

DECISION of the FEI TRIBUNAL
dated 13 February 2020

Banned Substance Case No.: 2017/BS31

Horse: HSM CORNELIO **FEI Passport No:** 104GP38/COL

Person Responsible/NF/ID: Pablo Carreño Mora/COL/10072192

Event/ID: CEI1* 80 – Ubate (COL)/2017_CI_1474_E_S_03_01

Date: 19 – 20 August 2017

Prohibited Substance(s): Ractopamine

I. COMPOSITION OF PANEL

Mr. Mohammed Al Saberi, 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 ("IRs"), and 3rd edition, 2 March 2018 ("IRs").

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

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. Pablo Carreño Mora.

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. Pablo Carreño Mora, is an endurance rider for Colombia.

- 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 HSM CORNELIO (the "**Horse**") at the CEI1*80 in Ubate, Colombia, from 19 to 20 August 2017 (the "**Event**").
- 2.2 During the Event in-competition samples (urine and blood) were collected from the Horse. Subsequent analysis of the sample revealed the presence of Ractopamine in the urine sample. The PR requested for the B-Sample confirmatory analysis, which confirmed the findings of the A-Sample. The results of the B-Sample analysis were notified by the FEI to the PR on 8 December 2017.
- 2.3 On 7 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. In addition, the Horse was also provisionally suspended for two (2) months, i.e., until 6 January 2018.

3. Further proceedings

- 3.1 On 30 November 2017, the Preliminary Hearing Panel issued a Preliminary Decision in which it decided (i) to lift the Provisional Suspension of the PR as of 30 November 2017, midnight Swiss time; and (ii) to maintain the Provisional Suspension of the Horse until 6 January 2018.
- 3.2 On 31 January 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2017/BS31 HSM CORNELIO 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.
- 3.3 On 3 February 2020, the FEI Tribunal Chair nominated a panel for the case at hand. The PR's father on the PR's behalf expressly confirmed that the PR accepted the constitution of the panel, and the FEI did not object to the constitution of the panel.

4. Agreement between Parties

4.1 On 31 January 2020 the Parties reached the following Agreement:

*** Quote***

3 NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:

3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from Mr Pablo Carreño Mora's horse HSM CORNELIO (the "Horse") at the CEI1* 80 - Ubate (COL), from 19-20 August 2017 (the "Event"), Mr Pablo Carreño Mora (the "PR") and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

- (a) The PR admits the violation of Article 2.1 of the EAD Rules (*The presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample*); and
- (b) The PR established on a balance of probabilities how the Ractopamine entered the Horse's system; and
- (c) The PR bears no fault or negligence for the Rule Violation and therefore he shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) shall be eliminated; and
- (d) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall not be considered a prior violation for the purpose of Article 8 (Multiple Violations) of the EAD Rules.
- (e) In accordance with EAD Rules Articles 9.1 and 10.1.2 the results achieved by the Mr Pablo Carreño Mora and HSM CORNELIO at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (f) The PR shall not incur any fines;
- (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the EAD Rules) will apply in this case.

3.2 The PR acknowledges that the Provisional Suspension imposed on the Horse and therefore accepts that this remained in place until 6 January 2018.

- 3.3 Each party will bear its own legal and other costs incurred in connection with these proceedings.
- 3.4 This agreement is made in accordance with Article 7.6.1 of the EAD Rules and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 12.2 of the EAD Rules.
- 3.5 The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, the Decision will be made public by the FEI. 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.

End Quote

- 4.2 Furthermore, the Parties provided the following Case Summary and Full Reasoning for the case at hand:
 - 2.1 "Mr Pablo Carreño Mora, the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is an endurance rider from Colombia.
 - 2.2 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 Dressage and Para Driving).
 - 2.3 The PR took part with his horse HSM CORNELIO (the "Horse") at the CEI1* 80 - Ubate (COL), from 19-20 August 2017 (the "Event"). As a member of the Colombian Equestrian Federation (the "COL NF"), the latter being a member of the FEI, the PR was bound by the EAD Rules.
 - 2.4 The Horse was selected for testing on 20 August 2017. The resulting samples were transported to the FEI approved the U.S. Equestrian Federation Equine Drug Testing and Research Laboratory ("USEF") in Lexington KY, USA for analysis.
 - 2.5 Analysis of the urine sample revealed the presence of Ractopamine a beta adrenoceptor agonist used to promote growth and leanness in certain food-producing animals and is classified as is a Banned Substance under the 2017 FEI Equine Prohibited Substances List. Ractopamine is a feed additive, which is legal for certain animal consumption in Colombia, but illegal in most parts of the world.

- 2.6 By notification letter dated 7 November 2017, the FEI informed Mr Pablo Carreño Mora in his capacity as the Person Responsible, and the COL NF of an alleged violation by Mr Pablo Carreño Mora, 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 the positive finding of the Banned Substance in the A Sample of the Horse. (Exhibit 1-2)
- 2.7 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 6 January 2018, had been imposed on the Horse.
- 2.8 In the notification letter, the PR was informed of his right to request the Horse's B Sample to be analysed. The PR requested for the B-Sample to be analysed. The B sample confirmed the finding of the A sample, namely the presence of Ractopamine. (Exhibit 3)
- 2.9 On 9 November 2017, the PR requested the lifting of the Provisional Suspension of the PR and Horse with immediate effect. He requested the lifting of the Provisional Suspensions based on that Ractopamine found in the Horse allegedly came from the feed produced by SOLA. (Exhibit 4)
- 2.10 A Preliminary Hearing took place The Panel agreed to the lifting of the Provisional Suspension of the PR, but maintained the Provisional Suspension of the Horse, in a Preliminary Decision on 30 November 2017. (Exhibit 5)
- 2.11 The PR provided several documents (Exhibit 4a-g) to explain his case.
- 2.12 The PR provided statements from the producer of the feed, which confirms that the company indeed uses Ractopamine, though only as an ingredient in the feed for pigs. (Exhibit 4c)
- 2.13 The PR also provided receipts from the purchase of the feed from the retailer for the period of the violation. (Exhibit 4d)
- 2.14 He also provided a certificate from the Colombian Agriculture Institute, which confirms that Ractopamine is licensed for use in certain feed products for pigs, such as SOLLA and ITACOL. (Exhibit 4e)
- 2.15 In addition, one of the producers of his feed confirmed that they now have improved their procedures to avoid contamination with Ractopamine at the feed plant in the production chain. (Exhibit 4g)
- 2.16 The PR explains the following: (Exhibit 4a & 6)

- They have a family farm where both father, son and daughter is involved in the horses.
- That the horses are always outside and that they do not have stables, and they are feed with the feed three times a day and looked after carefully.
- He further explains that they have procedures to avoid positive test such as only letting his veterinarian administer any kind of treatment to his horses and only buy feed from reputable sources.
- As a part of their welfare routine, the veterinarian comes once a week to check on the horses.
- The veterinarian has vast knowledge of prohibited substances and check all feed, medications and supplements before use.
- The daughter in the family is in charge of the designing the different training programs for each horse and rider according to what we want to achieve. She recently finished the Endurance FEI Coaching Course Level 1.
- The son and the father competes the horses after having participated in the training program.
- They have one employed groom of the farm, he lives in the farm and takes care of the feeding, cleaning and the daily labours of the farm. He has worked with the PR for more than eight years. He is also one of the grooms when they attend a competitions.

2.17 The PR provided a statement from his treating veterinarian confirming that she is the treating veterinarian for the Horse and that she has never administered any prohibited substance to the Horse. (Exhibit 4b)

2.18 The PR has had no reason to suspect that the feed that he had bought from a reputable source and used for several years could be contaminated with Ractopamine in the production chain.

2.19 The PR therefore bears no fault or negligence for the EAD rule violation.

2.20 This case was one of the first Ractopamine cases from South America. After the notification of this case, it has come to the FEI's knowledge

that several other cases in Colombia have the same source of Ractopamine, namely the feed produced by SOLA.¹

2.21 The FEI is therefore satisfied that the PR established:

- (a) on a balance of probabilities, a plausible explanation of how the Ractopamine entered the Horse's system, which most likely was from contamination of the feed, which occurred at a feed manufacturing plant of the producer in Colombia;
- (b) that the PR did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that the feed contained a Banned Substance;
- (c) in consequence the FEI is satisfied that the PR established that he bore no Fault or Negligence for the Rule Violation.

2.22 Article 7.6.1 of the EAD Rules permits an agreement between the parties, subject to FEI Tribunal approval."

5. Jurisdiction

- 5.1 The Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs, as well as Article 18 of the IRs.
- 5.2 As a member of the Colombian National Federation, the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 5.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 5.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

6. Approval of Agreement

- 6.1 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 accepts – on a balance of probability - that the source of the Ractopamine was contamination at the feed manufacturing plant in Colombia which confirmed using Ractopamine for producing pig feed, but not for horse feed. The Tribunal however also notes that the feed

¹ <https://inside.fei.org/system/files/Case%20Status%20Table%20Horses%20-%2027%2001%2020.pdf>

fed to the Horse shortly prior and/or during the Event has not been tested, and that the same feed seems to have been fed to the Horse and other horses for some time, seemingly without any incidents.

- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 6.3 Following from Article 10.4 of the EAD Rules, where a PR establishes that he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be eliminated.
- 6.4 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.
- 6.5 Moreover, one of the FEI's aims is to protect the safety, health and welfare of horses. The Tribunal acknowledges the procedures and investigations conducted by the FEI and the PR regarding the rule violation, and takes note of the degree of fault by the PR. The FEI as the prosecutor in the case agreed to and the PR accepted the clauses included in this Agreement. The Agreement that both parties accepted is in line with the FEI Rules and Regulations and corresponds to the reasons mentioned above.
- 6.6 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/BS31 HSM CORNELIO.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Pablo Carreño Mora, concerning the case 2017/BS31 HSM CORNELIO is hereby ratified by the Tribunal with the consent of the Parties and its terms set out in Article 4 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



Mr. Mohammed Al Saberi, one member panel