

DECISION of the FEI TRIBUNAL
dated 21 July 2020

Case No.: 2020/RF02

Horse: KENYA DE SAFRAY

FEI Passport No: 105AK13/FRA

PR/NF/ID: Marine JOBIN/10035870/FRA

Event/ID: CSI1* - Le Touquet (FRA)/2019_CI_1318_S_S_03

Date: 2 – 5 May 2019

Violation: Art. 2.3 EAD Rules

I. COMPOSITION OF PANEL

Mr. Chris Hodson QC, one member panel

II. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

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

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2019, 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, changes effective 1 January 2019.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, changes effective 1 January 2019.

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

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Marine JOBIN, represented by Chain Avocats, Paris, France.

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. 2.3 - Evading, Refusing or Failing to Submit to Sample Collection

“2.3.1 Evading Sample collection, or without compelling justification, refusing or failing to submit to Sample collection after Notification (in accordance with the FEI Veterinary Regulations) or to comply with all Sampling procedure requirements including signing the Sampling form or otherwise evading Sample collection.

2.3.2 It is each Person Responsible’s personal duty to ensure that if the Horse with/on which they competed or will compete is selected for Sampling and a notification of Sampling in accordance with the FEI Veterinary Regulations has taken place, such Horse is submitted to Sample collection and that all Sampling procedure requirements are met.

2.3.3 Accordingly, although it is permissible for the Person Responsible to delegate the submission and supervision of the Horse to a third party, the Person Responsible remains responsible for the Horse throughout the Sample collection process and for:

(i) any evasion of Sample collection; and/or

(ii) any refusal or failure, without compelling justification, to submit the Horse to Sample collection; and/or

(iii) any failure to comply with any or all of the Sampling procedure requirements, including signing the Sampling form.

2.3.4 It is not necessary to demonstrate intent, fault, negligence or knowledge in relation to any delegation relating to the Sampling process or to the acts of a relevant third party in order to establish an EAD Rule violation under this Article 2.3.”

EAD Rules Art. 7.6.1: "At any time during the results management process the *Person Responsible* and/or member of the *Support Personnel* and/or *Owner* against whom an EAD Rule violation is asserted may admit that violation at any time, waive a hearing and may agree with the FEI on the Consequences that are mandated by these EAD Rules or (where some discretion as to Consequences exists under these EAD Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the *FEI Tribunal*, the final agreement shall state the full reasons for any period of *Ineligibility* agreed, including (if applicable), a justification for why the flexibility in *Sanction* was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 12.2.2 and published as provided in Article 13.3."

III. DECISION

1. The Parties

- 1.1 The Person Responsible ("**PR**"), Ms. Marine Jobin, is a rider for France.
- 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 On 21 February 2020, the FEI notified the PR of an apparent violation of Article 2.3 of the EAD Rules.
- 2.2 Furthermore, the FEI provisionally suspended the PR from the date of notification, i.e., 21 February 2020.

3. Further proceedings

- 3.1 On 2 March 2020, the FEI informed the Tribunal that the PR requested for the lifting of the Provisional Suspension and for a Preliminary Hearing to be held.
- 3.2 On 6 March 2020, the FEI Tribunal Chair nominated a one member panel. Neither party objected to the constitution of the panel. At the same time the Tribunal set a date for the Preliminary Hearing. After the PR requested a postponement of the Preliminary Hearing, on 10 March 2020, the Tribunal proposed to the Parties expedited proceedings and a schedule of

submissions for the expedited proceedings.

- 3.3 On 9 March 2020, the FEI provided its Response to the request to lift the Provisional Suspension.
- 3.4 On 20 March 2020, the PR provided her written submission.
- 3.5 On 30 March 2020, the FEI provided its Response to the PR's written submission of 20 March 2020.
- 3.6 On 1 April 2020, upon request by the PR, the Tribunal provided the PR with the opportunity to further investigate the case, and provided the PR with a new deadline to respond to the FEI's Answer.
- 3.7 On 24 April 2020, the PR provided her final written submission.
- 3.8 On 29 May 2020, the Tribunal suggested a period of time for a hearing to be held, and on 5 June 2020 – absent any response by the Parties – set a hearing date.
- 3.9 On 10 June 2020, and having been informed that the Parties are in settlement negotiations and request a stay in the proceedings, the Tribunal granted a stay of the proceedings of 1 month.
- 3.10 On 15 July 2020, the FEI informed the Tribunal that the Parties had reached an Agreement in the context of the Case 2020/RF02 KENYA DE SAFRAY 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. Further, on 20 July 2020, the Parties provided the Tribunal with a fully signed version of the Agreement between Parties.

4. Agreement between Parties

- 4.1 On 20 July 2020, 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 *Failure to submit to Sample Collection*, which occurred at CSI1* - Le Touquet in France between 2-5 May 2019 in relation to the PR's horse KENYA DE SAFRAY, the PR and the FEI agree in accordance with 7.6.1 EADRs Rules on the following:

- (a) The PR admits the violation of Article 2.3 of the EAD Rules (*Evading, Refusing or failing to Submit to Sample Collection*);
- (b) The PR bears *No Significant Fault or Negligence* for the Rule Violation and the applicable period of Ineligibility shall be twelve (12) months, commencing as of 1 September 2019, taking into account the already served period of provisional suspension;
- (c) In accordance with Article 10.10.2 of the EAD Rules any and all results achieved by the PR between 1 September 2019 and 21 February 2020 are disqualified, with all resulting consequences, including forfeiture of any related medals, points and prizes;
- (d) The PR shall pay a fine of 500 CHF;
- (e) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (f) No other Sanctions will apply in this case;
- (g) This violation of the EAD Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.8 of the EAD Rules.

This agreement is made in accordance with Article 7.6.1 of the EAD 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 EAD Rules.

The parties acknowledge and agree that, pursuant to Article 13.3 of the EAD 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

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

“Ms. Marine JOBIN (FEI ID 10035870), the Person Responsible (“PR”) in accordance with Article 118.3 of the FEI General Regulations, is a rider for France.

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 KENYA DE SAFRAY (FEI ID: 105AK13) (the “Horse”) in CSI1* in Le Touquet, France which took place between 2-5 May 2019 (the “Event”). As a member of the French Equestrian Federation (the “French NF”), the latter being a member of the FEI, the PR was bound by the FEI EADCM Regulations.¹

On 1 May 2019, during the PR’s presentation of the Horse at the horse inspection the Horse escaped from the PR and seriously injured his pastern on the wire of a banner fixed on the surrounding fence. The Horse sustained a compound fracture with the horse’s tendon severed three-quarters of the way.

Due to the severity of the injury, suffering of the Horse and inability of transporting the injured Horse, the decision to euthanize the Horse was made.

The Treating Veterinarian performed the euthanasia as seen from the Veterinary Form A which was co-signed by the Veterinary Delegate. (Exhibit 1)

In case of an Equine Fatality at an International Event, EADCM Sample Collection and a Post Mortem Examination is mandatory as per. Art. 1080-1081 of the Veterinary Regulations (“VRs”)².

In the present case, the Horse was euthanized at the Event on 1 May 2019 due to a compound fracture – triggering Art. 1080-1081 of the VRs.

¹ FEI Equine Anti-Doping and Controlled Medication Regulations 2nd edition, changes effective 1 January 2019

² FEI Veterinary Regulations 14th Edition 2018, effective 1 January 2019

Whereas the PR states she was not informed of any compulsory regulations, the Veterinary Delegate stated that he orally informed the PR that according to the FEI regulations, it was compulsory to take samples and conduct a post mortem examination.

No EADCM Sample was obtained.

On the next day, the ground jury requested the PR to make a written statement mentioning her refusal of Post Mortem Examination for sentimental reasons.

No Post Mortem Examination was performed.

By notification letter dated 21 February 2020, the FEI informed the PR and the French NF of a violation of Article 2.3 (*Evading, Refusing or failing to Submit to Sample Collection*) of the FEI Equine Anti-Doping Rules (the "EAD Rules") based on the Veterinary Delegate's Report and related correspondence with the FEI Veterinary Department. (Exhibit 2-4)

In accordance with Art. 7.4.2 of the EAD Rules the PR was provisionally suspended as of the date of the notification letter.

Art. 2.3.2 of the EAD Rules states *"It is each Person Responsible's personal duty to ensure that if the Horse with/on which they competed or will compete is selected for Sampling and a notification of Sampling in accordance with the FEI Veterinary Regulations has taken place, such Horse is submitted to Sample collection and that all Sampling procedure requirements are met."*

Furthermore, the Person Responsible is responsible for the Horse throughout the Sample collection process and for any evasion of sample Collection; and/or any refusal or failure, without compelling justification, to submit the Horse to Sample Collection; and/or any failure to comply with any or all of the Sampling procedure requirements, including signing the Sampling Form.

Lastly, it is not necessary to demonstrate intent, fault, negligence or knowledge in relation to any delegation relating to the Sampling process or to the acts of a relevant third party in order to establish an EAD Rule violation under Art. 2.3.

In addition, Art. 1098.2, 1099.1 and 1071.4 of the VRs state as follows: *"PRs are strictly liable and responsible for their Horse(s) at all times and they and their Horse(s) may be subject to inspection for compliance with all applicable FEI rules and regulations by FEI Officials at any time during an Event.*

PRs must ensure that they and their Horse(s) comply with all aspects of these VRs, and EADCMRs including but not limited to: ...j) all provisions related to the implementation of the EADCMRs and Elective Testing;...

Following notification, the PR or a member of their Support Personnel must accompany the Horse to the Testing Veterinarian or VD and witness the sampling procedure."

In the present case, the FEI acknowledges that the situation from the time of the accident and throughout the euthanasia of the Horse was extremely tense. This was confirmed in several of the FEI Officials' statements. (Exhibits 5-7)

The PR additionally provided photography of the fracture attesting to the severity of the fracture with the lower limb of the horse hanging freely. (Exhibit 8)

Witnessing such a grave injury of her Horse which ultimately had to be euthanized caused devastation, distress and great sadness in the PR. In this highly intense emotional state the PR did not hear/understand the request the EADCMP Sample Collection.

In consequence, the PR failed to submit the Horse for Sample Collection as per art. 2.3 of the EAD Rules. Although the FEI acknowledges that the totality of the circumstances brought great distress to the PR, the FEI is of the opinion that no compelling justification existed in the present case which would justify the failure to submit the Horse for Sample Collection. The PR has the personal duty to comply with any or all of the Sampling procedure requirements with noncompliance resulting in an Anti-Doping Rule Violation.

However, the FEI took into consideration the aforementioned heightened emotional state of the PR and the possibility that it temporary affected the PR's rationality at the time of the incident and subsequent euthanasia resulting in an inadvertent departure from the applicable Rules.

The FEI therefore submits that the PR has established that she bears no Significant Fault or Negligence for the Rule Violation and that the standard Period of Ineligibility shall be reduced to twelve (12) months under art. 10.5 of the EAD Rules.

Lastly, due to the delay in notifying the PR of the Anti-Doping Rule Violation with the PR being notified only on 21 February 2020, the FEI agrees to start the Period of Ineligibility at an earlier date commencing on 1 September 2019. In consequence, all the competitive results achieved during the Period of Ineligibility including retroactive Ineligibility shall be disqualified.

For the avoidance of doubt, the PR and the Horse combination did not obtain any results at the Event in question. Therefore, only disqualification of any results obtained during the retroactive Period of Ineligibility shall apply.”

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 French National Federation, 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 PR admits the Rule violation, and that the FEI accepts that the PR bore No Significant Fault or Negligence for the Rule violation.
- 6.2 Furthermore, the FEI accepts Delays Not Attributable to the PR, and the Parties agreed for the period of Ineligibility to commence at an earlier date, i.e., on 1 September 2019.
- 6.3 Following from Articles 2.3, 10.3.1 and 10.5.2 of the EAD Rules, where a PR establishes that she bears No Significant Fault or Negligence, then

the otherwise applicable period of Ineligibility (2 years) may be reduced, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable.

- 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 accordingly. Further, this Decision shall terminate the present case 2020/RF02 KENYA DE SAFRAY.

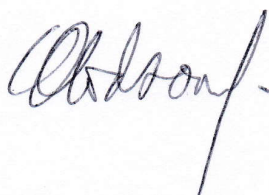
7. Decision

- 1) The Tribunal rules that the Agreement executed by the FEI and the PR, Ms. Marine Jobin, concerning the case 2020/RF02 KENYA DE SAFRAY 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. Chris Hodson QC, one member panel