DECISION of the FEI TRIBUNAL
dated 25 September 2019

Positive Controlled Medication Case No.: 2018/FT26

Horse: DONNERSHALL FRB  FEI Passport No: 103DN68/CZE

Person Responsible/NF/ID: Jiri Ziegler/CZE/10118947

Event/ID: CAI3*-H1 – Kladruby nad Labem (CZE)/2018_CI_0567_A_H1_01

Date: 19 - 22 April 2018

Prohibited Substance: Morphine

I. COMPOSITION OF PANEL

   Mr. Laurent Niddam, 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, changes effective 1 January 2018.

   FEI Controlled Medication Rules ("ECM Rules"), changes 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. Jiri Ziegler.

3. **Justification for sanction:**

   **GRs Art. 143.1:** “Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRAHA), 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. Jiri Ziegler, is a driver for the Czech Republic.

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 17 September 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2018/FT26 DONNERSHALL FRB 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 17 September 2019, the Parties reached the following Agreement:

*** Quote***

2.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR’s horse DONNERSHALL FRB (the “Horse”) at the CAI3*-H1 - Kladruby nad Labem in Czech Republic, from 19 to 22 April 2018 (the “Event”), the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:

(a) The PR admits the violation of Article 2.1 of the ECM Rules (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse’s Sample); and

(b) The PR established on a balance of probabilities how the Morphine 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. six months) shall be eliminated; and
(d) In accordance with Article 10.8.3 of the ECM Rules, this violation of the ECM Rules shall not be considered a prior violation for the purpose of Article 10.8 (Multiple Violations) of the ECM Rules;

(e) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse 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 ECM Rules) will apply in this case.

2.2 Each party will bear its own legal and other costs incurred in connection with these proceedings.

2.3 This agreement is made in accordance with Article 7.6.1 of the ECM 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 ECM Rules.

2.4 The parties acknowledge and agree that, pursuant to Article 13.3 of the ECM 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***

I – Case Summary and Reasons (as provided to the Tribunal by the Parties as part of the Agreement)

"1.1 Mr. Jiri Ziegler (FEI ID 10118947), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a driver for Czech Republic.

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 Dressage and Para Driving).

1.3 The PR participated with the horse DONNERSHALL FRB (FEI ID: 103DN68) (the “Horse”) in CAI3*-H1 - Kladruby nad Labem in Czech
Republic, from 19 to 22 April 2018 (the “Event”). As a member of the Czech Equestrian Federation (the “Czech NF”), the latter being a member of the FEI, the PR was bound by the EADCM Regulations.

1.4 The Horse was selected for testing on 20 April 2018. Blood and urine samples were collected from the Horse and sent to the FEI approved LGC Newmarket Road Laboratory (“LGC”) in Cambridgeshire, UK for analysis.

1.5 Analysis of the urine sample revealed the presence of Morphine, an opioid with analgesic effects. Morphine was at the time of the Event and still is a Controlled Medication Substance under the FEI Equine Prohibited Substances List. Morphine remaining a Controlled Medication Substance is also designated as a “Specified Substance”.

1.6 The FEI has with effect from 1 January 2016, amended the FEI Equine Anti-Doping and Controlled Medication Rules (“EADCMRs”) to introduce the concept of “Specified Substances”. The introduction of the category of Specified Substances is to recognize that it is possible for certain substances to enter a Horse’s system inadvertently, due to a credible non-doping explanation, and therefore to allow the FEI and/or the FEI Tribunal more flexibility when prosecuting a case or when making a sanctioning decision.

1.7 By notification letter dated 6 June 2018, the FEI informed the PR, in his capacity as the Person Responsible, and the Czech NF of a violation of Article 2.1 (The Presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse’s Sample) of the FEI Equine Controlled Medication Rules (the “ECMRs”) based on the Laboratory’s adverse analytical finding of Morphine in the Horse’s Sample collected at the Event. (Exhibit 1)

1.8 The proceedings were initiated under the so-called Administrative Procedure (also known as “Fast Track”) due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to him.

1.9 The PR and the Owner were provided with the right to request a B Sample analysis of the positive sample. Neither the PR not the Owner requested the B-Sample Analysis to be performed.

1.10 On 4 September 2018 and 16 November 2018, the PR provided his written submission, where he explained the following: (Exhibit 3-4)
• The PR has after extensive investigation discovered that the substance in question most likely entered the Horse’s system through Relax Feed produced by the manufacturer Energys Feed;

• The PR submitted an official warning letter of 27th September 2018 issued by the manufacturer of the feed i.e. De Heus – Energys feed producer, wherein the manufacturer states that their quality control system has detected the undesirable presence of low levels of alkaloids (Morphine) in Base range of pelleted horse feed. Furthermore, the letter reads that it is most likely that one of the basic raw materials has been contaminated by poppy seeds or part of the poppy plant. The producer was checking all the ingredients, as well as their suppliers. The letter ends with a recommendation to not feed the Base range of feeds to sport horses which could possibly face a doping test, particularly a few days before a race until the feed is free from contamination;

• The Horse was fed with Relax Feed by Energys which is one of the products in the Base range of pelleted horse feed - where the presence of low levels of alkaloids (Morphine) was detected as per the letter of previous paragraph;

• The PR provided several invoices attesting to the purchase of the Relax Feed in the time period before the Event. The invoices were issued towards JK PTICE-CLENOVE former riding club of the PR. For discount purposes the PR uses his member card when purchasing equipment and feed for his horses;

• The PR contacted the manufacturer of the feed and requested the analysis of the batches of feed manufactured before the Event;

• The manufacturer at that time did no longer have samples of feed for the time period in question since according to the Czech law they are obligated to store their samples for four months; the PR’s request therefore could not be obliged;

• The PR emphasized the delay in receiving the FEI’s notification letter; should he received the notification letter of the Rule Violation sooner, the manufacturer might still have the samples and they could have been analysed;

• The PR has in addition provided a list of hard feed and supplements that the Horse has been ingesting;

• The PR has eliminated the possibility for the positive finding of Morphine to be originating from any of the Horse’s other feed or
supplements with the most feed i.e. barley and oat produced directly by the owner of the PR’s stable;

- The PR has had no reason to suspect that the feed provided by the De Heus – Energys feed producer could contain any Prohibited Substances;
- The PR therefore bears no fault or negligence for the ECM rule violation.

1.11 The FEI has on 17 December 2018 contacted on its own initiative De Heus – Energys feed producer in order to clarify which batches of feed were affected by the presence of alkaloids (Morphine). On 19 December 2018, the FEI received the following reply from the manufacturer’s commercial director Mr. Marek Kumprecht: "We found and proved the contamination during September 2018 in samples of feed produced in July and August 2018. After that we distributed a letter to all of our clients to warn them and protect them from potential doping cases. Following the first finding we deeply investigated the possible source of contamination. We found significant content of morphine in alfalfa meal from Czech producer which raw material was included in our horse feed. Based on it we excluded and replaced this component from our feed and since November we are sure that our feed is free of morphine. The oldest finding is from 28th June batch of alfalfa, as for April we cannot confirm nor negate by evidence any contamination. We store raw materials samples for four months and samples from April has been withdrawn time ago. Theoretically contamination in April 2018 is possible." (Exhibit 5)

- When asked by the FEI on the plausibility of the feed already been contaminated in April Mr. Kumprecht on 19 December 2018 added: "Before June 2018 we did not analyze our feed/ raw materials for morphine at all, i.e. we have no evidence from this period. Morphine is not on the list of undesirable substances valid for compound feed production. The issue of positive doping test appeared later on. Based on our investigation we figured out the source of contamination – alfalfa meal. Since we do not have operational control over processing this product on supplier level we cannot prove when and where raw material was contaminated. We have two theories – it might have been field contamination, where alfalfa crop had been contaminated by poppy seed, i.e. harvest May, June 2018 or the product have been contaminated by another crop/raw material in the warehouse of our supplier. It is also possible since we learned that this supplier processes some other stuffs during the winter season (straw for heating pellets). Unfortunatelly the case is quite old and we cannot prove or exclude presence of morphine in April batches of feed. Lets say probability 50:50%." (Exhibit 6)
1.12 Taking into account the totality of circumstances of the case in question, the undertaken effort of the PR in investigating the source of the Adverse Analytical Finding and objective inability of subsequent analysis of the feed, the FEI is of the opinion that the PR has on a balance of probabilities established that he bore no fault or negligence for the Rule Violation. In its contemplation the FEI took into close consideration the following facts: the manufacturer found significant content of Morphine in alfalfa provided by its supplier; the manufacturer was not able to “pinpoint” when and where the raw material was contaminated; the manufacturer had no checks in place before June 2018, namely, the manufacturer beforehand did not analyse its feed/raw materials for Morphine; therefore there is a possibility that the Morphine was present already in April batches of feed. The manufacturer’s commercial director himself estimated there is a 50% possibility that the April feed batches were contaminated with Morphine. Such estimation by the manufacturer alongside with the PR’s explanation is sufficient for the FEI to be of the opinion that the PR has established on a balance of probabilities:

(a) a plausible explanation of how the Morphine entered the Horse’s system, which was via the Relax Feed by Energys;

(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 was contaminated with a Controlled Medication Substance;

(c) in consequence the FEI is satisfied that the PR established that he bore No Fault or Negligence for the Rule Violation.

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

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 National Federation of the Czech Republic, 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 Fault and Negligence on the part of the PR.

5.2 Furthermore, following from Articles 10.5.1 and 10.4 of the ECM Rules, where a PR establishes that he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility and other sanctions (apart from Article 9) may be eliminated in regard to such Person.

5.3 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/FT26 DONNERSHALL FRB.

6. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Jiri Ziegler, concerning the case 2018/FT26 DONNERSHALL FRB 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. Laurent Niddam, one member panel