



**DECISION of the FEI TRIBUNAL**

**dated 29 January 2014**

**In the matter of**

**Mr. GEORG VON STEIN**

**"Claimant"**

**vs.**

**FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")**

**"Respondent"**

**I. COMPOSITION OF PANEL**

Mr. Erik Elstad (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 23<sup>rd</sup> edition, effective 7 November 2013 ("**Statutes**").

General Regulations, 23<sup>rd</sup> edition, 1 January 2009, updates effective 1 January 2013 ("**GRs**").

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

Rules for International Combined Driving Events, 10<sup>th</sup> edition, 1 January 2009, updates effective 1 January 2013 ("**DRs**").

FEI Rules for World Cup Driving 2013/2014, in effect for the season 2013-2014 ("**DRs WC**").

#### **2. The relevant Legal Provisions:**

Articles 157.2, 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 Stockholm FEI World Cup Driving 2013 (A1\_SWE010\_13) (the "Event") took place from 29 November to 1 December 2013, in Stockholm, Sweden.
- 1.2 Mr. Von Stein (the "Claimant") and his team competed at the Event and finished second after the last day.
- 1.3 The documentation available (FEI TV footage of the Event) shows that during the last competition of 1 December 2013, Class A1L Four in hand CAI-W (the "winning round" or "second round"), the Claimant and his team – in contradiction to what is reflected in the results of the

competition ("Results of the Competition") – only had one knock down, instead of two knock downs as reflected in the results of the Event. It further follows from the footage that the respective five (5) seconds penalty for the single knock down was automatically reflected in the timing during the competition. The time shown in the footage upon finish of the winning round by the Claimant and his team is 118.63, including the five (5) seconds penalty imposed on him earlier. The total time for the Claimant's two rounds indicated in the FEI TV video, and also announced by the commentator, is 241,64, showing a five (5) seconds penalty next to the time, as well as a second position placement for the Claimant and his team. The footage further shows that the Claimant and his team are looking towards the screen, while leaving the competition arena. A little later the results table on the FEI TV video shows the time of 246.64 for the Claimant and his team.

## **2. Procedural Background**

- 2.1 On 2 December 2013, at 20:02, the Claimant sent an email to the FEI Driving, Reining and Vaulting Department, alleging that the Results of the Competition did not correspond to the FEI TV footage of the Event and the display which had been available in the arena. With his email the Claimant asked for his concern with the results to be respected and for the Department's opinion.
- 2.2 On 11 December 2013, referring to Articles 163.6 and 163.9 of the GRs, the Claimant wrote an email to the FEI Secretary General, stating that he wanted to appeal against the results of the Event ("the Protest").
- 2.3 On 15 January 2014, the Claimant supplemented his earlier submission with regards to the Protest.
- 2.4 On 20 January 2014, the FEI submitted its answer to the Protest ("the Answer").

## **3. Protest by the Claimant**

- 3.1. The Claimant alleged that in the winning round, he and his team only had one knock down, and should therefore only have received a five (5) point penalty, instead of a ten (10) point penalty. That furthermore, the five (5) point penalty attributed to them was already reflected in the final time of the winning round, i.e. in the final figure of 118,63 (i.e. that their time in the winning round was 113,63, leading to 118,63 once the five (5) point penalty for the one knock down had been added). That therefore his end result should be 236,64 points (118,01 of the first round and 118,63 for the winning round), instead of 246,46 points as reflected in the Results of the Competition.
- 3.2. The Claimant further argued that only once he had been in the truck on his way back home, after the end of the Event, he had realized that two knock downs had been noted for him in the winning round, and that the

second knock down – which he disputed having occurred – had not been mentioned on the TV screen in the competition arena, when he and his team had passed the finish line.

- 3.3. In addition the Claimant argued that it would not have been possible for him to lodge a Protest with regards to the Results of the Competition within thirty (30) minutes after the announcement of the Results of the Competition as foreseen in Article 163.4.4 of the GRs. In this context he claimed that no official results had been available at the show office, at least not within two (2) hours of completion of the competition, and that no final results had been announced at the press conference. That in light of the fact that no official results had been available at the Event it had only been possible for him to detect the scoring mistake by watching the video material. The Claimant further argued that as a result, his Protest concerned a matter which was not known until after the end of the Event, and that therefore Article 163.6 of the GRs rather than Article 164.4.4 had to apply in the case at hand. That further Article 163.9 of the GRs had to be also taken into consideration.

#### **4. Answer of the FEI**

- 4.1 The FEI argued that the Protest was inadmissible, as the Claimant had lodged his Protest untimely and not within the deadline foreseen under the GRs. That pursuant to Article 163.4.4 of the GRs, Protests concerning the results of a competition had to be filed no later than thirty (30) minutes after the announcement of the results. That in the case at hand according to the Foreign Judge of the Event as well as the responsible for the show office at the Event, the Results of the Competition had been announced shortly after they had been printed and signed off at 21:41, and hard copies had been made available at the show office. That further the Results of the Competition had also been published on the website of the Event. That therefore, the Protest filed by the Claimant on 2 December 2013 at 20:02, i.e. approximately 22 hours after the announcement of the results, had been filed too late. Together with its submission, the FEI submitted copies of the Results of the Competition.
- 4.2 The FEI further argued that insofar as the Protest concerned the results of a competition, a Protest pursuant to Article 163.4.5 of the GRs – foreseen in order to challenge the procedures followed in the application of any FEI Rule - was not possible as in case the results of a competition were at stake, Article 163.4.4 of the GRs was the more specific rule, or *lex specialis*. That furthermore, a Protest pursuant to Article 163.4.5 of the GRs had to be lodged within the same 30-minute deadline as foreseen in Article 163.4.4 of the GRs, and was therefore also inadmissible.
- 4.3 Further that a Protest pursuant to Article 163.6 of the GRs was not admissible either as even if the prerequisite of the existence of matters that were “not known until after the end of the Event” would be considered as fulfilled, the second prerequisite of Article 163.6 of the GRs, i.e. that the matter in question had not occurred “during or in direct connection with an International Event”, was not fulfilled, and that

therefore the cumulative prerequisites of Article 163.6 of the GRs were not met.

- 4.4 Finally that in the case at hand it was further not possible to file an Appeal pursuant to Article 165 of the GRs, as Articles 165.2.1 and 159.6.1 of the GRs, read together, did not allow for an Appeal against Decisions of the Ground Jury arising from the field of play which were final and binding. That those decisions included the decision whether an obstacle was knocked down.

## **5. Further proceedings**

- 5.1 On 23 January 2014, the Tribunal requested the Parties to provide further specific information with regards to the announcement of the Results of the Competition and the timing of the winning round, Prize Giving Ceremony and Press Conference.
- 5.2 On 24 January 2014, the FEI submitted statements by Ms. Bettina De Rham, FEI Director Driving, Reining and Vaulting; Mr. Mats Eriksson, Show Secretary at the Event, and Ms. Lotta Amnestål, Press Officer at the Event. The FEI further provided the FEI TV footage of the winning round.
- 5.3 In her statement Ms. De Rham explained that the two figures shown on the FEI TV video, i.e. 241.64 and 246.64, and the results of the Competition were incorrect insofar as the Claimant and his team only had one knock down in the winning round, and therefore a five (5) seconds penalty in total in that round. Further that the five (5) second penalty had already been included in the time of the winning round, i.e. 118.63, but that in the calculation of the results, it had been added once more after completion of the winning round. That therefore the Claimant's final total time should have been 236.64 (118.01 for the first round and 118.63 for the winning round, including the five (5) seconds penalty), and that with this result he would have placed first instead of second.
- 5.4 In his statement Mr. Eriksson explained that at the time when the drivers had come to sign the papers, only unsigned results had been available at the show office. That the drivers had been informed that the results were "preliminary", as one of the drivers had tried to lodge an Appeal against an earlier decision of the Ground Jury. However that no changes in the results list had been made from the preliminary results to the final results. Mr. Eriksson further submitted copies of the publication of the results on the website of the Event. It follows from those copies that the results had been uploaded on the Event's website at 21:09 on 1 December 2013.
- 5.5 In her statement Ms. Amnestål explained that the winning round had been scheduled to start at 19:10 and to finish at 19:55. That she could not precisely recall the actual timing, but that the show director had confirmed that the winning round had been on time. That right after the winning round, at approximately 20:00, the Prize Giving ceremony had taken place, and that the Claimant and his team had been presented with the second place. That in the following a Press Conference had been held

during which the results as presented at the Prize Giving ceremony and as published online had been used. Further that the results had not been discussed during the Press Conference. Ms. Amnestål further stated that only in the course of the Press Conference she had received a telephone call from a member of the Appeal Committee, informing her that the results had only been preliminary at this point in time. That however following the Press Conference the Appeal Committee had confirmed the earlier results, and that the confirmed results had not been different to the ones presented at the Prize Giving ceremony.

- 5.6 On 27 January 2014, the Claimant submitted his answers to the FEI Tribunal's questions of 23 January 2014. He further submitted statements by Mr. Boyd Exell and Mr. Michael Brauchle. Mr. Exell alleged in his statement that two hours after the competition there had been no official result at the show office, and Mr. Brauchle contended that no official result was presented during the press conference. Relying on the statements by Mr. Exell and Mr. Brauchle, the Claimant alleged that there had been no results in the show office or during the press conference. That consequently it had not been possible to him to lodge a Protest within 30 minutes of the announcement of the results of the competition. Further that during the press conference, only the three first placed competitors had been presented, but no details of the results had been discussed. Lastly that according to his memory, his result shown on the big screen of the Event had been a time of 241,64.
- 5.7. On 28 January 2014, the FEI Secretary General responded to the Claimant's request to have his matter being referred to the FEI Tribunal, under Article 163.9 of the GRs. The FEI Secretary General stated that having duly considered the matter he had decided to not refer the Protest to the FEI Tribunal as in his opinion, the facts reported by the Claimant would not justify a finding of "special circumstances" in the meaning of Article 163.9 of the GRs.

## **6. Decision**

- 6.1 As with any Protest or Appeal under the GRs, as a first step the Tribunal needs to decide the admissibility of the remedy chosen by the Claimant. Provided the Tribunal accepts the admissibility of the Protest or Appeal, in a second step the Tribunal has to decide on the merits of the case, i.e. whether the claims by the Claimant have been duly established and – where necessary – supported by evidence.
- 6.2 In the present case the Tribunal takes note that initially the Claimant's submission are not entirely clear regarding the question whether he is lodging a Protest or an Appeal with the Tribunal. However, following an interpretation of the entirety of Claimant's submission the Tribunal comes to the conclusion that the Claimant has chosen to lodge a Protest under Article 163 of the GRs. The Tribunal however finds that the Protest is inadmissible, for the following reasons.

- 6.3 To start with, the Tribunal is of the opinion that the Protest at stake is directed against the results of a Competition, as foreseen under Article 163.4.4 of the GRs. However, even if the Protest would be considered as a Protest under Article 163.4.5 of the GRs and therefore as a Protest "challenging the procedures followed in the application or implementation of any FEI rule", the end result would not be different.
- 6.4 The Tribunal however is only 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 (Article 161.1 of the GRs and Article 38 of the Statutes). With regards to the case at hand the Tribunal however holds that in light of Articles 163.4 and 163.4.4 of the GRs, the matter falls under the jurisdiction of the Ground Jury. As follows from Article 163.4 of the GRs, the Ground Jury of an Event has the exclusive jurisdiction with regards to matters specifically listed in Article 163.4 of the GRs, and according to Article 163.4.4 of the GRs, this exclusive jurisdiction also extends to the results of a competition. The Tribunal therefore finds that the Claimant would have been obliged to lodge a Protest with the Ground Jury of the Event, and that he further would have had to comply with the deadline foreseen under 163.4.4 of the GRs, i.e. no later than thirty (30) minutes after the announcement of the Results of the Competition.
- 6.5 In this context the Tribunal takes note of the Claimant's allegation that no results had been available, and that therefore it had only been possible for him to detect the scoring mistake by watching the video material, on his way home. The Tribunal also considered the FEI submissions in this respect, in particular the FEI TV footage and the statements of Mr. Eriksson and Ms. Amnestål. The Tribunal finds that by means of the copy of results provided by Mr. Eriksson, the FEI has established that the results had been electronically available on the website of the Event at 21:09. The Tribunal further considers that the publication of the results on the website is one valid means of announcement of the results under Article 163.4.4 of the GRs, and that therefore the deadline of 30 minutes had started to run no later than 21:10, on 1 December 2013.
- 6.6 The Tribunal notices that the Claimant does not contest that the results had been made available online at 21:09, but only alleges that they had not been available at the press conference, or within two hours after the competition, at the show office – the latter is however contradicted by Mr. Eriksson in his statement. In this context the Tribunal further acknowledges that the Parties, in their submission, make references to "final", "unsigned" and "preliminary results". However the Tribunal first notices that none of the results sheets presented to it contains any note as final, unofficial or preliminary results, and that therefore, based on the papers presented, no such differentiation could be made. The Tribunal further understands that there has been no difference between the results first distributed as "preliminary results", the results printed out at 21:10, and the results signed off at 21:41. That therefore, and given that the results were published and thereby announced at 21:09 on 1 December 2013, the deadline to protest under Article 163.4.4 of the GRs would start

at 21:10.

- 6.7 The Tribunal notes that according to the statement from Ms. Amnestål, the results were announced to the audience and the media at the Prize Giving ceremony. Further that according to Ms. Amnestål, the results were simultaneously shown on the screen in the arena.
- 6.8 The Tribunal therefore finds that the Claimant would have been obliged to lodge a Protest with the Ground Jury under 163.4.4 of the GRs at the time when the matter arose, namely after the announcement of the Results of the Competition. He should have lodged the Protest no later than thirty (30) minutes after the announcement of the Results of the Competition i.e. by 21:40.
- 6.9 Therefore the Tribunal finds that the Protest by the Claimant of 2 December 2013 is inadmissible, and that it has no competence to decide the matter. The Tribunal further holds that insofar as the Protest is inadmissible, it does not have jurisdiction to decide on the merits of the case, and that consequently, it cannot decide whether or not the Results of the Competition had been in accordance with the FEI Rules.
- 6.10 With regards to the Claimant's claim that as a result of the alleged absence of results, the matter had only been known after the end of the Event, and that therefore, a Protest under Article 163.6 of the GRs was available to him, the Tribunal holds that the prerequisites of Article 163.6 of the GRs were not fulfilled. The reason for this is that the matter had undoubtedly "occurred during and in direct connection with an International Event". Furthermore, according to the Claimant himself, when leaving the competition arena he had the impression that the time shown as his final result had been 241,64. This figure is clearly different to what the Claimant has claimed throughout the proceeding to be his final result, i.e. 236,64. The Tribunal further notes that right after the Claimant and his team had finished the winning round, the time shown in the arena was 118,63. Further that the sum of the latter time and the time of the first round is 236,64. The Tribunal therefore finds that already at the time of the Event, the Claimant had all relevant information to come to the result of 236,64, in particular according to his own observation he only had one, but not two knock downs, leading to a result of 118,63 for the winning round. It is therefore not clear as to why the Claimant has not addressed the issue at the time of the competition – irrespective of the question whether or not official results had been presented.

7.1 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.

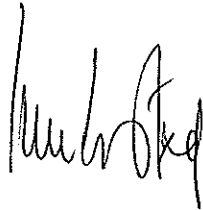


- 7.2 According to Article 168 of the GRs this Decision is effective from the date of oral or written notification to the affected party or parties.
- 7.3 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS), within 30 days of the present notification.

**7. DECISION TO BE FORWARDED TO:**

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

**FOR THE PANEL**

A handwritten signature in black ink, appearing to read 'Erik Elstad', is written over a horizontal line.

**One member panel, Mr. Erik Elstad**