



DECISION OF THE FEI TRIBUNAL

dated 5 June 2009

Alleged Violation of Internal FEI Bureau Regulations for Failing to Report Horse Abuse

Case No.: 2009/01

Bureau Member concerned: Dr. Hanfried Haring, GER

Event: Games of the XXIX Olympiad, Beijing 2008, Hong Kong

1. COMPOSITION OF PANEL

Mr. Erik Elstad
Mr. Patrick A. Boelens
Mr. Pierre Ketterer

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided to the Tribunal: The FEI Tribunal took into consideration all documents presented in the case file which were also made available to Dr. Haring. The Tribunal also heard the testimony of Dr. Haring.

2.3 Oral hearing: by Conference Call on 29 May 2009

Present: The FEI Tribunal Panel

For the FEI:

Mr Alexander McLin, Secretary General

Ms Lisa F. Lazarus, General Counsel

For the Bureau Member:

Dr Hanfried Haring, Former Secretary General GER NF
and FEI Bureau Member since 4 May 2006

Dr Joachim Wann, Legal Counsel to the GER NF

Further present:

Mr Sönke Lauterbach, Secretary General GER NF

Mr Marco Kutscher

3. APPLICABLE STATUTES, REGULATIONS, AND RULES

3.1 Articles of the Statutes/ Regulations which are applicable or are alleged to have been infringed:

Statutes, 22nd edition, effective 15 April 2007 ("**Statutes**"), Arts. 1.4, 34 and 37

General Regulations, 23rd edition, effective 1 January 2009, Arts. 118 and 142, 161 and 163 ("**GRs**"); (former version General Regulations, 22nd edition, effective 1 June 2007, Arts. 142, 167 and 174.

Internal Regulations of the FEI Tribunal, effective 15 April 2007.

Veterinary Regulations, 10th edition, effective 1 June 2006 ("**VR**"), Art. 1013.

FEI Code of Conduct for the Welfare of the Horse ("**Code of Conduct**").

Internal Regulations of the FEI Bureau, effective 16 April 2007, updated 21 November 2008, in particular Appendix 3.

The FEI Regulations for Equestrian Events at the Olympic Games (22nd ed.9 ("FEI OG Reg"), effective for the 2008 Beijing Olympic Games (Hong Kong)

3.2 Bureau Member concerned: Dr. Hanfried Haring

3.3 Justification for sanction sought:

Internal Regulation of the FEI Bureau - "Appendix 3 – Code of Ethics and Conflict of Interest Policy with Disclosure Statement" -

Introduction, Purpose, Code of Ethics

"[...]

7. Even the appearance of misconduct or impropriety should be recognized as damaging to the FEI's reputation, and should therefore be avoided."

GR Art. 163 – Protests

"[...]

8. Notwithstanding anything to the contrary, the Secretary General may, in special circumstances which – in his sole discretion – warrant a Decision, refer to the FEI Tribunal a protest against any person or body made by any person or body or on his own initiative, at any time, in regard to any matter and even without the payment of a deposit."

GR Art. 161 – FEI Tribunal

"[...]

2. The FEI Tribunal may impose the following penalties:

[...]

(v) Suspension of individuals and Horses for any period up to Suspension for life."

Statutes, Art. 34 – FEI Tribunal

“34.1 Subject to Articles 34.2 and 34.4, the FEI Tribunal shall decide all cases submitted to it by or through the Secretary General, whether Appeals from or matters not otherwise under the jurisdiction of the Ground Jury or Appeal Committee. These cases may be:

[....]

(iii) Notwithstanding anything to the contrary to this Article, the FEI Tribunal may review and decide upon any matter involving abuse of horses.”

GR Art. 142: Abuse of Horses

“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 without limitation any of the following:

- To whip or beat a Horse excessively;
- To subject a Horse to any kind of electric shock device;
- To use spurs excessively or persistently;
- To jab the Horse in the mouth with the bit or any other device;
- To compete using an exhausted, lame or injured Horse;
- To ‘rap’ a Horse.
- To abnormally sensitise or desensitise any part of a Horse;
- To leave a Horse without adequate food, drink or exercise;
- To use any device or equipment which cause excessive pain to the Horse upon knocking down an obstacle.

2. Any person witnessing an Abuse must report it in the form of a protest (Art 163) without delay. If an Abuse is witnessed during or in direct connection with an Event, it should be reported as a protest (Art 163) to an Official. If the Abuse is witnessed at any other time it should be reported as a protest (Art 163) to the Secretary General for referral to the FEI Tribunal.”

4. LEGAL PROCEEDINGS

4.1 The Secretary General of the FEI, under Article 163 paragraph 1 and 8 (“Protests”) of the FEI General Regulations, registered a protest against Dr. Hanfried Haring for failing to “observe the Statutes, GRs or Sport Rules” “in connection with an International Event”, FEI GRs, Art. 163 (1). This protest was supported by the majority of the FEI Bureau. Specifically, the FEI argued that Dr. Haring’s current service as an FEI Bureau member was in violation of the Code of Ethics set forth in Annex 3 of the Internal Rules of the FEI Bureau, given the

doping allegations against the German NF during his tenure as Secretary General of the German NF and his implication as a subject in the Presidential Ethics Panel investigation.

- 4.2 By virtue of this protest, and the FEI Tribunal's powers under Article 161 of the FEI General Regulations, the Secretary General sought a three (3) week preliminary suspension of Dr. Haring from service as an FEI Bureau member until such time as the Ethics Panel completed its review.
- 4.3 In accordance with Article 34.1 (iii) of the FEI Statutes, the Protest was submitted to the FEI Tribunal for review and decision. Specifically, the FEI relied on the Tribunal's authority to order a suspension for "any period" as the basis for its request to provisionally suspend Dr. Haring.
- 4.4 By Notification Letter of 28 May 2009, Dr. Haring was informed that the FEI Secretary General had registered the above Protest against him. Dr. Haring was also informed that a provisional suspension was requested pending the outcome of the Ethics Panel that had been convened to investigate the doping allegations against the German NF and its officials, among others. Dr Haring was further advised that the above Protest as well as the request for provisional suspension would be presented to the FEI Tribunal on 29 May 2009 at 3.30pm. Dr. Haring was invited to confirm whether or not he would like to be heard at the above mentioned time.
- 4.5 Through communication to the FEI Legal Department from the German NF, it was confirmed that Dr. Haring would like to be heard on the matters presented to the Tribunal and would participate in the scheduled conference call.
- 4.6 The hearing was therefore held on 29 May 2009 by means of a conference call. Both sides had the opportunity to argue the facts and present legal arguments to the Tribunal.

5. FACTUAL SUMMARY

- 5.1 Dr. Haring was present at the Games of the XXIX Olympiad, Beijing 2008, Hong Kong from 8 to 21 August 2008, (the "Event"), in his function as Secretary General of the German NF. At the time of the Event, Dr. Haring was also an FEI Bureau Member as Chair of Group 2, a post he has held since 4 May 2006.
- 5.2 During the Event, there were high-profile Show Jumping competitions in which the German team participated. One of the Members of the German team, Mr. Kutscher, participated in such Show Jumping competitions with the Horse CORNET OBOLENSKY.
- 5.3 On 4 May 2009, Marco Kutscher made the following statements during the television show "Sport inside" about an incident that occurred with his Horse during his participation in the Event:

"What has actually happened is that Cornet Obolensky, after the first round of the Nations Cup, has received a sports medical treatment. And upon this, to explain it this way, he got a bit sick. As you know, when humans receive medicines, they are asked to lie down on a couch. Horses stand – and for a short while, his knees started shaking. But has been ok again immediately. Yes, and this is what has happened. Yes."

"This has been administered by a colleague of mine – as had been agreed with the treating veterinarian."

In support: Statement of Marco Kutscher in:
"Statements of Persons involved" (for Wagner
Report)

- 5.4 Also on 4 May 2009, the Deutsche Reiterliche Vereinigung (also known as "German NF"), issued a press release featuring a statement by Dr. Björn Nölting, former team veterinarian of the German team, in response to Mr Kutscher's television interview of 4 May 2009:

"After the first flag of the Nations Cup during the OGs in Hong Kong,

Marko Kutscher and I have discussed the treatment of his horse Cornet Obolensky with Arnika and Lactanase, in order to optimally allow the regeneration of the horse's muscles. Unfortunately, the caretaker, without permission and absolutely hasty, administered the treatment, even before I could have asked for permission for the injection. I only became aware of the problem when I was asked to see the horse, which, after the administration of the substances, had undergone a short dizzy spell. Due to the turbulence over there, I have decided - and I take over the entire responsibility for this - to maintain silence."

In support: Press Release by the GER NF dated
4 May 2009

- 5.5 Further on 4 May 2009, the German magazine "DER SPIEGEL" published an article entitled "Eine Spritze zu viel", which provided more details, stating that the Horse had collapsed after the injection, and "shortly after this", Marco Kutscher had continued competing with the Horse, "as if nothing would have happened". According to the article, the Horse finished with 19 mistakes, the highest number of mistakes amongst the German team.

In support: "Eine Spritze zu viel" in DER
SPIEGEL dated 4 May 2009

- 5.6 According to the DER SPIEGEL article, Ludger Beerbaum, who shares a stable with Mr. Kutscher, confirmed the incident. Mr. Beerbaum further stated that the team veterinarian Dr. Björn Nölting was also present during the Horse's collapse.

In support: "Eine Spritze zu viel" in DER
SPIEGEL dated 4 May 2009

- 5.7 According to the DER SPIEGEL article, Dr. Nölting also stated that he informed the "responsible persons" within the GER NF of the incident. At the time of the incident, Dr. Haring was the Secretary General of the German NF and therefore responsible for overseeing all of its activities.

In support: "Eine Spritze zu viel" in DER SPIEGEL dated 4 May 2009

- 5.8 A Legal Opinion drafted by Dr. Martens, arbitrator with the Court of Arbitration for Sports (CAS) and sport legal expert, upon request of the GER NF and based upon facts provided by Mr. Breido Graf zu Rantzau, President GER NF, ("Martens Report", updated 27 May 2009), contained an additional "direct" statement from Dr. Nölting dated 11 May 2009:

"After the first flag of the Nations Cup during the OGs in Hong Kong, I have been approached by Marko Kutscher with respect to some support of Cornet Obolensky for better regeneration of its muscles, taking into account the climatic conditions and their effects to the organism. The administration of Lactanase and Arnika has been discussed. Those products/substances had been brought over by the caretaker of M. Kutscher to Warendorf and had been shown to me. They had been placed, as this is usual practice, in a box which is accessible for the caretakers.

After the conversation with M. Kutscher I advised that at that point of time, no treatment had to be undertaken. I thereupon left the stable building.

I wanted to consider whether, and if so, by which means the concern of the rider M. Kutscher could be complied with.

At the time of the above conversation, several members of the German delegation have been present in the stable aisle of the German stable area, amongst others Reinhard Wendt (Chef de Mission), Breido Graf zu Rantzau (President of the NF), Hanfried Haring (General Secretary of the NF), Peter Hofmann (President of the jumping Committee), Michael Rüping (Member of the Jumping Committee) and Kurt Gravemeier (Equipechef).

Out of a sudden, I have been startled by cry and shout from the area of the German stable aisle and started running over into the stable.

Apparently, Cornet Obolensky had suffered from a dizzy spell and has been backed up by Kurt Gravemeier and the caretaker of Marco Kutscher. Upon question Marie Johnson declared having administered to the horse an injection of Lactanase and Arnica.

At this point of time, the above mentioned members of the German delegation have been present in the stable aisle. The horse recovered after a couple of minutes.

I have been literally shocked by what had happened. Spontaneously, I did not see any possibility to report to the outside world what had happened without affecting the entire German team.”

In support: Legal Opinion drafted by Dr.
Martens, “Martens Report”, updated 24 May
2009

5.9 Dr. Nölting’s direct quote provided to Dr. Marten who was investigating the issues upon request from the German NF specifically identified Dr. Haring as being present in the stable aisle at the time the above-described and undeclared treatment was administered to Mr. Kutscher’s Horse CORNET OBOLENSKY.

5.10 At the hearing, Dr. Haring denied being present in the stable area when the horse was administered the Arnica and Lactanase. Conversely, Dr. Haring testified that he was in the grandstand of the event instead of the stable area. Dr. Haring further stated that during the meeting of 20 August 2008 convened in Hong Kong to discuss matters affecting the German NF, only the positive case of Mr. Ahlmann and COESTER had been discussed, but not the treatment of the Horse CORNET OBOLENSKY. Dr. Haring explained to the Tribunal that the first time he received information about the treatment of CORNET OBOLENSKY was at the end of 2008, several months after the Olympic Games.

6. **LEGAL ANALYSIS**

- 6.1 The FEI Tribunal has jurisdiction over this matter pursuant to the FEI Statutes, in particular Article 34.1 (iii).
- 6.2 The Tribunal declines to grant the requested relief of a *Provisional Suspension* in this case as it finds there is no mechanism for it to do so. The remedy of *Provisional Suspension* is well-developed in the context of the Equine Anti-Doping and Medication Rules, but it does not exist within the horse abuse framework. In cases brought before the FEI Tribunal where the Tribunal finds that there has been a violation of rules, misconduct and failing to “observe the Statutes, GRs or Sport Rules” “in connection with an International Event”, FEI GRs, Art. 163 (1), the Tribunal has the power to impose certain penalties, including suspension of the PR and/or his horse. While the Tribunal may suspend for “any period” following a finding of horse abuse, it declines to find that “any period” includes preliminary relief which permits the Tribunal to act ahead of any final resolution on the merits of the case.
- 6.3 In light of the above, it is immaterial to explore further at this point the issue of whether horse abuse occurred and the extent or absence of Dr. Haring’s involvement.
- 6.4 Notwithstanding the above, the Tribunal is troubled by the references to the “Code of Ethics” in the *Internal Regulations of the FEI Bureau*, in particular the statement that “Even the appearance of misconduct or impropriety should be recognized as damaging to the FEI’s reputation, and should therefore be avoided.” (*Internal Regulations of the FEI Bureau, Appendix 3, Code of Ethics*). It is a well-established global principle of corporate governance that Board members of any organization or entity have a heightened fiduciary duty and responsibility. When the ability to properly carry out that responsibility is challenged, it is a naturally occurring consequence that Board service is simultaneously challenged. This governance issue is however beyond the scope of any remedy the Tribunal is empowered to provide.

7. DECISION TO BE FORWARDED TO:

7.1 **The person against whom sanctions were sought:** Yes

7.2 **The President of the NF of the person against whom sanctions were sought:** Yes

7.3 **The FEI Secretary General and FEI General Counsel:** Yes

A handwritten signature in blue ink, appearing to read 'Erik Elstad', is centered on the page.

For the Panel
The Chairman Mr Erik Elstad

Date : 05 June 2009