

DECISION of the FEI TRIBUNAL
dated 6 April 2020

Case: 2017/FT22

Horse / Passport: RIVERVALES REBEL'S DESTINY/105QK19/RSA

Person Responsible/ID/NF: Murray Pote/10068395/RSA

Event/ID: CIC1*- Oaksprings (RSA)/2017_CI_1348_C_S_01

Date: 10-11.06.2017

Prohibited Substance: Scopolamine

I. COMPOSITION OF PANEL

Ms. Harveen Thauli, 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, and Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (Part I – 3.) ("**IRs**").

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

FEI Equine Controlled Medication Regulations ("**ECM 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. Murray Pote.

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."

III. DECISION

1. Parties

- 1.1 The Person Responsible ("PR"), Mr. Murray Pote, is a rider for South Africa.
- 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 21 July 2017, the FEI notified the PR of the positive finding and the potential consequences of this finding. The FEI commenced proceedings under the so-called Administrative Procedure (also known as "Fast Track") pursuant to Article 8.3 of the ECM Rules, and gave the PR an opportunity to accept the administrative sanctions available under the Administrative Procedure. The PR did not accept the administrative sanctions.
- 2.2 On 23 March 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the Case 2017/FT22 RIVERVALES REBEL'S DESTINY and submitted the "Agreement" (together with a case summary and the full reasoning for the Agreement as well as the annexes mentioned in this decision) to the Tribunal for approval and incorporation into a Tribunal decision in accordance with Article 7.6.1 of the EADCMRs.

3. Agreement between Parties

- 3.1 The Parties reached the following Agreement:

*** Quote***

NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR THE CLOSURE OF THE PROCEEDINGS:

In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR's horse RIVERVALES REBEL'S DESTINY (the "Horse") at the CIC1*in Oaksprings, South Africa, from 10 to 11 June 2017 (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);

- (b) The PR has established that the most likely source of the Adverse Analytical Finding is ingestion of Datura weed;
- (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;
- (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) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (h) 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.

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.

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

- 3.2 The Parties submitted the following case summary and full reasoning for the Agreement:

"Mr. Murray Pote (FEI ID 10068395), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a rider for South Africa.

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).

The PR participated with the horse RIVERVALES REBEL'S DESTINY (FEI ID: 105QK19) (the "Horse") in CIC1* in Oaksprings, South Africa, from 10 to 11 June 2017 (the "Event"). As a member of the South African Equestrian Federation (the "South African NF"), the latter being a member of the FEI, the PR was bound by the EADCM Regulations.

The Horse was selected for testing on 11 June 2017. 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.

Analysis of the urine sample revealed the presence of Scopolamine, a Parasympatholytic used to treat gastrointestinal spasms. Scopolamine is a Controlled Medication Substance under the FEI Equine Prohibited Substances List. Scopolamine remaining a Controlled Medication Substance is also designated as a "Specified Substance".

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.

By notification letter dated 21 July 2017, the FEI informed the PR, in his capacity as the Person Responsible, and the South African 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 Scopolamine in the Horse's Urine Sample collected at the Event. (Exhibit 1)

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.

The PR and the Owner were provided with the right to request a B Sample analysis of the positive sample. Neither the PR nor the Owner requested the B-Sample Analysis to be performed.

The PR provided his written submission, wherein he explained, *inter alia*, the following: (Exhibit 2-4)

- The PR and his team run a successful Warmblood Stud in the Kwa-Zulu Natal Midlands in South Africa;
- The mental and physical health of their horses is of the utmost importance to them;
- Under no circumstances was the Horse given/administered Scopolamine on purpose;
- It is of absolute certainty that Scopolamine had been ingested via contaminated feed or roughage;
- One of the most common weeds in South Africa is Datura or "Stinkblaar", "Stink weed" which occurs commonly in pastures, show venues, along road sides and commercial crops;
- The PR discussed the Datura problem with the people servicing their stud and it was alarming how common this weed is in the food chain;
- Various sightings of the Datura weed were as well made at the Event venue;
- The PR has difficulties to guarantee that the horse does not consume the Datura plant. Although every possible effort is made by not only themselves but the farmers and feed companies it is near impossible to completely mitigate contamination of even the slightest trace of this plant. Seeds are barely visible to the naked eye once processed if at all;
- The PR provided a letter from Mr. Michael Pappas, the owner of the feed company that supplies the stud with most of their bagged feed (5 tons per month). Mr Pappas explained that as a feed manufacturer they try to avoid any products that contain Datura seeds. However, it is always possible for some to slip through the checks they have in place. It is as well, very common for them to reject maize especially this time of the year but maize is only one possible source of Datura. It can come in Oats, Soya beans, hay and Lucerne;

- Furthermore, the PR provided a letter from Mr. Colin Straford, the stud's hay and fodder supplier for several years, explaining that although every effort is made to ensure that contamination does not occur, regardless of strict quality checks unfortunately no guarantee can be made of this. Natural ingestion is of high probability in nearly every case in South Africa. The owners have no means to guarantee that the fodder feed is absolutely free of this weed or traces thereof. There is not a fodder supplier in this country that is able to provide a 100 % guarantee of this;
- The PR in addition provided a letter from Mr. Kevin Horne, a representative of Farmers Agricare confirming that the Kwazulu Natal Midlands is renowned for its large weed spectrum due to high rainfall and high organic soil. Mr. Horne added that the weed *Datura stramonium* – or "stinkblaar" is very prolific around the property Rivervale Farm. There are many maize and hay growers in and around the property which have *Datura stramonium* in them. The possibility of contamination from Rivervale is very high, even with the Rivervale owners' stringent weed control programme;
- The PR's stud is supported by a dedicated Veterinary practice who are the only persons mandated to administer medication;
- The PR's treating veterinarian Dr. Michelle de Villiers Steenkamp, has provided a statement attesting that no Buscopan was given to the Horse prior to or during the Event. The Horse is a healthy horse and apart from routine chiropractic and acupuncture maintenance therapy, Vitamin B and Traumeel injections during periods of high performance he has not needed any major veterinary treatment for colic or any other condition;
- A letter from Dr. Sean Miller, the FEI treating veterinarian at the Event, has been submitted, confirming that Dr. Miller did not at any time administer any medications to the Horse and was never asked to tend to the Horse at any time during the Event for any medical reason;
- Most importantly, Dr. Schalk De Kock, Laboratory Director for the national Horse Racing Authority of Southern Africa, has attested in the submitted statement that *"...no commercial human or veterinary products in South Africa contain the substance Scopolamine"*;
- Dr. De Kock added *"when Buscopan is administered to the horse the presence of N-butyl-Scopolamine is noted in the blood and urine of the animal. It is therefore expected that if a horse was administered Buscopan or Buscopan Compositum then Scopolamine would not be observed in this horse. If there is Scopolamine detected in a horse*

specimen in South Africa then I would be of the opinion that this Scopolamine is due to the ingestion of Datura plant by this horse. If N-butyl-Scopolamine is not detected in a horse specimen but Scopolamine is detected in this specimen then it is obviously very unlikely that this horse was recently administered Buscopan";

- Lastly, Dr. De Kock concludes that *"This positive finding comes during the period 2016 to 2017 when our laboratory observed many elevated Scopolamine levels during our analysis of horse urine specimens. This is most likely an indication of a prevalence of Datura plant in the environment and in feed at this time..."*

Despite the PR's extensive investigation on the cause of the positive finding of Scopolamine, the FEI finds that the PR has failed to establish the causal link between ingestion of Datura and the Scopolamine finding. The PR has not provided any evidence showing that the batch of feed, hay or fodder that were consumed by the Horse were de facto contaminated with Datura weed. The PR as well did not provide any evidence that Datura was growing at the Event venue at the time of the Event and that the Horse was grazed at that particular area. The FEI therefore holds the view that the PR is merely assuming that the Horse tested positive due to an exposure to Datura in any of the above sources – feed, hay, fodder, grazing area with Datura growth.

Despite the above, the FEI has consulted its pharmacologist on the plausibility of attributing the Adverse Analytical Finding of Scopolamine to the ingestion of Datura weed. The pharmacologist confirmed that the estimated concentration of 100 – 150 ng/mL of Scopolamine that was found in the urine A sample could have been caused by Datura ingestion, if enough Datura was consumed by the horse;

The FEI as well acknowledges the problem of Datura infestation in South Africa and the challenges that the PRs, Owners and Organising Committees are faced with in the attempt to provide a Datura free environment for the horses;

In addition, the FEI's pharmacologist confirmed the veracity of the argument submitted by the PR's expert i.e. that the administration of Buscopan would result in a N-Butyl Scopolamine finding in the blood and urine but no finding of Scopolamine. The FEI confirms that there was no finding of N-Butyl Scopolamine in the Horse's sample. In consequence, the absence of N-Butyl Scopolamine excludes the administration of Buscopan, which is one of the most widely used antispasmodic for use in horses for relaxation of gastrointestinal smooth muscles and control of pain associated with colic. The PR has therefore excluded the

possibility of the Adverse Analytical Finding being attributed to this medication;

Furthermore, the FEI accepts Dr. De Kock statement that *no commercial human or veterinary products in South Africa contain Scopolamine*, although, products can be bought through internet and there may be importation on special license. Such restricted access to products containing Scopolamine in combination with the confirmation that no Scopolamine was administered to the Horse by the stud's dedicated veterinary practise (which are the only ones authorised to administer any medications to the horses) in the FEI's view lowers the likelihood of the Adverse Analytical Finding to be resulting from an administration of a medication;

The FEI, therefore, finds that the PR has established that the more likely source of the Scopolamine finding is indeed ingestion of the Datura weed;

The FEI acknowledges that despite stringent checks and control carried out by the PR, feed, hay and fodder suppliers there is a noteworthy possibility of Datura contamination as a result of its mass infestation in South Africa and in particular in the area of the Rivervale stud. The FEI is understandable of the regional situation and the difficulties to fully protect the horses from exposure to Datura. In consequence, the FEI is satisfied that the PR has established that he bears no Fault or Negligence for the Rule Violation;

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 Article 38 of the Statutes, Article 161 of the GRs, the EADCMRs as well as Article 18 of the IRs.
- 4.2 As a member of the National Federation of South Africa, the latter being a member of the FEI, the PR is 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 the terms of the Agreement, the Tribunal takes note that the FEI accepts the PR established that the most likely source of the Scopolamine was the Horse's ingestion of Datura weed.
- 5.2 Furthermore, the Tribunal also takes note that the FEI accepts the PR bore No Fault or Negligence for the rule violation.
- 5.3 Pursuant to Article 10.4 of the ECM Rules, where a PR establishes that he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (6 months) and other sanctions (apart from Article 9) may be eliminated.
- 5.4 However, the Tribunal wishes to clarify that it did not evaluate the PR's degree of fault, nor did it take into account previous case law.
- 5.5 Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to comply with all the terms of the Agreement as set forth in Article 3 above. Further, this Decision terminates the Case 2017/FT22 RIVERVALES REBEL'S DESTINY.

6. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Murray Pote, concerning the Case 2017/FT22 RIVERVALES REBEL'S DESTINY is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms in Article 3 are incorporated into this decision.
- 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 its receipt.
- 3) This decision will 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



Ms. Harveen Thauli, one member panel