

DECISION of the FEI TRIBUNAL
dated 30 March 2020

Case: 2018/BS15

Horse/Passport: TARYSMART/105YW97/AUT

Person Responsible/ID/NF: Fabiano Cestari/10165869/ITA

Event/ID: CRI3* - Wiener Neustadt (AUT), 2018_CI_1723_R_S_01

Date of Event: 17/05/2018

Prohibited Substance(s): Oripavine, Morphine

I. COMPOSITION OF PANEL

Mr. Mohammed Al Saberi, 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. Fabiano Cestari.

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") in accordance with Article 118.3 of the GRs, Mr. Fabiano Cestari, is a rider for Italy.

- 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 TARYSMART (the “**Horse**”) at the CRI3* in Wiener Neustadt, Austria, on 17 May 2018 (the “**Event**”).
- 2.2 During the Event, in-competition samples (blood and urine) were collected from the Horse. Subsequent analysis of the sample revealed the presence of Oripavine and Morphine in the urine.
- 2.3 On 11 July 2018, the FEI notified the PR of an adverse analytical finding and an apparent violation of Article 2.1 of the EAD Rules.
- 2.4 On 30 July 2018, the FEI informed the PR of the B Sample results which confirmed the results of the A Sample, *i.e.*, the presence of the Prohibited Substances Oripavine and Morphine.

3. Further proceedings

- 3.1 On 23 March 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2018/BS15 TARYSMART, 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.
- 3.2 On 27 March 2020, the FEI Tribunal Chair nominated a panel for the case at hand. Both Parties expressly accepted the constitution of the panel.

4. Agreement between Parties

- 4.1 On 23 March 2020, the Parties reached the following Agreement:

*** Quote***

“5.1 In the matter of the Adverse Analytical Finding related to the sample, which was collected from Mr. Fabiano Cestari’s horse TARYSMART (the “Horse”) at the CRI3* in Wiener Neustadt (AUT), on 17 May 2018 (the “Event”), Mr. Fabiano Cestari (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 the Banned and Controlled Medication Substance(s) 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 10.4 of the EAD Rules (*Elimination of the Period of Ineligibility Where there is no Fault or Negligence*) are fulfilled in the case at hand and that the applicable period of Ineligibility shall be eliminated.
- 3) In accordance with Article 10.8.3 of the EAD Rules, this violation of the EAD Rules shall **not be considered a prior violation** for the purpose of Article 10.8 (*Multiple Violations*) of the EAD Rules.
- 4) **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 10 September 2018.
- 5) **Disqualification of Results:**
In accordance with Articles 9 and 10.1.4 of the EAD Rules, all the results achieved by the PR with the Horses at the Events are disqualified, including forfeiture of medals, points and prizes.
- 6) **Full Settlement and Resolution:**
This agreement resolves and settles all outstanding matters between the FEI and the PR, Mr. Fabiano Cestari, including the horse TARYSMART.
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.
- 7) **No Other Sanctions:**
No fine shall be imposed on the PR. Each of the Parties shall bear their own legal costs. The PR shall bear the cost of the B sample.
- 8) **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.
- 9) **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

- 4.2 The Parties provided the following Case Summary and Reasons as part of the Agreement between Parties:

"3. CASE SUMMARY

- 3.1 The PR took part with his horse TARYSMART (the "Horse") at the CRI3* in Wiener Neustadt (AUT), on 17 May 2018 (the "Event"). As a member of the Italian Equestrian Federation (the "Italian NF"), the latter being a member of the FEI, the PR was bound by the EAD Rules.
- 3.2 The Horses were selected for testing on 17 May 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 11 July 2018 the FEI informed Mr. Fabiano Cestari, in his capacity as the Person Responsible, and the Italian and Austrian NF of an alleged violation by Mr. Fabiano Cestari of Article 2.1 (*The Presence of a Banned Substance or its Metabolites or Markers in a Horse's Sample*) of the EAD Rules and that, in accordance with Article 7.4.1 of the EAD Rules. No Provisional Suspension was imposed on the PR since all Prohibited Substance present in the samples, namely Oripavine and Morphine are Specified Substances. (Exhibit 1-2)
- 3.4 Oripavine is an opiate analgesic and is classified as a Banned Substance under the FEI Equine Prohibited Substances List. Equally, Morphine is opiate analgesic and is classified as a Controlled Medication Substance. Oripavine and Morphine have analgesic effects. The positive finding of Oripavine and Morphine in the Horse's sample gives rise to an Anti-Doping Rule Violation under the FEI Equine Anti-Doping and Controlled Medication Regulations. Oripavine and Morphine are Prohibited Substances identified as Specified Substances on the Prohibited List. The presence of Oripavine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding.
- 3.5 The PR was also informed that a Provisional Suspension of two (2) months, i.e. until 10 September 2018, had been imposed on the Horse.
- 3.6 In the Notification Letter, the PR was informed that he had the right to request that the Horse's B Sample be analysed. The PR did request for the B Sample to be analysed. The B Sample results confirmed the A Sample results and the presence of the Prohibited Substance Oripavine

and Morphine. The PR was notified thereof on 30 July 2018. (Exhibit 3)

3.7 The PR submitted information in relation to his case as follows:

- PR Explanations 28.08.2018 (Exhibit 4)
- Feed Company Statement (Exhibit 5)
- Feed Company Analysis Results (Exhibit 6)
- Pictures of the feed (Exhibit 7)
- Receipts of the feed purchase (Exhibit 8)

3.8 The FEI also enquired information from the Austrian Trotting:

- Statement Austrian Trotting (Exhibit 9)
- Analysis Results Trotting (Exhibit 10)

3.9 The PRs submission can be summarised as follows:

- Initially the PR had no idea how the substance entered the body of his horse.
- He is a reiner at high level and was on the long list for WEG.
- He has been in the horse business for 14 years with no trouble of doping.
- The PR is employed at the Western Training Center H&D Schulz in Wiener Neustadt, where he also has his own horses.
- He has two grooms taking care about the training horses, but the PR himself is the only one who is taking care about the Horse.
- Before his horses gets any kind of medications or treatments, from normal small things like scratches or bigger things, he always let his Vet check if the product is containing any doping substances.
- The stables and the owner of the place is taking care about cleaning and feeding of all horses, and had used the same feed from the same producer - Königshoffer, a major feed provider in Austria, for many years.
- The stable has over 250 Horses and all are feed the same Königshoffer pellets.
- The feed producer Königshoffer confirmed in a statement the traces of Morphine, Codeine and Thebaine in their products.
- There had been several other cases at national level in Austria, where it has been confirmed that feed from Königshoffer was the result of the positive Morphine findings.
- The PR clearly declared and demonstrated how this substances got into the Horse, and it is clearly that no one from us did any mistakes, but it came from the feed company named Königshoffer.

3.10 In addition, the science shows that especially in case where traces of Morphine and Oripavine substances appear together, and in particular if Oripavine is present in combination with Morphine, it may indicate the ingestion of poppy seed.

3.11 Based on the submissions, the FEI therefore recognises the contaminated feed from Königshoffer was the source of the positive findings of Oripavine and Morphine in the Horse.

4. FULL REASONING FOR THE AGREEMENT

- 4.1 Specified Substances are substances which are more likely to have been ingested by Horses for a purpose other than the enhancement of sport performance, for example, through a contaminated food substance. Oripavine and Morphine are classified as Specified Substances. The presence of Oripavine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding.
- 4.2 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 10.6 below.*" Article 10.4 of the EAD Rules also states that it "only applies in exceptional circumstances".
- 4.3 Based on the evidence and documentation supplied by the PR (as described in Section 3 above), and the science available the FEI has evaluated whether or not Article 10.4 was applicable. The FEI has considered if the PR has established by a balance of probabilities, a plausible explanation of how the Prohibited Substance had entered the Horses' system. In this regard, the FEI finds that there is a plausible explanation as to how the Prohibited Substance entered the Horse's system based on the information that the Horse had been fed with feed from the feed producer Königshoffer that had confirmed traces of Morphine and its metabolites. Further, the presence of Oripavine together with Morphine may indicate that the ingestion of poppy seed could be the source of the positive Morphine finding. Additionally, there are several other positive cases from this region where horses had been fed with feed form the same feed producer.

- 4.4 The FEI finds that the contamination of the feed from the producer Königshoffer is the plausible explanation for how the Prohibited Substances entered the Horse's system. The FEI is thus satisfied that the requirement of establishing by a balance of probabilities how the Prohibited Substance entered the Horses' system has been fulfilled.
- 4.5 The FEI has proceeded to evaluate the level of Fault and Negligence of the PR. The FEI is satisfied that the PR had demonstrated that he bore no Fault or Negligence since he had procedures in place in order to prevent positive findings, such as:
- The horses are stabled in private stables.
 - Nobody else but the PR and his grooms take care of the horses.
 - The PR and his grooms are in full control of his horses, and they feed only the pellets from Königshoffer and hay.
 - The same feed supplier has been used for many years on all 250 horses in the stables, without any problems.
 - The PR is always checking with his vet any question of medications or treatment.
 - If there is a medication treatment by the vets, the grooms or the PR is present.
- 4.6 Königshoffer is a major feed provider in the Austria/Southern German region and the PR's stables has fed feed from this producer for many years. The same applies to many top riders in this region. He therefore had no reason to doubt those products. The PR could not reasonably have been expected to take any further measures which would have prevented the Prohibited Substances entering the Horse's system, neither could he have suspected that the feed given to his horses for many years, all of a sudden was contaminated with poppy seed. The FEI is of the opinion that the circumstances of the PR are unfortunate and could not have been foreseen by him as a PR. Thus in this case, the only plausible explanation for the presence of the Prohibited Substances is such contamination of the feed given to the Horses. Therefore the FEI is satisfied that the PR bears No Fault or Negligence for the anti-doping rule violation.
- 4.7 The FEI accepts that the circumstances of the case were exceptional on the basis that the presence of the Banned and Controlled Substances in the Horse's Sample and particularly the presence of Oripavine, are consistent with poppy seed contamination. Further, there are several other cases from the very same region, who all have been confirmed to feed products from the same producer.
- 4.8 The FEI is satisfied that the criteria for the application of Article 10.4 of the EAD Rules had been met in that (i) the PR has established how

the Banned Substances came to enter the Horse's system, (ii) the PR has demonstrated that he bore No Fault or Negligence and (iii) the circumstances of the case are exceptional and that, therefore, the otherwise applicable period of Ineligibility (i.e. two years) should be eliminated and that no other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Article 9 and Article 10.1.4 and of the EAD Rules) should apply. The PR shall bear the cost of the B sample, as confirmed in the B sample request."

5. Jurisdiction

- 5.1 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.
- 5.2 As a member of the National Federation of Italy, 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 the PR's explanations for the source of the Prohibited Substances, namely contaminated feed fed to the Horses. In this respect, the Tribunal also notes the analysis results of laboratory concerning the feed samples analysed, as well as the statement of the feed producer.
- 6.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 6.3 Following from Article 10.4 of the EAD Rules, where a PR establishes that he bears No Fault or Negligence, then the otherwise applicable period of Ineligibility (2 years) and other sanctions (apart from Article 9) may be eliminated.
- 6.4 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.
- 6.5 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/BS15 TARYSMART.

7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Mr. Fabiano Cestari, concerning the case 2018/BS15 TARYSMART 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



Mr. Mohammed Al Saberi, one member panel