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/BS26 DALTON DES HAYETTES.

8. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Pascal Van Laethem, concerning the case 2017/BS26 DALTON DES HAYETTES 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. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 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

A handwritten signature in black ink, appearing to read 'Henrik Arle', is centered on a light blue rectangular background.

Mr. Henrik Arle, one member panel