



DECISION of the FEI TRIBUNAL

dated 26 August 2013

In the matter of

Ms. CHRISTINE VOGT

**represented by Mr. Clemens Sandmeier, Sandmeier & Sixta, Aichach,
Germany**

“Claimant”

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

“Respondent”

I. COMPOSITION OF PANEL

Mr. Pierre Ketterer (one member panel)

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 submissions received to date.

3. Oral hearing: none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable or have been infringed:

Statutes 23rd edition, effective 8 November 2012 ("**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2012 ("**GRs**").

Internal Regulations of the FEI Tribunal, 2nd edition, 1 January 2012 ("**IRs**").

Veterinary Regulations ("**VRs**"), 12th edition, effective 5 April 2010, updates effective 1 January 2012, Annex XVII.

Veterinary Regulations ("**VRs 2013**"), 13th edition, effective 1 January 2013, Chapter IV.

FEI Code of Conduct for the Welfare of the Horse.

2. The relevant Legal Provisions:

Article 163 of the FEI General Regulations.

Article 18.12 of the Internal Regulations of the FEI Tribunal.

IV. DECISION

Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence in the present proceedings, in its decision it only refers to the submissions and evidence it considers necessary to explain its reasoning.

1. Factual Background

- 1.1 The FEI international Event CSI-CH-J-Y-P INDOOR TWENTE in HENGELO, the Netherlands (the "Event") took place from 28 November to 2 December 2012.
- 1.2 One hundred and thirteen (113) ponies were measured by 2 FEI Measuring Veterinarians. One of the ponies measured was the equine Two Tone Blue (FEI ID 102US41) (the "Equine"), owned by the Claimant.

- 1.3 Five (5) ponies were over height and measured out, among them the Equine.
- 1.4 Ms. Vogt (LIE) (the "Claimant") was offered the opportunity to have the Equine re-measured at the Event, within one (1) hour of the first measurement. The Claimant did not accept that opportunity and instead decided to withdraw the Equine from the Event.

2. Procedural Background

- 2.1 On 7 December 2012, the Claimant sent a fax to the FEI Veterinary Department, objecting to the conditions of the measurement carried out at the Event ("the Protest").
- 2.2 On 13 December 2012, the FEI acknowledged receipt of the Protest, and extended the deadline to ask for the re-measurement or to lodge an Appeal under the Appeal System by seven (7) days.
- 2.3 On 21 December 2012, the FEI offered the Claimant the possibility to have the Equine measured at an FEI Pony Competition in 2013, in accordance with the VRs 2013. As requested by the Claimant, on 28 December the FEI extended the deadline to accept the measurement until 11 January 2013.
- 2.4 In several communications between 21 December 2012 and 11 January 2013, the Claimant confirmed her disagreement with the pony measurement conditions at the Event, and stated that she did not accept the measuring of the ponies at the Event because of the alleged inappropriate conditions, and argued further that therefore, the measuring results of all ponies were invalid.
- 2.5 On 24 January 2013, the Claimant confirmed that she would allow the Equine to undergo a measurement procedure, provided that it would be in line with the VRs 2013, and that the pony measurement was programmed for all ponies under the same conditions. She further clarified that she had not accepted a re-measurement, as in her eyes, the measurement conditions at the Event had been inappropriate, and had not complied with FEI Rules.
- 2.6 On 4 February 2013, the FEI confirmed that the proposed measurement would be in accordance with the VRs 2013, that further not only the Equine but the ponies of all participants would be measured at the selected FEI Pony Competition, and that the measurement was not considered as a re-measurement.
- 2.7 On 12 March 2013, in accordance with Article 166.2 GRs, the Claimant made the deposit of CHF 500 regarding her Protest with the FEI Tribunal.
- 2.8 On 8 April 2013, 27 May 2013 and 7 June 2013, the Claimant submitted supplemental arguments to her initial objection of 7 December 2012.

3. Protest by the Claimant

3.1. The Claimant stated that the pony measurement conducted at the Event had been in breach of the FEI Rules, more specifically Nr. 2 to Nr. 5, Nr. 8, Nr. 16 of the Appendix A to Annex XVII of the VRs. Together with her submissions, the Claimant provided a list including twenty-two (22) signatures of trainers, parents and athletes, agreeing with the Claimant's objection against the pony measuring at the Event. The witnesses stated that the location where the ponies had been measured had not been quiet and private and that the floor had been slippery. The witnesses further stated that unauthorised people had been present during the measuring process, and that the measurers had changed the time frame of the measuring, allowing four (4) ponies to be measured on the day following the day for which the measurement had been foreseen. The Claimant further submitted photographs to support her claim that the measuring location had not been adequate.

3.2. In essence the Claimant submitted:

- a) That the measuring location had not been free from disturbances and distractions as required under the VRs. That the Equine had been unsettled and nervous during the measuring as it had been disturbed by noise, persons working at the measurement location, and the slippery floor.
- b) That it was important for pony owners that the measurement was announced in the schedule in order to allow them to prepare their ponies for the measuring process, as foreseen in the VRs 2013.
- c) That the two FEI Measuring Veterinarians had not been equipped with a reading device for the microchip identification of the ponies, and that the first ponies measured at the Event had not been correctly checked with the microchip.
- d) That no control of the ponies' shoes had taken place, and that most shoes had been changed.
- e) That most of the time, more than two people had been present during the measuring.
- f) That ponies had been re-measured without being accompanied by an FEI Steward, and without being kept on a holding paddock, and that in many cases the time between the initial measuring and the re-measuring had been more than one (1) hour. That furthermore, most of the ponies that had to be re-measured had been taken around the corner, out of sight of the FEI officials, and that their shoes had been grinded and hoofs cut.
- g) That the entire measuring process had been inappropriate and not in the interest of the protection of animals.
- h) That as a result of the inappropriate measuring conditions, the Equine

had to be allowed to take part in national and international shows without any further measuring as a condition for participation.

- i) That further, the Equine had been measured by the German National Federation in 2010, and that at the time, it had "Measured In". That furthermore ponies that had reached the age of seven (7) years would not grow anymore. That therefore, the standardized method for measuring had to be questioned.
- j) That in addition, the FEI had not acted transparently as – despite a respective request – the FEI had not informed her of the names of the FEI Measuring Veterinarians.
- k) That finally, the Ground Jury had had no authority to deal with the matter, as no respective Regulation was foreseen in the Appendix B to Annex XVII of the VRs, and that further no failure to respect the time limits had occurred, as the FEI had extended those time limits and offered suggestions for solutions.
- l) Regarding the Protest, the Claimant further argued that the FEI had at no time informed her that a Protest to the FEI Tribunal was inadmissible.

4. Answer of the FEI

- 4.1 On 26 April 2013, the FEI submitted its answer to the Protest ("the Answer"). In its Answer the FEI sought bifurcation of the proceedings pursuant to Article 18.12.1 of the IRs, requesting the FEI Tribunal to first decide on the issue of the admissibility of the Protest, prior to addressing the merits of the case. The FEI argued that the Protest was inadmissible, as the Claimant had not exhausted the administrative remedies available to her at the Event under the GRs and the VRs, i.e. a Protest with the Ground Jury or an Appeal under the VRs, requesting re-measurement. That those remedies foreseen under the GRs and the VRs had been the adequate remedies, as the matter in question had arisen during the Event. That pursuant to Articles 159.1, 159.2 and 163.1, 163.2 and 163.3 of the GRs, it would have been appropriate to lodge a Protest with the Ground Jury of the Event, as the Ground Jury had been the competent body to deal with all Protests and Reports which related to anything occurring during or in direct connection with an event.
- 4.2 With regards to the Appeal System foreseen under Appendix B to Annex XVII of the VRs in case a pony measures out during an FEI event, the FEI highlighted that it had not been complied with by the Claimant. That the Appeal System provides the Person Responsible or his or her representative with the chance to have his pony re-measured upon a written request for re-measurement to the FEI Veterinary Department within 7 days of the end of the FEI Event or Championship where the pony had measured out. That despite the fact that the Claimant had been informed of the process to be followed, she had not made a respective written request for re-measurement. That in conclusion, the

Claimant had not, as required, fulfilled her obligation to exhaust the above outlined administrative remedies at the Event, prior to filing a Protest with the FEI Tribunal after the Event.

5. The Decision

- 5.1 As an initial matter, the Tribunal grants the FEI's request under Article 18.12.1 of the IRs to bifurcate the proceedings, and to decide the case on the merits only if the Protest is determined to be admissible.
- 5.2 The Tribunal finds however that the Protest is inadmissible. The Tribunal comes to this conclusion for several reasons. Firstly, the Tribunal takes note that the only legal remedy chosen by the Claimant was a Protest to the FEI Tribunal after the Event, in accordance with Article 163 of the GRs. The Tribunal further takes note that the Protest concerned the conditions of the pony measurement at the Event. That therefore the Protest addressed a potential failure – i.e. to observe FEI Sport Rules (i.e. the VRs or the GRs) - which had allegedly occurred during an International Event.
- 5.3 In a second step, the Tribunal needs to decide whether the matter – submitted to it - falls within its competence. In line with Article 161 of the GRs and Article 38 of the Statutes, the Tribunal is competent to decide all cases submitted to it by or through the FEI Secretary General, whether Appeals or other matters, provided that the matter at stake does not fall under the jurisdiction of the Ground Jury or the Appeal Committee. The Tribunal however holds that as the matter arose during the Event, the Ground Jury and the Appeal Committee, if present, would have had jurisdiction in the present case. As follows from Article 163.4 of the GRs, the Tribunal only had competence to take decisions on matters which have not occurred during, or in direct connection with an International Event, or which were not known until after the end of the Event. The matter at hand however did occur during an Event, as it occurred in the context of the pony measurement.
- 5.4 The Tribunal therefore finds that the Claimant would have had two administrative remedies at her disposal at the time when the matter arose. Firstly, the Claimant could have requested a re-measurement within 7 days of the conclusion of the Event according to the Pony Measurement Appeal System, in accordance with Article 1045 of the VRs. The Tribunal understands that the Claimant had not chosen to make use of this possibility, even though the deadline to request such re-measurement had been prolonged several times, as she had considered that the entire measuring process had been inappropriate. However, the Tribunal understands that the FEI had confirmed that the re-measurement would have taken place under appropriate conditions, and the Tribunal therefore holds that the Claimant had no reason to not follow up on the option of the re-measurement.
- 5.5 Secondly, as the Claimant believed that the pony measurements had been conducted in breach of FEI Rules, she could have lodged a Protest

under the GRs, with the Ground Jury during the Event. The Tribunal further takes note of the Claimant's claim that the FEI had not informed her that a Protest to the FEI Tribunal was inadmissible. In this respect the Tribunal holds that at the time when the Claimant first addressed the FEI on 7 December 2012, the only potential remedy available to the Claimant - apart from the re-measurement under the VRs - was a Protest to the FEI Tribunal. That furthermore, only the body with whom a remedy is lodged has the competence to decide on the admissibility of the chosen remedy. In conclusion, it was exclusively for the Tribunal to decide on the admissibility of the Protest by the Claimant.

5.6 Therefore, the Tribunal finds that the Protest by the Claimant of 7 December 2012 is inadmissible, and that it has no competence to decide on the matter. The Tribunal further holds that, as the Protest is inadmissible, it cannot decide on the merits of the case, and that consequently it cannot decide whether or not the pony measuring conditions at the Event had been in accordance with the FEI Rules.

5.7 For the above reasons, the Tribunal decides as follows:

- 1) The Protest is inadmissible.
- 2) The Parties are to bear their own costs and expenses.

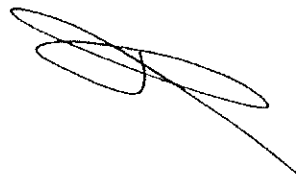
5.8 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.

8.9. According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within 30 days of the present notification.

V. DECISION TO BE FORWARDED TO:

- a. **The Parties: Yes**
- b. **Any other: No**

FOR THE PANEL



One member panel, Mr. Pierre Ketterer