DECISION of the FEI TRIBUNAL
dated 28 February 2019

Positive Anti-Doping Case No.: 2018/CM14

Horse: MORA INOCENTE  FEI Passport No: 103TG88/ARG

Person Responsible/NF/ID: Pablo DE LOS HEROS/ARG/10017972

Event/ID: WEG-E – Tryon NC (USA), 2018_WEG_0001_E_S_01_02

Date: 11 – 23 September 2018

Prohibited Substance: Dexamethasone

I. COMPOSITION OF PANEL

Mr. Cesar Torrente, 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.


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

FEI Equine Anti-Doping and Controlled Medication Regulations (“EADCMRs”), 2nd edition, changes 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. Pablo De Los Heros.

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's 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.”

ECM Rules Art. 7.6.1: “In cases where the Administrative Procedure, as set out in Article 8.3 below, is not available, at any time during the results management process the Person Responsible and/or member of the Support Personnel and/or Owner against whom an anti-doping 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 ECM Rules or (where some discretion as to Consequences exists under these ECM 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. Pablo De Los Heros, is an endurance rider for Argentina.

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. Further proceedings

2.1 On 22 February 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2018/CM14 MORA INOCENTE and 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 EADCMRs.

3. Agreement between Parties

3.1 On 21 February 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 and Controlled Medication Rules (“EADCM Rules”)

5.2 In the matter of the Adverse Analytical Finding related to the samples, which were collected from “), Mr. Pablo De Los Heros’ horse MORA INOCENTE (the “Horse”) at the FEI World Equestrian Games - WEG-E -
Tryon NC (USA) from 11-12 September 2018 (the “Event”), Mr. Pablo De Los Heros (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 ECM Rules, on the following:

1) The **Presence of the Controlled Medication Substance** in the Horse’s sample constitutes a violation of Article 2.1 of the ECM Rules.

2) **Ineligibility Period:**
The Parties agree that the prerequisites for Article 10.5 of the ECM 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 two (2) months, starting on the date of the FEI Tribunal’s approval of this agreement.

3) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.2 of the ECM Rules, all the results achieved by the PR with the Horse at the Event are disqualified, including forfeiture of medals, points and prizes.

4) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Mr. Pablo De Los Heros, including the horse MORA INOCENTE at the Event. 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.

5) **Fine and Legal Costs:**
   (a) The PRs shall contribute with a fine of 1 500 CHF, but no legal costs.
   (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.

6) **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 ECM Rules.

7) **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***

I - Case Summary (as provided to the Tribunal by the Parties as part of the Agreement)

“3.1 The PR took part with his horse MORA INOCENTE (the “Horse”) at the FEI World Equestrian Games - WEG-E - Tryon NC (USA) on 11-12 September 2018 (the “Event”). As a member of the Equestrian Federation of Argentina (the "ARG NF"), the latter being a member of the FEI, the PR was bound by the ECM Rules.

3.2 The Horse was selected for testing on 11 September 2018. The resulting samples were transported to the FEI approved LGC Newmarket Road Laboratory (“LGC”) in Cambridgeshire, UK for analysis.

3.3 By notification letter dated 22 October 2018 the FEI informed Mr. Pablo De Los Heros, in his capacity as the Person Responsible, and the ARG NF of an alleged violation by Mr. Pablo De Los Heros, of Article 2.1 (The Presence of a Controlled Medication Substance or its Metabolites or Markers in a Horse’s Sample) of the ECM Rules and that, in accordance with Article 7.4.1 of the ECM Rules, the PR was not provisionally suspended, since the presence of only one Controlled Medication Substance does not result in a mandatory provisional suspension. However, the Administrative Procedure is not available to any positives from WEG in accordance with Art 8.3.1 (c) of the ECM Rules and this case is therefore opened as a standard Controlled Medication case. (Exhibit 1-2)

3.4 Dexamethasone is a corticosteroid with anti-inflammatory effect and classified as Controlled Medication Substance under the Equine Prohibited Substances List. A positive finding for Dexamethasone constitutes a prima facie Equine Controlled Medication Rule violation.

3.5 Neither the PR nor the Owner of the Horse requested the B sample analysis to be carried out. 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.
3.6 The PR submitted his explanations promptly on 16 November 2018. (Exhibit 3-2)

3.7 In essence the PR submitted the following:

- On the morning of 9 September the Horse was found in the box with a swelling on the leg. Most likely caused by some trauma in the box.
- Almost immediately thereafter, around 8:15 the Horse was treated with 15 ml of Dexamethasone by the veterinarian.
- The treatment was carefully done in order for the substance to be out of the system at the time of the horse inspection planned to take place on 11 September 2018.
- The time frame was concluded in accordance with the FEI detection times.
- The treatment was done by the PR’s veterinarian Mr. Marcos Muriel.
- Since the treatment was done ahead of the Event and since the horse showed no more clinical signs, no veterinary forms were necessary.

3.8 The FEI is of the opinion that based on the submissions made and the evidence provided, the PR has established how the substances entered the body of the Horse.”

II – Full Reasoning for the Agreement (as provided to the Tribunal by the Parties as part of the Agreement)

"4.1 According to Article 10.2 of the ECM Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be six (6) months, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6. A fine of up to CHF15,000 shall also be imposed and appropriate legal costs.

4.2 Article 10.4 of the ECM 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 ECM 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 Controlled Medication Substance and/or its Metabolites or Markers is detected in a Horse’s Sample in violation of Article 2.1 (presence of a Controlled Medication Substance), the Person Responsible and/or member of the Support Personnel (where applicable) must also establish how the Controlled
Medication 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 ECM Rule violation shall not be considered a violation for the limited purpose of determining the period of Ineligibility for Multiple Violations under Article 10.8 below”.

4.3 Based on the evidence and documentation supplied by the PR (as described in Section 3 above), the FEI has evaluated whether or not Article 10.4 ECM was applicable. The FEI has considered if the PR has established how the Controlled Medication Substances had entered the Horse’s system. In this regard, the FEI finds that there is a plausible explanation as to how the Controlled Medication Substance entered the Horse’s system based on the information that the Veterinarian treated the Horse two days before the horse inspection before the Event. The FEI is thus satisfied that the requirement of establishing how the Prohibited Substances entered the Horse’s system has been fulfilled.

4.4 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is of the opinion that No Fault or Negligence does not apply in cases where the administration of a Controlled Medication Substance is done by the PR’s veterinary personnel or member of the Support Personnel close to the competition, since the PR is also responsible for any treatments given to his Horse by the veterinarian. In this case, in order to avoid any positive the PR could have informed the Veterinary Delegate about the treatment and in addition perhaps even been able to get a Veterinary Form for emergencies accepted by the veterinarians at the Event.

4.5 In addition, a detection time is not the same as a withdrawal time. The detection time is the approximate period of time for which a drug (or its metabolite) remains in a horse’s system, such that it can be detected by the laboratory and the FEI provide a list of some detection time only as a guide. The withdrawal time for a drug must be decided upon by the treating veterinarian and is likely to be based on the detection time and an added safety margin. This margin should be determined using professional judgment and discretion to allow for individual differences between horses such as size, metabolism, degree of fitness, recent illness or disease etc. to be taken into consideration. The safety margin in most cases should be at least multiplied with 2. The detection time recommended by the FEI for Dexamethasone is 48 h (2 days), for 10 mg Na-phosphate,
In this case the Horse was treated with 15 ml of Dexamethasone i.v. about 48 h before the horse inspection. There was no safety margin added to this detection time for the calculation of withdrawal time for this specific Horse. The FEI is not surprised the Horse tested positive after this treatment.

4.6 With this background the FEI is of the No Fault and Negligence cannot be applied in the case at hand. The FEI is however satisfied that the PR had demonstrated that he bore No Significant Fault or Negligence in accordance with Article 10.5 of the ECM Rules, based on the following: The PR is an experienced endurance rider with great competition record. He is supporter of clean sport and treated the Horse for welfare issues, due to minor swelling. He is well aware of the FEI detection times and was carefully following such detection times. He is also aware that detection times may vary from horse to horse and tried to have a prudent time frame to the start of the Event, namely the horse inspection. Due to the troubles at WEG such as the difficulties in the quarantine and the disorganisation at arrival, the PR did the best of the situation.

4.7 The FEI is satisfied that the criteria for the application of Article 10.5 of the ECM Rules had been met in that (i) the PR has established how the Prohibited Substances came to enter the Horse’s system, (ii) the PR has demonstrated that he bore No Significant Fault or Negligence and that, therefore, the otherwise applicable period of Ineligibility (i.e. six (6) months) should be reduced to two (2) months period of ineligibility for the PR, starting from the date of this agreement’s approval by the FEI Tribunal in a final decision.

4.8 In addition the Disqualification of the Horse’s results at the Event in accordance with Article 9, 10.1.4 and 11 of the ECM Rules should apply.

4.9 Article 10.2 of the ECM 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 1 500 CHF be imposed on the PR. This amount is in line with the FEI Guidelines for Fines and Contribution towards Legal Costs.¹ 1 500 CHF is also the minimum fine for the Administrative Procedure

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¹ https://inside.fei.org/system/files/FEI%20Detection%20Times%202018%20_0.pdf
(8.3 ECM Rules).”

4. Jurisdiction

4.1 The Tribunal has jurisdiction over this matter pursuant to the Statutes, the GRs and the EADCMRs.

4.2 As a member of the Argentinian National Federation, the latter being a member of the FEI, the PR was bound by the EADCMRs.

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

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

5. Approval of Agreement

5.1 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 No Significant Fault and Negligence on the part of the PR.

5.2 Furthermore, following from Article 10.5.2 of the ECM Rules, where a PR establishes 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.

5.3 Given that the Parties agreed on a period of Ineligibility which is within the sanction range foreseen in Articles 10.2 and 10.5.2 of the ECM Rules, 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.

5.4 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 as set forth in Article 3 above. Further, this Decision shall terminate the present case 2018/CM14 MORA INOCENTE.
6. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Pablo De Los Heros, concerning the case 2018/CM14 MORA INOCENTE is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above.

2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM 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 ECM 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. Cesar Torrente, one member panel