

DECISION of the FEI TRIBUNAL
Alleged Horse Abuse of the horse 8 MINUTE
Dated 13 March 2020

Alleged Horse Abuse Case 2019/11:

Horse: 8 MINUTE/104BW22/UAE

PR: Rashed Hamoud Humaid AL JUNAIBI/10083889/UAE

Trainer: Majed Khalfan AL JAHOURI/10014774/UAE

Event: CEI3* 106km, Al Wathba, Abu Dhabi, The President's Cup (UAE)

Date: 09.02.2019

Allegation: Horse Abuse

In the matter of

Ms. Pippa CUCKSON

"Ms. Cuckson" or "the Protestor"

v.

Mr. Rashed Hamoud Humaid AL JUNAIBI

Represented by Morgan Sports Law, London, United Kingdom

"Mr. Al Junaibi" or "the Respondent"

I. COMPOSITION OF PANEL

Ms. Constance Popineau, chair

Mr. Cesar Torrente, member

Ms. Harveen Thauli, member

II. SUMMARY OF THE FACTS

1. Memorandum of case: By Legal Department.

2. Case File: The FEI Tribunal duly took into consideration the Parties' written and oral submissions, as well as the FEI's written and oral opinion.

3. Hearing: 26 February 2020, FEI Headquarters, Lausanne, Switzerland.

Present:

- The FEI Tribunal Panel (chair in person, remaining members via videoconference call)
- Ms. Erika Riedl, FEI Tribunal Clerk

For the Protestor:

- Ms. Pippa Cuckson, Protestor (via videoconference call)
- Mr. William Micklem, expert witness (via videoconference call)

For the FEI:

- Ms. Anna Thorstenson, Legal Counsel
- Ms. Ana Kricej, Junior Legal Counsel

For the Respondent:

- Mr. Al Junaibi, Respondent
- Mr. Khalil Dababneh, representative Al Wathba stables and interpreter for Respondent
- Ms. Lisa Lazarus, counsel
- Ms. Emma Waters, counsel

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Relevant Rules and Regulations:

Statutes 24th edition, effective 20 November 2018 ("**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd edition, effective 2 March 2018 ("**IRs**").

Endurance Rules, Updated 9th Edition, effective 1 February 2019 ("**ERs**").

FEI Code of Conduct for the Welfare of the Horse

2. The relevant Legal Provisions:

GRs Article 142.1: "No person may abuse a Horse during an Event or at any other time. "Abuse" means "an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including, but not limited to: (...)

(iv) To jab the Horse in the mouth with the bit or any other device;
(...)"

GRs Article 163.2: "(...) Protests for abuse of Horses may be lodged by any person or body."

GRs Article 169.6.2: "Abuse of Horses in any form (rapping,

abnormal sensitisation or desensitisation of limbs, banned schooling methods etc.) may entail a fine of up to 15,000.- and/or a Suspension of a minimum of three (3) months up to life;”

IV. DECISION

Below is a summary of the relevant facts and allegations based on the written submissions of the Parties and the FEI and pleadings and evidence adduced during the hearing. Although the Tribunal has considered all the facts, allegations, legal arguments and evidence in the present proceedings, it refers only to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. Factual Background

- 1.1 The rider, Mr. Rashed Hamoud Humaid Al Junaibi participated with the horse 8 MINUTE (“**the Horse**”) at the CEI3* 160km, Al Wathba, Abu Dhabi, The President’s Cup, United Arab Emirates (UAE), on 9 February 2019 (“**the Event**”). Mr. Al Junaibi is an FEI registered rider (FEI ID 10083889), and his administering National Federation is the UAE National Federation (“**UAE-NF**”).

2. Procedural Background

- 2.1 On 4 April 2019, the Protestor, Ms. Cuckson, lodged a Protest for horse abuse (“**the Protest**”), in accordance with Articles 142.1 and 163.2 of the GRs, with the FEI Secretary General, for referral to the FEI Tribunal.
- 2.2 On 7 June 2019, the FEI notified Mr. Al Junaibi through the UAE-NF of the Protest and requested Mr. Al Junaibi to provide a written reply.
- 2.3 On 25 June 2019, Mr. Al Junaibi provided a response to the allegations.
- 2.4 On 29 October 2019, the FEI submitted the case file to the Tribunal for adjudication.
- 2.5 On 31 October 2019, the FEI submitted a second statement from the Protestor to add to the case file.
- 2.6 On 31 October 2019, the Tribunal Chair nominated a panel. The Tribunal also granted the Respondent an opportunity to comment on the Protester’s second statement, and similarly granted the FEI – as an interested party – the opportunity to provide its opinion.

- 2.7 On 27 November 2019, Mr. Al Junaibi, now legally represented, requested (i) an opportunity to provide an additional submission; (ii) an in-person hearing; and (iii) a suspension of the proceedings until the Court of Arbitration for Sport decided another case (CAS 2019/A/6373), the outcome of which was, in the Respondent's view, highly relevant to the present proceedings. Both, the Protestor and the FEI opposed the suspension of the proceedings.
- 2.8 On 6 December 2019, the Tribunal informed the Parties and the FEI that it would neither suspend the proceedings nor grant the Respondent an opportunity to provide an additional written submission because he was granted the right to respond and did respond to the Notification Letter. Procedural rules do not change whether a person is legally represented or not.
- 2.9 On 13 December 2019, the Respondent submitted his position on the Protester's second statement.
- 2.10 On 14 January 2020, the FEI submitted its opinion to the Tribunal.
- 2.11 On 26 February 2020, an in-person hearing was held. The Tribunal Chair was present at the hearing. The Protester, the Protester's witness, and the other two members of the Tribunal attended by video-conference.

3. Protest

- 3.1 Together with the Protest, Ms. Cuckson provided a video and photos taken from a broadcast of the Event. In her Protest, Ms. Cuckson alleges as follows:

"(...) 11. Mr Al Junaibi has started 39 times in FEI rides on 36 different horses – all qualified by other persons. He has 18 FEI ride completions. 8 Minute is one of just three horses he has started twice each in CEI. All his FEI starts but two are in the UAE.

12. To pick out 8 Minute in the video evidence, Mr Al Junaibi wears bib 101. He is the only one in black sleeves, usually in the centre of the featured group, flanked by other horses – possibly as a contrived means to control 8 Minute. He also is notable for his rigid stance in the saddle, with no natural bend at the elbow, probably because of the short, fixed reins. The Al Wathba Stables horses all wear large saddle cloths in luminous yellow.

13. *The FEI Code of Conduct in endurance says "Tack must be designed and fitted to avoid the risk of pain or injury" and that "Abuse of a Horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) will not be tolerated."*

While FEI endurance rules on tack are extremely limited, Article 810 says: "In principle, there is no restriction on saddlery however it must be in safe condition and fit the Horse.....Any type of rein that may unduly restrict the free movement of the head of the Horse, including, but not limited to Draw (Running) Reins/French Reins are forbidden."

One of the actions listed as an example of abuse in FEI General Regulations is "To jab the Horse in the mouth with the bit or any other device."

14. *I allege that Mr Al Junaibi's riding was abusive at many stages by his mis-use of the bridle. 8 Minute wore a long shanked bit with a tightly secured cross-type noseband, the bottom strap comprising an exposed metal chain. This appears to be a flash noseband, but wrongly fitted so that the upper strap is angled, more akin to a grakle. This is used in direct combination with fixed short reins, held by the loops throughout all the available video evidence. Mr Al Junaibi used the reins solely off the curb. The combined effect gives extra leverage and means that once travelling at speed, the rider cannot release or "slip" the reins, either in an emergency or to offer relief to the horse. This resulted in fellow riders having to cool 8 Minute for Mr Al Junaibi while in motion, known as "mobile crewing". This is arguably unauthorised assistance, too.*

15. *The fixed-length reins enable Mr Al Junaibi to lean far back, applying his whole body weight against the horse's mouth. The mare can often be seen licking – indicative of soreness and/or dehydration. It would be difficult to drink during the ride without the noseband being slackened.*

16. *As the ride progresses, the more pronounced the rider's hanging on the bit. At various stages Mr Al Junaibi is thrown about, meaning the horse's mouth is repeatedly jabbed by the force of his body-weight. Many times he leans on the pommel for support, with a "blocking" hand position then putting even greater pressure on 8 Minute's mouth.*

17. *Please also refer to Mr Micklem's statement about the physical effect of this type of tack on the horse.*

18. In the video evidence, I mention just a selection of concerning incidents during the race – you may spot other instances of the rider leaning hard against the bit or jabbing 8 Minute in the mouth that I have not listed below. The time is shown in the top left hand corner of the Dubai Racing TV screen. Some instances last many seconds at a time. The ride commenced at 06.30 hours.

10.13 hours (and onwards): Stable-mates either side grab reins of 8 Minute

10:22: 8 Minute is trotted in vet-gate - note her constant licking

10:46: 8 Minute again licking and mouthing

11.08: Fellow riders slosh 8 Minute as Mr Al Junaibi cannot release the reins; he leans against the reins several times

11.26: Mr Al Junaibi again leaning against the reins

11.55: Group arrives in canter at vet gate, 8 Minute enters narrow gap with no decrease in speed

12.48, 12.58, 13.04: Mr Al Junaibi supports himself on the saddle – fellow riders cool the horse.

13:15: Mr Al Junaibi again unable to control speed of 8 Minute. His face scarf has slipped and he cannot free up a hand to adjust it.

14.22: With none of her pacers from Al Wathba Stables remaining in the race to steady her, 8 Minute overtakes other horses at speed, the rider again using extreme leverage of his bridle as brakes. 8 Minute catches up with stable-mate number 104, the only other Al Wathba horse left by this stage, who effectively becomes a buffer. This continues till the end of the available video evidence of 8 Minute on the piste.

15:00: 8 Minute comes in to vet-gate 5, lame at trot and stumbling

15:05: 8 Minute in vet-gate 5, still licking her mouth. The handler, who I believe to be the trainer Mr Al Jahouri, treats her roughly at the trot-up. He does not even complete the second jog. He uses a tight lead-rein, an old trick to try to disguise lameness.

19. Any rider can have an occasional, accidental “wrong” moment but I submit these were not just one or two unfortunate snapshots amid an otherwise exemplary performance. Mr Al Junaibi did not have control of 8 Minute over many hours and it seems likely that, severe gadgetry was employed as it was anticipated the rider would have no control.

20. If my protest is upheld, I would respectfully request that Mr Al Junaibi serves a period of suspension. A disqualification alone would have little impact, as he was vetted out of the race in any event. I would respectfully also ask that any suspension takes into account that it is now the “closed” season in FEI Group 7, and that there would be no practical impact on Mr Al Junaibi unless such suspension carries into the 2019-2020 winter season.

21. In anti-doping cases, there have been occasions when Tribunal have seen fit for suspend a horse for a prolonged period, for its own protection. As well as her yet-to-be sanctioned steroids offences, 8 Minute is the subject of two separate abuse protests with different riders. I would argue 8 Minute would benefit from similar intervention by the Tribunal, for her own protection."

3.2 Together with the Protest, Ms. Cuckson also provided an expert opinion of Mr. William Micklem FBHS about the impact of the bit and noseband on the Horse as well as the Respondent's riding. Mr. Micklem concluded as follows:

a) about the bit:

"(...) The result of these forces and pressure on nerves and blood vessels will mean that after initial discomfort and pain the mouth and lower jaw area is almost certain to become numb during the competition, making the horse a potential danger to both other competitors and spectators, and then hypersensitive in the days and weeks afterwards due to bruising and lacerations."

b) about the noseband:

"(...) The tight noseband also causes unacceptable pressure on the inside of the mouth, where the top jaw molar teeth are considerably wider than the lower jaw teeth. Therefore the delicate tissue inside the mouth is trapped between the protruding outside edge of the top jaw molar teeth on the inside and the noseband on the outside. This bruises or cuts the tissue on the inside of the mouth and can cause mouth ulceration. Therefore it is widely accepted that nosebands that are cranked tightly should not be part of a modern horse world."

In addition the position and tightness of the cavesson part of the noseband puts unacceptable pressure on the Infraorbital nerve which exits on the upper jaw just under the skin. Pressure on the infraorbital nerve in this way will cause discomfort or pain and eventually numbness in the lower face where the bit acts. The tight noseband also does not allow use of the TMJ (temporomandibular) joint which is associated with a horse's proprioceptive sense and coordination."

c) about the Respondent's riding:

"(...) Is it obvious in the filmed sections that there is no evidence of a good relationship between rider and horse, no harmony and no evidence of the training that makes for an efficient performance. The reverse is the case, with the horse being treated as a machine and produced in such a way that the use of strength and the strongest of biting and noseband solutions is required to produce a competitive

result, thereby contravening the FEI Code of Conduct, where it says that "Welfare of the horse must never be subordinated to competitive or commercial influences."

- 3.3 In her second submission, the Protestor stated the role of tack in horse abuse cases was discussed at the FEI Sports Forum in Lausanne on 16 April 2019, and the FEI General Assembly subsequently approved amendments to the tack rules, proposed in the FEI Endurance Rules at the Sports Forum, in November 2019. The Protestor stated that at the FEI Sports Forum the Endurance Temporary Committee (ETC) Chair drew comparisons with other FEI disciplines, and stated that tack rules for endurance were "overdue". According to the Protestor the ETC Chair further stated as follows: *"There is no doubt that some of the bits, nosebands, martingales etc are a serious cause of poor horse welfare and very bad for the public image of endurance. (...) They are indicative of poor horsemanship (...)"*.

4. Response by the Respondent

- 4.1 Mr. Al Junaibi denied any allegation of horse abuse. He stated his riding did not fall within any of the categories of abuse listed in Article 142 of the GRs, nor did he believe that the Horse suffered any pain or unnecessary discomfort from his tack or riding style. He confirmed he did not condone any form of horse abuse.
- 4.2 More specifically, he stated that:
- a) FEI veterinarians examined the Horse six (6) times during the Event and none of them raised any concern about head injuries. A veterinarian eventually eliminated the Horse for lameness.
 - b) He admitted there were times when he was tired and his balance was less than perfect, but it was *"a bit extreme to expect constant perfect riding position over 140km"*. He did not believe the Horse would have performed as well as she did if she felt any pain or unnecessary discomfort from the tack or his riding style. Further, he submitted as follows: *"At various times during the ride, when I felt 8 Minute was getting strong, I tried to use my bodyweight to control the speed. As most riders would tell you, moving your bodyweight back from a neutral position helps to slow horses down and leaning toward typically makes them speed up. This does not increase the amount of pressure applied to a horse's mouth – it is a question of where your centre of gravity is on the horse. I do not believe I have a rigid stance and no natural bend or that I was jabbing 8 Minute in the mouth, everyone has areas of improvement but I do not believe my*

riding was detrimental to 8 Minute. Everyone has their own riding style and so long as the horse is well taken care of, it is a dangerous approach to dictate about style. Contrary to Ms. Cuckson's allegation, 8 Minute and I worked very well together to complete 140km. Perhaps Ms. Cuckson has never taken part in long distance riding but in my opinion, it would be pretty hard to ride so far without control."

- c) He did not consider the Horse's licking excessive and believed it resulted from the Horse having consumed water before entering the vet gate.
- d) The Respondent commented on his use of the bridle, bit and tack as follows:

"8 Minute is also very well-known and admired in the endurance community and coming in to the ride, I was aware that certain other stables would try their best to put some horses in front of her to try to make her too excited and difficult to control in the hope that she would run away and not be able to complete the ride. In endurance, if a horse runs away, they are at extremely high risk of suffering career ending, if not life ending, injuries. With this in mind, we selected the best bridle for 8 Minute to minimise the risk of her becoming out of control whilst ensuring her welfare was maximised.

The bit used is a long shanked joint bit, similar to the Dutch gags which are frequently used in endurance. The bridle had a flash noseband and the flash attachment to the noseband has a flat loose-link chain on the bottom half. The noseband allowed for 2 fingers to be inserted under the flash attachment as required by FEI rules. The chain part of the flash attachment is flat and loose link and has a much milder action than the typical curb type of chain. With the flash attachment fitted correctly, the chain does not come into play unless 8 Minute opens her mouth wide. This type of flash attachment is available for sale in many competition tack shops across discipline. I have first seen it used in FEI Eventing in America and have subsequently seen it used in FEI Jumping. I also used para-reins which are standard reins with an additional adjustable loop for use when a person has difficulty holding the rein normally – in my case, due to blisters. The length of the loop can be adjusted and if you do not want to adjust them during the loop, the normal rein can be used – it is very easy to release the reins if required contrary to what Ms. Cuckson has described. These reins are in no way akin to draw reins or French reins – they work in the same way as normal reins and do not in any way restrict movement of the horse's head. My bridle was in safe condition and was designed and fitted to avoid the risk of pain

or injury to 8 Minute as is borne out by the fact that she had no injuries whatsoever from it.

This is the same bridle that I used for the President's Cup 2018 and, to my knowledge, no concerns were raised about my tack in relation to that ride. and fitted the horse as required by the FEI rules.

I would add that no part of my tack is prohibited by FEI rules for endurance competitions and I do not believe I misused the bridle. As the FEI is aware, FEI rules are tailored to different disciplines. Ms. Cuckson's suggestion that tack rules from one discipline should be imputed to another discipline shows an ignorance of the type of riding and pressure applied to horses in different disciplines. Noone would logically argue that spurs are not allowed in Endurance therefore it is an abuse of the horse to wear them in Jumping or Dressage. Likewise with tack, I believe the FEI has carried out an appropriate analysis of what rules to apply for each discipline. Given the similar bridles have been used in endurance for many years, and that the FEI Jumping and Dressage rules have been amended to be very prescriptive on tack, I am sure that if the FEI deemed them abusive, the FEI would have acted on that and made clear prescriptive rules on tack in Endurance."

- e) Finally, with regard to Mr. Micklem's statement the Respondent submitted as follows: "(...) *with all due respect to Mr. Micklem and his work with different styles of bridle, the note appears to be somewhat of an advertising piece for his bridle (containing references to the benefits of his bridle and testimonials for him) and it is well known that Mr. Micklem developed his own style of bridle because he considers that all other bridles put undue pressure on the horse's head*". Further, Mr. Micklem provided his view on the Respondent's tack without actually looking at it or seeing how it was fitted in person. Mr. Micklem's views therefore discussed theoretical risks, which may be worth considering when looking at future tack rules, but did not address the reality of the Horse's condition.

- 4.3 In response to the Protester's second statement, the Respondent argued that the Protestor did not provide any further evidence about his tack or his riding style. She did, however, refer to the new tack rules for endurance, which came into force on 1 January 2020. His position was that the new rules were irrelevant to this case because any sanctions had to be determined in accordance with the law in effect at the time of his alleged rule violations.

5. FEI opinion

- 5.1 The FEI submitted that the Respondent had legal responsibility of the Horse in accordance with Article 118 of the GRs and was liable under the FEI rules and regulations.
- 5.2 The FEI also mentioned that it had no reason to doubt the authenticity or veracity of the photos and video. In the FEI's view, the photos and videos provided evidence of "Abuse" within the meaning of Article 142 of the GRs.
- 5.3 The FEI further submitted that protests such as the one filed by the Protester may be filed by anyone at any time, in accordance with Article 163.1-2 and 142 of the GRs, and they were not limited to the time periods for "field of play" decisions as described in Article 163 of the GRs.
- 5.4 The FEI discussed the alleged horse abuse as follows:

"The horse is a very sensitive animal with exceptional tactile perception. The superior athletic ability of the horse, its sensitivity to pressure and touch together with its willingness and desire to please, make it a desirable animal for many uses. Due to the horses great senses, equine welfare is not only dependent on physical comfort but mental comfort as well. The horse has a well-developed sense of touch. Consequently, touch is the horse's most important sense for responding to the aids or cues of the rider. The most sensitive areas are around the eyes, the ears, and the nose and mouth.

Bits and bridles are for communication with the horse. They are not handles in order to stabilize the rider in the saddle or instruments for pulling on the horse's mouth. Bits exert pressure on a horse's bars, lips, tongue, hard palate, chin, nose, and poll. Of these, the tongue and the hard palate are the most sensitive and the most responsive to rein pressure, which should be subtle.

The FEI has carefully reviewed the photos and video of this case, together with the Protest and the expert report of Mr. Micklem.

From the video the following can be seen:

- *At time 21:11, the PR is clearly jabbing the horse's mouth with the left and right hand repeatedly. Due to this action, the horse's head is moving left-right and is forced in a high position in an attempt to avoid the discomfort/pain caused by these actions.*

- *At time 17:15, the PR is putting his whole body weight on the reins, jabbing the horse's mouth severely, the horse is trying to avoid the discomfort and pain by thrusting the head up high and as a consequence even falls into trot.*
- *At time 15:30, we can again see the jabbing of the horse's mouth although to a less extent, however, the horse's head is completely restricted due to the heavy hand of the rider and the severe setup of the bit. In comparison the horse next to the PR (bib 105) displays the natural and unrestricted movement of its head as is desirable.*
- *At time 22:40, the PR is again strongly pulling the reins with his whole body weight and jabbing the horse's mouth, is in an attempt to regain a slower tempo of the horse.*
- *At time 14:18, the PR is seen leaning back putting the whole body weight on the reins.*
- *On several other occasions seen in the video, the PR's riding is not normal nor desirable riding. The reins are extremely short and when pulled limiting the free movement of the horse. In addition, the body weight of the PR while leaning backwards is putting severe pressure on the mouth of the horse. To avoid the horse going too fast, the PR has a strong hand, jabs the mouth of the horse and leans backwards often while pulling the reins."*

- 5.5 The FEI argued that Article 142.1 (iv) of the GRs specifically states that: "To jab the Horse in the mouth with the bit or any other device" constitutes horse abuse. One sole jab was sufficient to constitute horse abuse. The FEI stated that the Respondent jabbed and pulled on the Horse's mouth repeatedly during this 6 hour long competition.
- 5.6 The FEI acknowledged that riders have different riding styles but all good riders that take into account a horse's biomechanics and conformation. The FEI strongly disagreed with the Respondent that his riding was normal in endurance. While the FEI agreed with the Respondent that leaning back from a neutral position helped to slow a horse down or collect a horse, this required the rider to shift his weight subtly and slightly. Instead, the Respondent leaned back with his whole body weight while pulling on the reins with his legs fully extended in front of him.
- 5.7 The FEI highlighted that – contrary to the Respondent's claims – the definition of horse abuse did not require any injury, but rather that the actions caused or were likely to cause pain or unnecessary discomfort to a horse. The use of any ill-fitted equipment that risks causing or causes pain or injury to the Horse may also be considered as horse abuse.

- 5.8 The FEI also addressed the equipment used by the Respondent during the competition. Firstly, the FEI agreed with Mr. Micklem that the long shanked bit was upside down, which would have increased pressure on the Horse's mouth causing unnecessary discomfort and pain. This type of bit is now prohibited as of 1 January 2020 in the amended Endurance Rules.
- 5.9 Secondly, the FEI agreed with the Protestor that the Respondent used para-reins. Para-reins have handles, which limit a rider's ability to release them when necessary to follow a horse's natural movement. Pursuant to Article 810 of the ERs, "*Any type of rein that may unduly restrict the free movement of the head of the Horse, including, but not limited to Draw (Running) Reins/French Reins are forbidden*" are not allowed in endurance competitions. This was not an exhaustive list of reins that are not allowed but rather examples of reins that are not allowed in endurance competitions.
- 5.10 The FEI was of the opinion that the bit and its setup, the reins, and the tight noseband in combination with the Respondent jabbing and pulling on the Horse's mouth with all his weight were actions, which caused or likely caused pain or unnecessary discomfort to the Horse and constituted abuse within the meaning of Article 142 of the GRs.
- 5.11 Given the totality of the evidence, the FEI submitted that the appropriate sanctions are a minimum 6 month suspension, a fine in accordance with the FEI Guidelines for fines, a contribution to legal costs, and disqualification from the Event in accordance with Article 8.11.1 of the ERs.

6. Hearing

- 6.1 During the hearing, the Parties and the FEI had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Tribunal. At the conclusion, the Tribunal closed the hearing and reserved its Decision. The Tribunal listened carefully and took into consideration in its subsequent deliberations all the evidence and the arguments presented by the Parties and the FEI.
- 6.2 The Protestor and the FEI acknowledged that the Tribunal had respected their right to be heard and their procedural rights. The Respondent, however, maintained that since he was not granted the right to submit an additional submission, he did not believe he had a fair opportunity to present his case.
- 6.3 The Respondent used a PowerPoint presentation, which contained new

arguments not previously raised. In its closing arguments, the FEI objected to the admissibility of this document.

- 6.4 During the hearing, and where not mentioned otherwise in the following, both Parties and the FEI maintained their previous submissions.
- 6.5 At the start of the hearing, the Parties and the FEI discussed Preliminary matters about confidentiality. The Protestor confirmed that even though she was a journalist, she respected the confidentiality of the proceedings and would never report on what was said during the hearing.
- 6.6 Upon request by the Respondent, the FEI clarified that the Protestor had the burden of proof and that the FEI was only participating as interested party, which the Tribunal acknowledged and accepted.
- 6.7 The Respondent further alleged that there were unsubstantiated allegations put on the record, and asked the Tribunal pursuant to Article 22.1 of the IRs to decide the case based solely on the evidence, and argued that all evidence must be authenticated. The FEI responded that the FEI was only an interested party in these proceedings, and the FEI did not bring this case in accordance with Article 163.9 of the GRs. Instead, the FEI brought this case under Article 142 in combination with 163.3 of the GRs, which was a *lex specialis* for horse abuse cases, which implied a third person may lodge a Protest against horse abuse at any time. Here, a third person brought forward this case and she has the burden of proof on the Respondent's point concerning unsubstantiated allegations and evidence, the FEI argued that the FEI did not have any comments and explained that the FEI had to follow the horse abuse rules.

Expert statement during the hearing:

- 6.8 Mr. Micklem stated that contrary to the Respondent's submission, in his view the bit used was not similar to a Dutch gag. He demonstrated where the tack and the bit sit using a horse's skull. He explained that prolonged pressure on top of the horse's tongue was uncomfortable and caused a horse to repeatedly raise his head. He explained it was visible in the video that there was a prolonged pressure on the Horse's mouth. He accepted the Horse may have been excitable, but the Horse showed discomfort by raising her head and pinning her ears.
- 6.9 Mr. Micklem stated that what he saw on the video had nothing to do with "good riding" and did not find the Respondent's riding acceptable.

He explained the Respondent appeared to be holding the reins in a fixed position. In comparison, the rider on the lead horse had delicate rein contact, which allowed the rider's hands to move in unison with the horse's movements.

- 6.10 The Respondent did not dispute Mr. Micklem's expertise. He stated, however, that Mr. Micklem was not present at the Event and did not look into the Horse's mouth, which Mr. Micklem confirmed.

Further submissions by Protestor during the hearing:

- 6.11 During the hearing, the Protestor submitted she had been involved with equestrian sport for over 40 years and confirmed the Respondent's ride was one of the worst she had ever seen. When she discovered the Ground Jury had not sanctioned the Respondent during the Event, she felt obligated to lodge a Protest for horse abuse. She agreed that someone like her sitting at home should not have to do the work of the FEI Stewards and Judges.

- 6.12 The Protestor further argued that a single jab in the mouth fell under the definition of abuse. She recognised that sometimes a jab may be accidental but in this case, the jabbing occurred throughout the race. She stated it was clear in the video that the Respondent was using his full body weight against the Horse's mouth and pulling on the reins to slow down the Horse. She argued that given the type of bit, the force on the jaw, soft tissue, etc. would have been multiplied and in her words, similar to "using a sledgehammer to crack a nut". These bits were meant for very subtle and still-positioned work and not as breaks. The Respondent also used his body weight as a brace against the Horse's mouth.

- 6.13 The Protestor clarified that she was not suggesting that the 2020 FEI rules on tack be applied retroactively, but that this issue had been finally recognised by the FEI. In her view, the rules in place at the time had been "abusively abused".

Further submissions by the FEI during the hearing:

- 6.14 The FEI relied on its written opinion and emphasised the evidence in the video and the pictures could not be disputed. The FEI clarified that this case was not about the tack or equipment the Respondent used. Instead, it concerned how the Respondent used his tack and equipment. The FEI agreed with the Protester that one jab was sufficient to constitute abuse. Here, it was clear the Respondent was excessively jabbing and pulling on the Horse's mouth. The FEI believed

there was no doubt the Respondent caused unnecessary discomfort and most likely pain to the Horse, which was enough to be considered abuse.

- 6.15 The FEI submitted that the Tribunal had jurisdiction, a Protest for horse abuse may be filed by any person at any time, and the Protester had filed her Protest without any delay.

Further submissions by the Respondent during the hearing:

- 6.16 The Respondent stated he had been riding in FEI competitions since he was 14 years old and had never been disciplined. He started training the Horse in May 2018 in preparation for the Event.
- 6.17 The Respondent stated he had never been told his riding style was not good. He explained that since each horse was different, some more mature than others, this required a different riding style. The Respondent stated the Horse was enthusiastic and always wanted to move forward, which meant he had to lean back and pull on the reins to ride her.
- 6.18 The Respondent stated the bit was designed for the Horse based on her mouth and it was not up-side down. In his view, it was fitted properly. He maintained the Horse was not uncomfortable during the race. He knew his Horse and would have immediately noticed if she was suffering. He further explained that he had previously used this bit, which was also used by other riders, and had even won races with it. He confirmed all decisions about bits and equipment were made as a team.
- 6.19 The Respondent argued the Protest was inadmissible as it was filed "too late". Article 142.2 of the GRs required a person witnessing an abuse to report it "without delay". According to the Respondent, the Protestor was aware of the alleged abuse on about 8 March 2019, when she posted about the tack rules on social media using one of the pictures submitted with her Protest, but she only lodged the Protest on 4 April 2019. The Respondent was notified about the allegations on 7 June 2019. He believed filing a Protest three (3) months after the Event should be considered "undue delay".
- 6.20 In the alternative, the Respondent claimed that the burden of proof – to the comfortable satisfaction of the Tribunal - had not been met. The burden was high on the scale as the allegations were serious.
- 6.21 The Respondent submitted there were approximately 30 FEI Officials

at the Event. The Horse underwent five vet checks and passed them all. The veterinarians also checked for cuts on the side of the Horse's mouth. He maintained that the FEI Officials at the Event had the responsibility to ensure the Horse's well-being and safety. If they became aware of any horse abuse, it was their responsibility to disqualify the Respondent and report it to the FEI. Furthermore, the ERs in force at the time of the alleged conduct had very few rules about equipment. It was the responsibility of the Stewards to ensure tack checks were conducted. Article 1047 of the VRs provides that "*tack may be examined by Stewards*" and veterinarians checked whether there were any irregularities with the tack pursuant to Article 1047.5(c) of the VRs. None of the Stewards or veterinarians commented on the tack the Respondent used. In the Respondent's view, if the present case was so serious, as suggested by the FEI, the FEI should have taken action against some of the Officials; however, none had been reprimanded. He believed the FEI was relying on third parties to report these incidents.

- 6.22 The Respondent maintained the new Endurance Rules, which came into force on 1 January 2020, did not apply to his case since his tack and equipment were not prohibited at the time of the Event.
- 6.23 The Respondent confirmed his teammates explained the FEI rules to him because he did not read English. He was aware of the meaning of abuse under the rules. The Respondent highlighted the Horse did not have any injuries, or abrasions, etc. While he accepted the rules did not require injuries for horse abuse, he stated that he would have ended the race if he thought the Horse was in pain.
- 6.24 When asked by the panel, the Respondent recalled that his trainer's wife was a British trained lawyer and helped him with his submission of 25 June 2019, answering the FEI's Notification of alleged horse abuse dated 7 June 2019.
- 6.25 He asked the Protest be dismissed. In the alternative, if the Tribunal did not agree, he stated he should not receive a suspension of more than three (3) months because: (i) this was his first offence; (ii) his equipment or riding was not sufficiently egregious or obvious to be noticed by any of the (many) Officials at the Event; (iii) no abuse was detected at the vet checks; and (iv) his tack and equipment did not contravene any regulations applicable at the time.

7. Jurisdiction

- 7.1 The Tribunal has jurisdiction over the matter pursuant to the Statutes,

GRs and IRs.

8. Admissibility of the Claim

- 8.1 The Tribunal finds the Protest was properly submitted to it by the FEI Secretary General through the FEI Legal Department. Protests may be lodged by anybody under Article 163.2 of the GRs. Since the Respondent was registered with the FEI at the time of the incident, the Protest is admissible and the Tribunal will decide on this matter in accordance with applicable rules and regulations.
- 8.2 The Tribunal further notes the Respondent's claim that the alleged horse abuse was not reported "without delay" as required under Article 142.2 of the GRs. The Tribunal finds that "without delay" has to be examined on a case by case basis. In this case, the Protest was lodged by the Protestor on 4 April 2019 whereas the Respondent claims the Protestor was aware of the alleged horse abuse on at least 8 March 2019. While the Tribunal agrees that protests for horse abuse should be reported as soon as possible, Article 142.2 of the GRs provides that a protest may be filed at any time after an event. Therefore the Tribunal finds that there was no undue delay between the Event and the filing of the Protest and dismisses the Respondent's argument.

9. Decision

- 9.1 To start with, the Tribunal has to decide whether to allow the PowerPoint presentation submitted by the Respondent at the outset of the hearing. The Tribunal finds this document contained new legal arguments not previously presented to the Protester, the FEI or the Tribunal. Therefore, the Tribunal will not admit this PowerPoint presentation into evidence. The Tribunal will, however, allow the oral submissions related to the PowerPoint presentation, which included new arguments. The Tribunal further notes the Protestor did not object to the PowerPoint presentation and any new oral arguments during the hearing. The FEI only objected to the PowerPoint presentation during its closing statement and did not object to any new oral arguments.
- 9.2 The Tribunal also wishes to address the Respondent's complaints about not being able to provide additional written submissions after retaining a lawyer. The Tribunal granted the Respondent an opportunity to respond to the Protest, the Notification Letter, and the Protester's second statement. The Respondent could have also responded to Mr. Micklem's report or provided an expert report of his own. The Tribunal must emphasize that it was the Respondent's choice not to be legally represented when he responded to the Notification Letter. Despite this,

the Respondent acknowledged during the hearing that he had a British trained lawyer assist him with his response and the Tribunal is allowing his oral presentation of the PowerPoint presentation.

- 9.3 Continuing with the decision on the merits, and after having decided that the Protest is admissible, the Tribunal has to determine whether the Respondent committed horse abuse pursuant to Article 142 of the GRs.
- 9.4 The Tribunal does not question the veracity of the video or the photos and accepts them into evidence. Neither the Respondent nor the FEI questioned their veracity.
- 9.5 The Tribunal accepts Mr. Micklem's expert report and oral testimony.
- 9.6 The Tribunal confirms that only the rules and regulations in force at the time of the alleged violation are applicable in this case.
- 9.7 The Tribunal has taken note that the Respondent did not agree with the Protester and the FEI that the bit was up-side down. Since this bit was not prohibited when the alleged violation occurred, the Tribunal will not make any rulings on the bit and will only take into consideration the way it was used during the Event by the Respondent.
- 9.8 Having examined the video and photos, the Tribunal agrees with the Protester and Mr. Micklem that the riding of the Respondent is totally unacceptable, because he was completely unbalanced as he leaned back and pulled on the reins, which he did over and over again during the competition. It is crystal clear for the Tribunal, from the video evidence and Mr. Micklem's expert testimony, that by riding this way, the Respondent was constantly and repeatedly jabbing the Horse in the mouth, which undoubtedly caused unnecessary discomfort to the Horse. The Tribunal is reminded that even a single jab in the mouth falls under the definition of abuse. In this case, however, the jabbing was not accidental because it occurred consistently throughout the video and showed the Respondent's method of riding, which the Tribunal finds abusive.
- 9.9 The Tribunal strongly disagrees with the unacceptable position of the Respondent, but when answering the FEI's Notification of the alleged horse abuse, the Respondent stated: *"It is unfortunately all too easy to sit at home, look at pictures and concoct hypothetical theories that a horse suffered but the reality is that the people who actually saw 8 Minute and checked her, including numerous FEI officials and several qualified FEI veterinarians, saw that she had no injuries and had no concerns for her welfare."* For the Tribunal these are not hypothetical

theories of horse suffering. The continuous jabbing of the horse's mouth displayed by the Respondent during the video is totally out of line with all general principles of horsemanship. The Tribunal wishes to draw to the Parties' attention to the treatises of Xenophon, the earliest works on horsemanship in any literature, as early as 350 BC, and through the history of riding, to current common international riding practices: "As a rule, a smooth bit is better than a rough bit. If a rough bit is used, it should be used gently enough that it resembles a smooth bit (this principle is still a basis used today).¹ What the Tribunal saw on the video was a very rough bit, used without any regard whatsoever for the horse's mouth and welfare. Of course, the Respondent's way of riding, by pulling back with his entire body and with such a rough bit, cannot be accepted in any competition. Any person with a minimum knowledge of horsemanship would consider this riding and jabbing unacceptable. Therefore, the Tribunal not only objects to the Respondent's criticism of the Protestor, but also urges the Respondent to understand the importance of horsemanship. This begins with showing respect for the horse and understanding that in riding, horses must be treated as the living, breathing, sentient creatures that they are and commit to the priority of horse welfare.² Therefore, the Tribunal strongly advises the Respondent to take and pass all FEI Courses available on the FEI Campus³ prior to returning to competition.

9.10 Similarly, the Tribunal also disagrees with the Respondent's argument when he stated as follows: "(...) *As most riders would tell you, moving your bodyweight back from a neutral position helps to slow horses down and leaning forward typically makes them speed up. This does not increase the amount of pressure applied to a horse's mouth – it is a question of where your centre of gravity is on the horse. I do not believe I have a rigid stance and no natural bend or that I was jabbing 8 Minute in the mouth, everyone has areas for improvement but I do not believe my riding was detrimental to 8 Minute. Everyone has their own riding style and so long as the horse is well taken care of, it is a dangerous approach to dictate about style. Contrary to Ms. Cuckson's allegation, 8 Minute and I worked very well together to complete 140km. Perhaps Ms. Cuckson has never taken part in long distance riding but in my opinion, it would be pretty hard to ride so far without control.*"

9.11 Again, the Tribunal strongly disagrees. It should be obvious for any person with minimal horsemanship knowledge, that leaning back and totally out of balance for so long and continuously, with the bit, bridle

¹ See *Part IX: Riding the Spirited and Dull Horse* (para 3) at https://en.wikipedia.org/wiki/On_Horsemanship

² See <https://inside.fei.org/system/files/Horsemanship%20Competence.pdf>

³ Available here: https://campus.fei.org/theme/fei_campus/pages/fei_portals.php

and the reins used by the Respondent, increases the amount of pressure to a point that causes or is likely to cause pain or unnecessary discomfort to a horse. Of course, riders have different riding styles but no riding style, including jabbing on the horse's mouth, should cause unnecessary pain to a horse. This contradicts old and all principles of riding that the FEI, riders, trainers and officials worldwide must uphold.

- 9.12 The Tribunal is therefore comfortably satisfied that the Respondent committed horse abuse within the meaning of Article 142(iv) of the GRs.
- 9.13 Article 142.1 of the GRs sets out the principle that no person may abuse a horse during an event or at any other time and defines the word "abuse" to mean "*an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse*". The Tribunal finds the Protester established the burden of proof of horse abuse and the Respondent committed horse abuse pursuant to Article 142.1 of the GRs.
- 9.14 The Tribunal also noted that neither the Protester nor the FEI commented on the apparent blood on the Horse's legs when she was eliminated for lameness. This aspect should also be investigated by the FEI and the Officials reaction to it.
- 9.15 The Tribunal once more reiterates – as it has already stated in previous decisions – the FEI should investigate why FEI Officials did not react on apparent horse abuse happening during competition. The Tribunal encourages the FEI to investigate and open disciplinary proceedings, if necessary, against the FEI Officials officiating at the Event for potential breaches of the FEI rules and regulations that they may have committed.
- 9.16 For the avoidance of any doubt, the Tribunal rejects the Respondent's argument that since he was not disqualified at the Event for horse abuse, this matter should be dismissed. For the Tribunal the welfare of the horse is paramount in international equestrian sport and all those involved must adhere to the FEI Code of Conduct and to acknowledge and accept that at all times the welfare of the Horse must be paramount.
- 9.17 In taking into account the totality of the circumstances, the Tribunal finds a suspension of three (3) months, in accordance with Article 169.6.2 of the GRs, in combination with a fine, as provided for in Article 169.8 of the GRs, as proportionate. The Tribunal finds that all results (if any) from the Respondent and the Horse at the Event are disqualified.
- 9.18 As a result of the foregoing, the Tribunal finds that the Respondent's conduct constitutes Abuse within the meaning of Article 142.1 of the

GRs. For the above reasons, and in accordance with Articles 142.1, 169.6.2, 169.8 and 169.10 of the GRs, the Tribunal decides as follows:

1. The Protest is admissible.
2. Mr. Al Junaibi has engaged in horse abuse and thereby violated Article 142 of the GRs.
3. Mr. Al Junaibi is suspended for a period of **three (3) months** starting from the date of the present decision.
4. **All results** achieved (if any) by Mr. Al Junaibi with the Horse at the Event, including forfeiture of medals, points and prizes are **disqualified**.
5. Mr. Al Junaibi is fined **two thousand Swiss Francs (CHF 2,000)**.
6. Mr. Al Junaibi must contribute **three thousand Swiss Francs (CHF 3,000)** towards the costs of these proceedings.
7. Prior to returning to competition, Mr. Al Junaibi is strongly advised to pass all tests with exams available at the FEI Campus regarding horsemanship.

9.19 According to Article 168 of the GRs, this Decision is effective from the date of its oral or written notification to the affected party or parties.

9.20 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision may be appealed to the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

The Parties: Yes

Any other: NF

FOR THE PANEL



Ms. Constance Popineau, FEI Tribunal panel chair