



DECISION of the FEI TRIBUNAL

dated 5 July 2011

In the matter of

COLOMBIAN EQUESTRIAN FEDERATION ("COL NF")

Applicant

vs.

FEDERATION EQUESTRE INTERNATIONALE ("FEI")

Respondent

1. COMPOSITION OF PANEL

Mr. Hernán Méndez Cañas (Chair)

Mr. Jens Adolphsen

Mr. Patrick A. Boelens

2. SUMMARY OF THE CASE RECORD

2.1 Submissions and evidence before the FEI Tribunal

The FEI Tribunal duly took into consideration all written evidence, submissions and documents presented in the case file.

A list of the submissions and evidence filed by each of the parties is attached to this Decision (Annex 1).

2.2 Oral hearing: None

2.3 Articles of the Statutes/ Regulations which are applicable:

A. General Regulations, 23rd edition, 1 January 2009, updated 1 January 2010 ("**GRs**"), in particular:

Article 116

"3. NFs are responsible for selecting and entering qualified Horses and Athletes. This includes the fitness and capability of the Horses and the Athletes to participate in the Competition in which they are entered."

Article 117

"1. NFs have the final responsibility for the selection of all Athletes and Horses to participate in any International Event or to represent their countries at CIOs, FEI Championships, FEI

Regional, Olympic Games, and Paralympic Games provide that Athletes and Horses are qualified in all respects under the conditions set forth for each Event and have the sport nationality of the NF for whom they are competing."

Article 136

"1. Age restrictions on Horses taking part in FEI competitions shall be specified in the relevant Sport Rules."

Article 157

"2. Before reaching a Decision on any protest or Appeal the relevant body must examine the available evidence, whether written or oral, hear all the parties concerned (provided they are available) and take into account all relevant material, in every case trying to reach a fair and equitable Decision."

Article 159

"1. The Ground Jury shall be competent to deal with all Protests and Reports which relate to anything occurring during or in direct connection with an Event and are presented within the period of its jurisdiction.

2. The period of jurisdiction of the Ground Jury commences one (1) hour before the beginning of the first Horse Inspection and terminates, so far as each Discipline is concerned, half an hour after the announcement of the final results in that Discipline.

7. The Ground Jury shall refer the following to the Appeal Committee:

7.1. Any case which is beyond its competence;"

Article 160

"2. The Appeal Committee shall deal with the following matters:

2.2. Protest addressed to the Appeal Committee or referred to it by the Ground Jury, and all cases which are beyond the competence of the Ground Jury.

4. The Appeal Committee may impose the following penalties on Officials, Owners of Horses, Persons Responsible, Athletes and team officials:

4.3. Disqualification with one or more Horses from a Competition

or from the whole Event.”

Article 163

“1. Protests may be lodged against any person or body involved in any capacity in an International Event or otherwise subject to the jurisdiction of the FEI including for failure to observe the Statutes, GRs or Sport Rules or violation of the common principles of behaviour, fairness, or accepted standards of sportsmanship, whether occurring during or in connection with an International Event or at any other time.

2. Protests may only be lodged by Presidents of NFs, Officials, Chefs d’Equipe or, if a Chef d’Equipe is not present, by a Person Responsible or a Team Veterinarian responsible for Horses taking part in the Event, with the exception of protests for abuse which may be lodged by any person or body.

3. Protests must be lodged with the Ground Jury during its period of jurisdiction for failing to observe the Statutes, GRs or Sport Rules in the organisation or conduct of a Competition, including the matters referred to in paragraph 7 below. Protests for other matters must be lodged with the Appeal Committee during its period of jurisdiction or with the Ground Jury if there is no Appeal Committee.

6. Protests must be in writing, signed by the authorised person making the protest, and presented personally to the President of the Ground Jury, to the President of the Appeal Committee or sent to the Secretary General, as the case may be, together with any supporting evidence, names of witnesses and the necessary deposit.”

Article 165

“1. An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see paragraph 2 below):

1.2. With the FEI Tribunal through the Secretary General against Decisions by the Appeal Committee or by one member of the FEI Tribunal;

1.3. With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the Secretary General and provide him with copies of the Appeal papers.

5. Appeals to the FEI Tribunal must be despatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or the presence of one or more witnesses at a designated hearing and must reach the Secretary General within thirty (30) days of the date on which the Secretary General's notification of the earlier Decision was sent.

6.1. Appeals to the CAS together with supporting documents must be despatched to the CAS Secretariat pursuant to the Procedural Rules of the CAS Code of Sports-related Arbitration:

6.2. So as to reach the CAS within thirty (30) days of the date on which the Secretary General's notification of the FEI Tribunal Decision was received by the National Federation of the Person Responsible;

6.3. A copy of the statement of Appeal should be sent concurrently to the Secretary General;

6.4. Appeals reaching the CAS after the time limits as indicated above will not be considered.

7. No new evidence may be presented on Appeal, other than in circumstances where it is shown that such new evidence could not have been obtained, with reasonable diligence, prior to the hearing before the first instance."

Article 166

"2. Protests and Appeals to the FEI Tribunal must be accompanied by a deposit to the FEI of the equivalent of CHF 500."

Article 169

"4. Disqualification is appropriate when it is specified in the Statutes, GRs or Sport Rules, or if the circumstances require an immediate action.

4.1. Disqualification from a Competition means that the Athlete and Horse or Horses concerned - even should they change ownership - are removed from the list of starters and the classification and includes the forfeiture of prize money won in that particular Competition.

4.2. Disqualification from an Event means that the Athlete and Horse or Horses concerned - even should they change ownership

- may take no further part in that Event and it may include (in addition to what is mandated under paragraph 4.1.) the forfeiture of any prize money won in previous Competitions at that Event where this is provided for in the Statutes, GRs or Sport Rules."

10. *Decisions of the FEI Tribunal may also impose on unsuccessful parties the payment of costs borne by the FEI for the judicial procedure in the amount of CHF 500.- to 7,500.-. In addition, a party may be ordered to pay further costs not exceeding CHF 10,000.- if the costs of the procedures borne by the FEI have been increased by conducting a hearing or by excessive prolongation of the procedures or other exceptional cause. In the interests of fairness, the cost to the FEI of any hearing which is held in conjunction with other hearings or with an administrative meeting of the FEI Tribunal shall be separately calculated."*

B. Internal Regulations of the FEI Tribunal, effective 15 April 2007, updated 1 February 2008.

C. Rules for Jumping Events 23rd Edition effective 1st January 2009, updated 1st January 2010 (Annex XV updated 27 April 2010) ("**Jumping Rules**"), in particular:

Article 200

"7. Age of Horses

7.1. *[...] Horses entered in Regional Games, FEI Continental Championships and FEI World Cup™ Finals must be at least eight (8) years of age.*

D. Rules for Jumping Championships and Olympic Games Rules 23rd Edition effective 1st January 2009 ("**Jumping Championships and Olympic Rules**"), in particular:

Article 328

1. *Prizes must be awarded for individual placing in each Competition. The allocation of prizes must follow the provisions of the General Regulations.*

2. *FEI gold, silver and bronze medals will be awarded to each member of the three best placed teams and to the individuals placed first, second and third."*

E. Equestrian Rules and Regulations of the XXI Central American and Caribbean Sports Games 2010 ("**Games Rules**"):

Article 2

"2.1. Jumping. [...] *Minimum age of the horses is eight (8) years old.*"

Article 4

"4. Rules and Regulations

4.1. *The equestrian competitions of the XXI Central American and Caribbean Sports Games 2010 will be carried out according to the FEI Rules and Regulations, and any further modifications or amendments published by the FEI.*

[...] An arbitration procedure is provided for in the FEI Statutes and General Regulations [...] In accordance with this procedure, any appeal against a decision rendered by the FEI or its official bodies, is to be settled exclusively by the Court of Arbitration for Sport (CAS) in Lausanne, Switzerland.

It is the responsibility of NF's to ensure that participants are of the correct age and that athletes and horses are registered with the FEI.

Article 5

"5.1. Jumping. *Minimum age of the horses is eight (8) years old.*

[...] The Jumping events will be regulated by the Continental Championships rules, Articles 316 to 328 of the FEI rules for Jumping Championships and Olympic Games.

5.1.6. *The award ceremony will consist of gold, silver, and bronze medals for the riders in first, second, and third place, and ribbons for places first to six. First place ribbon for champion horse."*

2.4 The Decision challenged

The decision challenged by the COL NF is the disqualification of the horse Celesta ("the Horse"; FEI passport 102VP02) by the Appeal Committee from the XXI Central American and Caribbean Sports Games 2010 ("the Games") and subsequent forfeiture of the bronze medal won by the Colombian rider Rodrigo Díaz Kraus at the Games in the Speed Competition (Jumping discipline) which took place on Monday 26 July 2010.

3. DECISION

3.1 The Facts

1. By 17 February 2010, the COL NF, through the Colombian National Olympic Committee ("**CNOC**"), had entered all Colombian riders and horses to compete at the Games.
2. All parties involved agree that the Horse, at the time it was entered to compete in the Games, was seven (7) years old.
3. According to the COL NF, the Horse was entered incorrectly but in good faith, by applying the rules of the Continental and Regional Championships for Young Riders and Juniors which allow the participation of seven (7) year-old horses (Article 15.1.1 Annex IX Rules for Jumping Events 23rd Edition, effective 1st January 2009).
4. The Horse was subject to veterinary examination and horse inspections before any competition started as set forth in the applicable rules. The Horse was authorised by the Games Organising Committee to compete at the Games.
5. The Jumping Competitions at the Games were run according to the Continental Championships structure: Speed Competition on Monday 26 July; Team Competition (two -2- rounds) on Wednesday 27 July and Thursday 28 July; and the Individual Competition (two -2- rounds) took place on Friday 30 July.
6. On Monday, 26 July 2010, 9:30 am, the Horse underwent a horse inspection and was included on the starting list of the Speed Competition.
7. Later that day, the Horse competed in the Speed Competition.
8. On Tuesday 27 July and Wednesday 28 July, the Horse competed in the Team Competition.
9. On Friday, 30 July, 8:51 am, the Mexican team, through its Chef d'Equipe, lodged a written protest ("the *Protest*") with the Ground Jury, thirty (30) minutes before the Individual Competition started, alleging that the Horse did not fulfil the age requirements of the Games.
10. The President of the Ground Jury, Mrs Yolanda Matallana, did not decide the Protest and instead referred it to the Appeal Committee.

11. On Friday, 30 July the President of the Appeal Committee, Mr François Ferland, met with the Chef d'Equipe of the COL NF, reviewed the facts and consulted the Rules and Regulations of the FEI and of the Games. He then disqualified the Horse from the entire Games because the Horse did not comply with the age requirement applicable to the Games.

3.2 The Proceedings

1. On 26 August 2010, the COL NF submitted an appeal with the FEI Secretary General for referral to the FEI Tribunal.
2. On 2 December 2010, the President of the Appeal Committee submitted a written statement.
3. On 6 December 2010, the President of the Ground Jury submitted a written statement about the disqualification in question.
4. On 7 December 2010, the FEI submitted all documents concerning the case to the COL NF and to the MEX NF, informing both parties that the appeal would be referred to the FEI Tribunal. The FEI asked both NFs to submit a written statement for submission to the FEI Tribunal and to present any witnesses, together with a summary of their evidence or a copy of their statements, along with any other evidence, for consideration by the FEI Tribunal in deciding the case.
5. The COL NF submitted an additional written statement by 21 December 2010. The MEX NF did not submit any written statement.

3.3 The Decision

1. The COL NF argued that:
 - i. The Horse was incorrectly entered but in good faith by applying the rules applicable to FEI Continental and Regional Championships for Young Riders and Juniors which allow participation of seven (7) year-old horses (Article 15.1.1 Annex IX Rules for Jumping Events 23rd Edition, effective 1st January 2009).
 - ii. The incorrect entry did not result in any advantage for the rider or the Horse in the Speed Competition.
 - iii. The Horse's age could have been known to any person, organiser, competitor, rider, chef d'equipe, sports

authority, and/or Ground Jury member.

- iv. The Horse's participation at the Games was authorized by the Games Organising Committee, the veterinary delegate, the veterinary committee and had also been approved by the Ground Jury during the horse inspection.
 - v. The Horse's welfare was never put at risk since the height of obstacles at the Speed Competition during the Games was lower than the height required for FEI Continental Championships. Moreover, the height of the obstacles at the Speed Competitions during the Games was similar to other FEI Competitions where 7 year-old horse are allowed to compete.
 - vi. The MEX NF protest was lodged in breach of Articles 159 and 163 GRs.
 - vii. The MEX NF acted in bad faith.
 - viii. The COL NF was not given the right to be heard.
 - ix. The principle that sports results cannot be modified once the sports competition is over was violated by the Appeal Committee.
2. The MEX NF did not appear during the proceedings or provide any evidence for consideration by the Tribunal.
 3. The FEI Tribunal, in considering all of the evidence before it, holds as follows:
 - i. The MEX NF protest is not in breach of the GRs. The protest was lodged by the MEX NF with the Ground Jury on Friday, 30 July 2010, which is three days after the Horse first competed in the Speed Competition. The Ground Jury, recognising its lack of jurisdiction, immediately referred the protest to the Appeal Committee in accordance with Articles 159.7.1 and 160.2.2 GRs.
 - ii. The MEX NF lodged the protest as soon as it was aware of the inappropriate age of the Horse. There is no reason for the Tribunal to accept the COL NF's allegation that the Protest was lodged in bad faith.
 - iii. The Appeal Committee, in its decision making process, did not violate the Parties' right to be heard. To start with, the COL NF does not present any facts or evidence to support its allegation of the breach of the right to be heard. Furthermore, Mr Ferland, President of the Appeal

Committee, explained in his written statement of 2 December that the decision to disqualify the Horse was taken after having met with the Chef de Mission of the COL NF. It follows, therefore, that the COL NF had been duly heard prior to the decision being taken or issued.

- iv. The rules concerning the age of horses to compete at the Games are absolutely clear (see Articles mentioned above in Section 2.3.).

Moreover, according to Articles 116.3, 117.1 GRs and 4.1. of the Games Rules, NFs are responsible for selecting and entering qualified horses and athletes. This does not only include the fitness and capability of the horses and the athletes to participate in the competition for which they are entered, but also the age of the horses as one fundamental element. As it has been recognised by the COL NF, it did not perform its duties properly and incorrectly entered the Horse to compete at the Games. The Horse did not comply with the age requirement and therefore was not qualified to compete at the Games. The fact that the authorities of the Games did not comply with their tasks to verify that only eligible horses were entered does not justify the lack of diligence of the COL NF in choosing an unqualified horse. The Tribunal considers that the COL NF is the final responsible party.

- v. Since the rule regarding the age of horses qualified to compete at the Games was breached by the COL NF, the FEI Tribunal considers it irrelevant to assess whether the rider Rodrigo Diaz benefited from competing at the Games with the Horse. The rules setting the minimum age to compete in international equestrian events are set up to protect the welfare of the horse, which is paramount and must never be subordinated to competitive or commercial influences. Therefore, no concession maybe made in this context.
- vi. The lack of negligence or wilful misconduct of the COL NF does not release it from its responsibility in the breach of the applicable rules.
- vii. Regardless of the height of the obstacles at the Speed Competition, the minimum age of horses to compete at the Games was explicit, unequivocal and unambiguous and the COL NF did not comply with such legal requirement.
- viii. The principle of "not modifying sport results once the sport

competition is over" is not relevant to this case and therefore should not be considered. This principle is only applicable to the decision of an official or referee based on a factual observation of performance during a competition. In this case, the Horse did not fulfil an essential requirement to compete. The age of the horse is a "conditio sine qua non". The participation of a seven-year old horse of is null and void.

4. Finally the Tribunal wishes to emphasize that the authorities for the Games did not properly fulfil their duty to verify the age of the Horse. The Veterinary Delegate did not notice the wrong age of the Horse and therefore did not inform the President of the Ground Jury. Nevertheless, the Tribunal finds that this failure should not affect the outcome of the present case for the reasons expressed above.
5. For the reasons set forth above, the FEI Tribunal confirms the disqualification of the horse CELESTA (102VP02) by the Appeal Committee from the XXI Central American and Caribbean Sports Games 2010. Furthermore, the subsequent forfeiture of the bronze medal won by the Colombian rider Rodrigo Díaz Kraus at the above referenced Games in the Speed Competition (Jumping discipline) which took place on Monday 26 July 2010 is also confirmed by the FEI Tribunal.
6. COL NF shall contribute **CHF 500.-** towards the legal costs of the judicial procedure.

4. DECISION TO BE FORWARDED TO:

4.1 The Parties involved in proceedings: Yes

4.2 Any other: The authorities of the event and the FEI Jumping Committee.

FOR THE PANEL



THE CHAIRMAN Mr Hernán Méndez Cañas