



DECISION of the FEI TRIBUNAL

dated 28 February 2019

Positive Anti-Doping Case No.: 2018/BS22

Horse: BARDOLINA 2 **FEI Passport No:** 104TU30/USA

Person Responsible/NF/ID: Mario DESLAURIERS/CAN/10002174

Event/ID: CSIO5* - NC Final – Barcelona (ESP)/2018_NCF_0001_S_S_01

Date: 5 – 7 October 2018

Prohibited Substance: O-Desmethylvenlafaxine

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 2018, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2018.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2018.

Veterinary Regulations ("**VRs**"), 14th edition 2018, effective 1 January



2018, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible:

Mr. Mario Deslauriers, represented by Mr. Peter F.C. Howard of Strikeman Elliott LLP, Toronto, Canada, and Ms. Lisa Lazarus, Morgan Sports Law, London, United Kingdom.

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.”

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, the Athlete must also establish how the Prohibited Substance entered his or her system.”

III. DECISION

1. Parties

- 1.1 The Person Responsible (“**PR**”), Mr. Mario Deslauriers, is a jumping rider for Canada.
- 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. Preliminary Decision

- 2.1 On 6 December 2018, the Preliminary Hearing Panel issued a Preliminary Decision and decided to lift the Provisional Suspension of the PR.
- 2.2 No lifting of the Provisional Suspension of the Horse has been requested, and the Horse served the two months Provisional Suspension imposed, *i.e.*, from 30 October 2018 to 29 December 2018.

3. Further proceedings

- 3.1 On 15 February 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2018/BS22 – BARDOLINA 2, and on 21 February 2019 the FEI submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) 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. Agreement between Parties

- 4.1 On 21 February 2019, the Parties reached the following Agreement:

*** Quote***

2 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:

2.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from , Mr Mario Deslauriers horse BARDOLINA (the "Horse") at the CSIO5* - NC Final in Barcelona, Spain, from 5 to 7 October 2018 (the "Event"), Mr Mario Deslauriers (the "PR") and the FEI agree in accordance with 7.6.1 EAD Rules on the following:

2.2 Mr Deslauriers:

- (a) admits the violation of Article 2.1 of the EAD Rules;
- (b) waives his right to a final hearing; and
- (c) cooperates with the FEI fully with respect to his case.

2.3 The FEI is satisfied that Mr Deslauriers has established:

- (a) how the O-Desmethylvenlafaxine entered the Horse's system; and
- (b) that he bore No Fault or Negligence for the rule violation, and
- (c) that the circumstances of the case are exceptional and that, the PR could not reasonably have known that his groom had urinated in the stables.

2.4 Given that, the FEI agrees that:

- (a) Mr Deslauriers bears no fault or negligence for the violation which was caused by human contamination, and therefore he shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated; and
- (b) In accordance with EAD Rules Articles 9.1 and 10.1.2,¹ the results

¹ EAD Rules 9.1 and 10.1.2 provide as follows:

9.1 *A violation of these EAD Rules in connection with a test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination obtained in that Competition with all resulting Consequences, including forfeiture of any related medals, points and prizes. [...] Even if a Sanction is reduced or eliminated under Article 10 below, such reduction or elimination shall under no circumstances reverse the automatic Disqualification of Individual Results mandated by this Article 9.*



achieved by Mr Deslauriers and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;

- (c) In addition, in accordance with EAD Rules and 11.1.2, the results of Mr Deslauriers and the Horse should be subtracted from the team results.
 - (d) That Mr. Deslauriers shall not incur any fines or costs.
 - (e) 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) should apply in this case.
- 2.5 Mr Deslauriers did not contest the Provisional Suspension imposed on the Horse and therefore accepts that this remained in place until 30 December 2018.
- 2.6 Each party will bear its own legal and other costs incurred in connection with these proceedings.
- 2.7 The parties hereby request that the FEI Tribunal issue a Decision incorporating the terms of this agreement. The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD Rules, that 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. 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.
- 2.8 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.
- 2.9 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.

End Quote

10.1.2 At Events other than those listed above: an EAD Rule violation occurring during or in connection with an Event may lead to Disqualification of 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, except as provided in Article 10.1.4.

4.2 Furthermore, the Parties submitted the following Case Summary and Reasoning:

“1 WHEREAS:

1.1 BARDOLINA 2 (the “**Horse**”), participated at the CSIO5* - NC Final in Barcelona, Spain, from 5 to 7 October 2018, in the discipline of Jumping (the “**Event**”). The Horse was ridden by Mr Mario Deslauriers (“**Mr Deslauriers**”) who is the Person Responsible in accordance with Article 118.3 of the FEI General Regulations.

1.2 Blood and urine samples were collected from the Horse at the Event. Analysis of the samples revealed the presence of the substance, O-Desmethylvenlafaxine. O-Desmethylvenlafaxine is a Banned Substance under the 2018 FEI Equine Prohibited Substances List.

1.3 On 30 October 2018, the FEI charged Mr Deslauriers with committing an anti-doping rule violation under Article 2.1 of the FEI Equine Anti-Doping Rules (the “EADRs”) (namely, presence of a Banned Substance in a Horse’s sample). Mr Deslauriers was provisionally suspended pending determination of the charge. On the same day, a Provisional Suspension of two months was also imposed on the Horse. (Exhibit 1-2)

1.4 On 30 November 2018, Mr Deslauriers provided his written submissions to the Preliminary Hearing Panel, where he explains the following: (Exhibit 3-4)

- His groom was prescribed by his personal doctor, the medication containing Venlafaxine at one tablet a day for the past five (5) years.
- The groom had been working for the PR for the last five (5) years and their horses had been tested numerous times in that period and always with clean results.
- The groom had not informed the PR that he was taking the medication.
- Due to the distance between the stables and the toilets at the Event, the groom urinated in the stables of the Horse, which was something that to his knowledge was a regular practice for most male grooms, riders and trainers.

1.5 In addition, the PR provided an expert statement which concludes that the dosage taken by the groom within a reasonable degree of scientific



certainty could lead to the positive finding at the concentrations found in the Horse. (Exhibit 5)

- 1.6 The FEI's expert also provided an opinion on the case at hand. (Exhibit 6)
- 1.7 The Preliminary Hearing Panel issued a decision on 6 December 2018, lifting the provisional suspension of the PR Mr Deslauriers in accordance with Article 7.4.4 (ii) EADR (the "**Decision**"). (Exhibit 7) The Decision records that the Preliminary Hearing Panel was satisfied that Mr Deslauriers established:
 - (a) a plausible explanation of how the O-Desmethylvenlafaxine entered the Horse's system, which was via human contamination caused by the groom urinating in the stables; and
 - (b) that the period of Ineligibility otherwise imposed might be either reduced or completely eliminated.
- 1.6 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 the Statutes, the GRs and the EAD Rules.
- 5.2 As a member of the Canadian 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 that the case concerned human contamination and that the PR bore No Fault or Negligence for the rule

violation.

- 6.2 Furthermore, Article 10.4 of the EAD Rules allows for the elimination of the period of Ineligibility where there is No Fault or Negligence on the part of the PR. As a result, the Tribunal has decided to approve the Agreement made between the Parties. 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.
- 6.3 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, of the Event accordingly. Further, this Decision shall terminate the present case 2018/BS22 BARDOLINA 2.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Mario Deslauriers, concerning the case 2018/BS22 BARDOLINA 2 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

A handwritten signature in black ink, appearing to read 'Henrik Arle', is centered on the page. The signature is fluid and cursive.

Mr. Henrik Arle, one member panel