DECISION of the FEI TRIBUNAL

dated 25 October 2019

Positive Anti-Doping Cases No.: 2018/BS08

Horse: SOHAIR DES BRUYERE  FEI Passport No: 104VK62/QAT

Person Responsible/NF/ID: Elizaveta MININA/10140497/RUS

Trainer/NF/ID: Hassan Khamis Mohammed A AL SHAHWANI/10131286/QAT

Event/ID: CEI2* 120 – Doha, Mesaieed (QAT)/2018_CI_1613_E_S_02_01

Date: 20 January 2018

Prohibited Substance: Testosterone

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, 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 ("EADCMRs"), 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:** Ms. Elizaveta Minina.

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”), Ms. Elizaveta Minina, is an endurance rider for Russia.

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 SOHAIRE DE BRUYERE (the “Horse”) at the CEI2* 120 – Doha, Mesaieed, in Qatar on 20 January 2018 (the “Event”).

2.2 During the Event an in-competition sample was collected from the Horse. Subsequent analysis of the sample revealed the presence of Testosterone.

2.3 On 5 March 2018, 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 she was provisionally suspended, and provided with the opportunity to request for a Preliminary Hearing.

3. Preliminary Decision

3.1 On 22 March 2018, the Preliminary Hearing Panel issued a Preliminary Decision following a Preliminary Hearing which was requested by the PR. The Preliminary Hearing Panel decided not to lift the Provisional Suspension of the PR and to maintain it.

4. Further proceedings

4.1 On 22 October 2019, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2018/BS08 SOHAIR DES BRUYERE, 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. None of the parties objected to the constitution of the panel.
5. Agreement between Parties

5.1 On 22 October 2019, the Parties reached the following Agreement:

*** Quote***

In the matter of the Adverse Analytical Finding related to the samples, which were collected from Ms. Elizaveta Minina’s, horse SOHAIR DES BRUYERE (the “Horse”) at CEI2* 120 - Doha, Mesaieed (QAT) Event on 20 January 2018 (the “Event”), Ms. Elizaveta Minina (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 a Banned Substance 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 twenty (20) months, starting on the date of notification, namely 5 March 2018, until 4 November 2019.

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 4 May 2018.

4) Disqualification of Results:
In accordance with Articles 9 and 10.1.2 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, Ms. Elizaveta Minina, including the horse SOHAIR DES BRUYERE.
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 PR shall contribute with a fine of 3 000 CHF and the legal costs of 1 500 CHF.
(b) No further Sanctions than those mentioned in this agreement should apply to the PR in relation to the above mentioned cases.

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 EAD 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.

8) For avoidance of doubt, this violation of the EAD Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8.3 of the EAD Rules.

9) 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***

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

"1. CASE SUMMARY

1.1 The Person Responsible ("PR"), Ms. Elizaveta Minina, is an endurance rider for Russia.

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 Mr. Hassan Khamis Mohammed A AL Shahwani, FEI ID 10131286, is the registered Trainer for the Horse and counts as Support Personnel for the purpose of the positive finding in this case. Separate proceedings are opened against the Trainer."
1.4 The PR took part with her horse SOHAIR DES BRUYERE (the “Horse”) at CEI2* 120 - Doha, Mesaieed (QAT) Event on 20 January 2018 (the “Event”). As a member of the Russian Equestrian Federation, (the “RUS NF”), the latter being a member of the FEI, the PR was bound by the EAD Rules.

1.5 The Horse was selected for testing on 20 January 2018. The resulting samples were transported to the FEI approved LGC Laboratory, in Newmarket (UK) for analysis. The A sample showed the presence for Testosterone.

1.6 By notification letter dated 5 March 2018 the FEI informed Ms. Elizaveta Minina, in her capacity as the Person Responsible, and the RUS NF, of an alleged violation of Article 2.1 - The Presence of a Banned Substance in a Horse’s Sample, of the EAD Rules. In accordance with Article 7.4.1 of the EAD Rules, the FEI provisionally suspended the PR from all competition as of 5 March 2018. The Horse was also provisionally suspended from the same date for two (2) months, until 4 May 2018. (Exhibit 1)

1.7 The Trainer was provisionally suspended as of 23 April 2018. (Exhibit 2)

1.8 Testosterone is an anabolic steroid with anabolic effects and classified as a Banned Substance under the FEI Equine Prohibited Substances List. A positive finding for Testosterone constitutes a prima facie Equine Anti-Doping Rule violation.

1.9 On 15 March 2018, the Trainer admitted the violation and explained that he had used Testosterone injections on the Horse and other horses. (Exhibit 3-4)

1.10 On 22 March 2018, a preliminary hearing was held where the Trainer and PR explained the situation. The Tribunal decided to maintain the provisional suspension of the PR and the Horse. (Exhibit 6)

1.11 On 6 June 2018, the PR submitted her full explanations in the case, where she explains her procedures in place to avoid a positive test and contamination. (Exhibit 5)

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1 Applicable rules of this agreement are the 2018 version of the FEI Equine Anti-Doping and Controlled Medication Rules (“EADCM Rules”) and this agreement is made in accordance with Article 7.6.1 of these Rules. All capitalised terms used but not defined herein shall have the meaning ascribed to such terms in the EADCM Rules.
1.12 Among other things, the PR’s submission advised of the following:

- Before entering the Event she was riding the horse for almost 6 month in daily training.
- During all this time she was careful with anti-doping rules.
- Before entering the first race with the horse in November 17 she checked the medication book 1 month before the race, 3 weeks, 2 weeks, 1 week, and the day before with the vet.
- She further checked all the medication mentioned in the log book through the FEI app, and all the medication by the active ingredient only, because she knows that the trade mark sometimes is not appearing in the app.
- All the medication the horse was getting was permitted class of medication (vitamins, amino acids, normal saline, ringer lactate).
- The only controlled medication she found in the book was dexamethasone, but it was injected within enough withdrawal period.
- The Horse received the medication called "Regumate”, and she consulted the vet who explained that she had to present the vet form on the day of the veterinary inspection. She did so to a President of the vets at the Event who explained that according to the new rules, you do not have to present the form and it is allowed to use this medication.
- There were no banned substances mentioned in the medication book during the same time.
- The stable grooms were in charge of the medication book. They were also giving the medicine and supplements according to the trainers request only. When the horse was injected with Testosterone the Trainer requested not to put it in the medication book because he knew that the PR was checking the book regularly and would refuse to train and race the horse if there were any banned substances.
- She also spoke to the Trainer and grooms if there is anything else not mentioned in the book is given to the horse and received the negative answer.
- In addition, she was using only separate set of riding tack for the horse (including saddle pad, girth, bridle and boot - all what is touching the horse body)
- She also gave instructions to the grooms to use separate feed and water buckets for the Horse, and put it in the same paddock, which is not used for any other horses. The instructions were strictly followed.
- One more reason of why she agreed to ride the horse was that she had already done so with success, and the recent testing results in 2017 was negative for Sohair Des Bruyeres.
2. FULL REASONING FOR THE AGREEMENT

2A. How the substance entered the body of the Horse

2.1 The PR has established on a balance of probabilities how the substance Testosterone entered the body of the Horse, namely by injection on the order of the Trainer without her knowledge.

2.2 The Parties therefore agree that the PR has fulfilled the threshold of how the substance entered the Horse’s body.

2B. Fault and Negligence for the rule violation

2.3 According to Article 10.2 of the EAD Rules, the period of ineligibility imposed for the violation of Article 2.1 shall be two (2) years, subject to potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EADR. A fine of up to CHF15,000 shall also be imposed and appropriate legal costs.

2.4 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 10.8 below...

Otherwise Article 10.4 only applies in exceptional circumstances. No Fault or Negligence does not apply in the following circumstances:

(b) the Administration of a Banned Substance by the Person Responsible’s veterinary personnel or member of the Support Personnel without disclosure to the Person Responsible. Persons
Responsible are responsible for their choice of veterinary personnel and Support Personnel and for advising veterinary personnel and Support Personnel that Horses cannot be given any Banned Substance at any time.”

2.5 Based on the rule above the FEI concludes that Article 10.4 EAD Rules, no fault or negligence, cannot be applied in the case at hand.

2.6 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The PR has not demonstrated that she exercised utmost caution to avoid a positive test, but the FEI is however satisfied that the PR demonstrated that she bore No Significant Fault or Negligence when viewed in the totality of the circumstances in accordance with Art 10.5.2 EAD Rules.

2.7 The PR had procedures in place to avoid a positive sample and could not have expected that the Trainer would inject the Horse with Testosterone.

2.8 Despite the actions of the Trainer, the PR is still responsible for the Horse she is competing since it is the “personal duty” of the PR following from Article 2.1.1 of the EAD Rules, i.e. her personal duty to ensure that "no banned substance is present in the Horse’s body". The PR cannot rely on any other person to perform her duty of care and such duty of caution or due-diligence is non-delegable. For example it is therefore not possible for a PR to rely on or blame any other person, for the positive case.²

2.9 From an FEI perspective, this a very serious violation especially since Testosterone is an anabolic steroid not only prohibited at all times under the FEI rules, but also prohibited by law in many countries. This is something that each and every active in equestrian sport must know. For the Trainer to ignore this fact and to not look at the FEI Clean Sport App before administration of such substance is truly negligent. Therefore, separate proceedings are opened against the Trainer in this case.

2.10 The PR has advised the FEI that she has had enough time to study all the horses and athletes anti-doping rules and regulations. I took part in the seminar for anti-doping rules in October 2018 in Meydan, in Dubai. She red all the previous doping cases and

\[2\] CAS 2013/A/3318 Stroman v. FEI para 71.
CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI.
decisions posted on FEI Clean Sport website since 2005. She also studied about using the controlled medication and the withdrawal periods. She was assisting different doctors in their work, asking different opinions about different medications and was making a lot of notices for myself. She is now considering herself as a very educated person in horses and human anti-doping rules. In addition, she also studied a lot about horse welfare - all the information posted in the FEI web-sites, rules and regulations. Moreover, she studied information about horse feeding, shoeing, sport injuries and their treatment, stable management and holistic management, and now all new knowledge can be used in her everyday practice.

2.11 The FEI does not doubt the fact that the PR is a good person with good intentions and love for horses. The FEI has duly considered the facts and circumstances of the case and compared with similar case law and is satisfied that the PR has fulfilled the requirements for No Significant Fault and Negligence for the rule violation. Especially since the PR had checked the medication logbook, asked the Trainer/grooms for medications, trained the Horse over the past 6 months on a daily basis and had tried to be in control of the welfare of the horse. In addition, she made a big effort to educate herself also after the violation. The FEI is very pleased with this attitude.

2.12 Article 10.2 of the EAD Rules provides that a PR 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 parties agrees that a fine of 3 000 CHF shall be imposed on the PR, and that the PR be ordered to pay the legal costs of 1 500 CHF. 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.\(^3\)

2C. Conclusions of the Parties

2.13 Based on the evidence and documentation supplied by the PR and the evidence in the case, the parties conclude that source of the Testosterone in the Horse’s sample, was by the injection of the Trainer.

2.14 The parties concludes the criteria for the application of Article 10.5.2 of the EAD Rules had been met in that:

\(^3\) In accordance with the FEI Guidelines for Legal Costs available at: https://inside.fei.org/sites/default/files/FEI_Guidelines_Legal_Costs.pdf
(i) the PR has established how the Testosterone entered the Horse’s system;

(ii) the PR did not know or suspect, that the Trainer would inject the Horse with a Banned Substance;

(iii) in consequence, the PR has demonstrated that she bore No Significant Fault or Negligence for the rule violation;

(iii) the PR/Trainer, also promptly admitted the rule violation.4

2.15 The parties therefore agree that the otherwise applicable period of Ineligibility (i.e. two (2) years) should be reduced to twenty (20) months period of ineligibility for the PR, starting from the date of the notification.

2.16 As a consequence, Art 7.6.1 of the EAD Rules permits for an agreement between the parties, subject to FEI Tribunal approval.”

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 Russian 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 trainer and owner of the Horse confirmed that the Horse was injected Testosterone on his order.

7.2 Furthermore, the Tribunal notes that the FEI accepts that the PR has demonstrated that she bore No Significant Fault or Negligence for the rule violation.

4 Although this is not applicable for the purpose of Prompt Admission Art 10.6 EADR, since you cannot admit the violation of another person, but it shows her good intentions.
7.3 Following from Articles 10.5.2 of the EAD Rules, where a PR establishes that she bears No Significant Fault or Negligence, then the otherwise 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 2018/BS08 SOHAIR DES BRUYERE.

8. Decision

1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Elizabeta Minina, concerning the case 2018/BS08 SOHAIR DES BRUYERE 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

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Mr. Henrik Arle, one member panel