

**DECISION of the FEI TRIBUNAL  
dated 12 March 2020**

**Controlled Medication Case:** 2019/FT35

**Horse / Passport:** HURST OMAN/105XP19/NAM

**Person Responsible/ID/NF:** Bianca JACOBS/10094843/NAM

**Trainer/ID/NF:** Bianca JACOBS/10094843/NAM

**Event/ID:** CEIYJ2\* 120km - Windhoek (NAM), 2019\_CI\_1464\_E\_YJ\_02

**Date:** 07-08.06.2019

**Prohibited Substance:** Scopolamine

**Bar Code No.:** 5573654

**I. COMPOSITION OF PANEL**

Mr. Martin Gibbs, one member panel

**II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**1. Articles of the Statutes/Regulations which are applicable:**

Statutes 24<sup>th</sup> edition, effective 20 November 2018 ("**Statutes**"), Arts. 1.4, 38 and 39.

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2019, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 2<sup>nd</sup> edition, changes effective 1 January 2019.

Veterinary Regulations ("**VRs**"), 14<sup>th</sup> edition 2018, effective 1 January 2019, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

**2. Person Responsible:** Ms. Bianca Jacobs

**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**"), Ms. Bianca Jacobs, is a rider and registered Trainer for Namibia.

- 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 28 February 2020, the FEI informed the Tribunal that the Parties had reached an agreement in the context of the case 2019/FT35 HURST OMAN and submitted the Agreement (together with the Case Summary and the Full Reasoning for the Agreement, as well as the Annexes outlined throughout this Decision) to the Tribunal for approval and incorporation into a Decision of the Tribunal in accordance with Article 7.6.1 of the EADCMRs.

## **3. Agreement between Parties**

- 3.1 The Parties reached the following Agreement:

\*\*\* Quote\*\*\*

### **3 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:**

- 3.1 In the matter of the Adverse Analytical Finding related to the samples, which were collected from the PR’s horse HURST OMAN (the “Horse”) at the CEIYJ2\* 120km in Windhoek, Namibia, from 7 to 8 June 2019 (the “Event”), the PR and the FEI agree in accordance with 7.6.1 ECM Rules on the following:
- (a) The PR admits the violation of Article 2.1 of the ECM Rules (The presence of a Controlled Medication Substance and/or its Metabolites or Markers in a Horse’s Sample); and
  - (b) The PR established on a balance of probabilities how Scopolamine entered the Horse’s system; and
  - (c) The PR bears no fault or negligence for the Rule Violation and therefore she shall not serve any period of ineligibility and the otherwise applicable period of Ineligibility (i.e. six months) shall be eliminated; and
  - (d) In accordance with Article 10.8.3 of the ECM Rules, this violation of the ECM Rules shall not be considered a prior violation for the

purpose of Article 10.8 (Multiple Violations) of the ECM Rules;

- (e) In accordance with Articles 9.1 and 10.1.2 of the ECM Rules the results achieved by the PR and the Horse at the Event are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
  - (f) The PR shall not incur any fines;
  - (g) No other Sanctions (other than the Disqualification of the Horse's results at the Event in accordance with Articles, 9, 10.1.2 and 11 of the ECM Rules) will apply in this case;
  - (h) Each party will bear its own legal and other costs incurred in connection with these proceedings.
- 3.2 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.
- 3.3 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 further provided a Case Summary and Reasons as follows:

- 2.1 "Ms. Bianca JACOBS (FEI ID 10094843), the Person Responsible ("PR") in accordance with Article 118.3 of the FEI General Regulations, is a rider and a registered Trainer for Namibia.
- 2.2 The Fédération Equestre Internationale (the "FEI" and together with the PR, the "Parties"), is the sole IOC recognised international federation for equestrian sport. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para Dressage and Para Driving).
- 2.3 The PR participated with the horse HURST OMAN (FEI ID: 105XP19) (the "Horse") in CEIYJ2\* 120km in Windhoek, Namibia, from 7 to 8 June 2019 (the "Event"). As a member of the Namibian Equestrian Federation (the "Namibian NF"), the latter being a member of the FEI,

the PR was bound by the EADCM Regulations, 2nd edition, changes effective 1 January 2019.

- 2.4 The Horse was selected for testing on 7 June 2019. 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.
- 2.5 Analysis of the urine sample revealed the presence of Scopolamine, an anticholinergic and antimuscarinic used to treat gastrointestinal spasm. 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".
- 2.6 The FEI has with effect from 1 January 2016, amended the EADCMR 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.
- 2.7 By notification letter dated 18 July 2019, the FEI informed the PR, in her capacity as the Person Responsible and Trainer of the Horse, alongside with the Namibian 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 Sample collected at the Event. (Exhibit 1)
- 2.8 The proceedings were initiated under the so-called Administrative Procedure (also known as "Fast Track") due to the respective prerequisites under Article 8.3 of the ECM Rules for that type of procedure being fulfilled. The PR did not accept the Administrative sanctions offered to her.
- 2.9 The PR who is also the owner and Trainer of the Horse was provided with the right to request a B Sample analysis of the positive sample. The PR did not request the B-Sample Analysis to be performed.
- 2.10 The PR provided her written submission, wherein she explained the following: (Exhibit 2-3)
  - The Horse is stabled at a small holding (stable) just outside the town Otjiwarongo with 11 other horses;

- The horses live in semi-liberty and are grazing throughout the day;
- They have their own individual paddocks which are used only when hard feed is given to the horses;
- The Horse is fed hard feed twice a day (morning and evening);
- The PR keeps a vaccination logbook for the Horse;
- The PR did not intentionally/negligently give the horse any substance that would violate the FEI Rules;
- The Horse inadvertently consumed Datura plant, which grows in the pastures where the Horse is grazed;
- Datura is known to contain Scopolamine;
- The PR provided a written statement by Dr. Kleber (the owner of the stable), (hereinafter referred to as "Dr.K") wherein she confirmed that Datura plant is very common in that area. The plant could have been consumed by the horse either via contaminated hay or in the pasture. Due to the drought in the country it is even more likely that the horses would ingest Datura plant since they are feeding on anything they can find. Datura plant is growing at our holding;
- Two photographs of Datura plant that were taken in the pastures of the stable have been submitted alongside with Dr. K.'s statement;
- Upon the FEI's request for more exact information with regards to the Datura growth at the property, Dr. K. explained that Datura is growing in the pastures where the Horse is grazed. The grazing area is vast and spreads over 275 ha. Datura is generally found on areas where the soil has been trampled e.g. close to a water point.

2.11 The FEI is satisfied that the PR has established, on a balance of probabilities, how Scopolamine entered the Horse's system.

2.12 Furthermore, taking into account the totality of circumstances of the case in question, the FEI is satisfied that the PR has on a balance of probabilities established that she bore no fault or negligence for the Rule Violation.

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

#### **4. Jurisdiction**

4.1 The Tribunal has jurisdiction over this matter pursuant to 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 Namibia, the latter being a member of the FEI, the PR was bound by the EADCMRs.
- 4.3 Further, Article 7.6.1 of the EADCMRs allows for agreements between parties.
- 4.4 As a result, the Tribunal finds that it has jurisdiction to issue this Decision.

## **5. Approval of Agreement**

- 5.1 Having reviewed the Case Summary, the Full Reasoning for the Agreement and terms of the Agreement, the Tribunal has – among others – taken note, that the FEI accepts that the PR has established the source of the Prohibited Substance, namely Datura plants that are growing in the pastures where the Horse grazed or from contaminated hay with Datura. In this regard, the Tribunal also notes that Datura is known to contain Scopolamine.
- 5.2 Furthermore, the Tribunal takes note that the FEI accepts that the PR bore No Fault or Negligence for the rule violation.
- 5.3 Following from Articles 10.4 of the ECM Rules, where a PR establishes that she 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 degree of fault of the PR, 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 fully comply with all the terms of the Agreement as set forth in Article 3 above. Further, this Decision shall terminate the present case 2019/FT35 HURST OMAN.

## **6. Decision**


- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Bianca Jacobs, concerning the case 2019/FT35 HURST OMAN is hereby - pursuant to Article 7.6.1 of the EADCMRs - approved by the Tribunal with the consent of the Parties and its terms are incorporated into this Decision. Namely, the Parties agreed as outlined in Article 3 above.

- 2) This Decision is subject to appeal in accordance with Article 12.2 of the ECM Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
- 3) This Decision shall be published in accordance with Article 13.3 of the ECM Rules.

**IV. DECISION TO BE FORWARDED TO:**

- a. **The Person Responsible: Yes**
- b. **The President of the NF of the Person Responsible: Yes**
- c. **The Organising Committee of the Event through his NF: Yes**
- d. **Any other: No**

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read 'Martin Gibbs', is centered on the page. The signature is written in a cursive style with a horizontal line at the end.

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**Mr. Martin Gibbs, one member panel**