

DECISION of the FEI TRIBUNAL

Dated 18 May 2012

Positive Controlled Medication Case No.: 2011/FT14

Horse: FADAR ZAYED

FEI Passport No: 103BS56

Person Responsible: Flavia Ferraro

Event: CEI2* 120 Km, Flores (URU); 25 -26 June 2011

Prohibited Substance: Procaine

1. COMPOSITION OF PANEL

Mr. Pierre Ketterer, Single Member Panel

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by Person Responsible (PR): The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.

2.3 Oral hearing: None

3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

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

Statutes 22nd edition, effective 15 April 2007, updated 19 November 2009, Arts. 1.4, 34 and 37 ("**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2011, Arts. 118, 143.1 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

FEI Equine Controlled Medication Rules ("**ECM Rules**"), 1st edition, effective 5 April 2010, updates effective 1 January 2011.

Veterinary Regulations ("**VRs**"), 12th edition, effective 5 April 2010, updates effective 1 January 2011, Art. 1013 and seq. and Annex II (the "Equine Prohibited List").

FEI Code of Conduct for the Welfare of the Horse.

3.2 Person Responsible: Flavia Ferraro

3.3 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)."

ECM Rules Art 2.1.1: "It is each Person Responsible's personal duty to ensure that no Controlled Medication is present in the Horse's body during an Event. Persons Responsible are responsible for any Controlled Medication Substance found to be present in their Horse's Samples, even though their Support Personnel will be considered additionally responsible under Articles 2.2 – 2.7 of the ECM Rules where the circumstances so warrant. It is not necessary that intent, fault, negligence or knowing use be demonstrated in order to establish a Rule violation under Article 2.1.

4. DECISION

4.1 Factual Background

1. FADAR ZAYED (the "Horse") participated at the CEI2* 120 km in Flores (URU) from 25-26 June 2011 (the "Event"), in the discipline of Endurance. The Horse was ridden by Ms. Flavia Ferraro, who is the Person Responsible in accordance with Article 118 of the GRs (the "PR").
2. The Horse was selected for sampling on 25 June 2011. Analysis of the urine sample no. J 01745 taken from the Horse at the Event was performed at the FEI approved laboratory, the United States Equestrian Federation ("USEF") Equine Drug Testing and Research Laboratory, by analyst P. Mulherin under the supervision of Tom Lomangino, Director of the Laboratory. The analysis of the urine sample revealed the presence of Procaine.
3. The Prohibited Substance detected is Procaine. Procaine is a local anaesthetic with pain relief effect. It is commonly used in combination with the antibiotic Penicillin. Procaine is classified as a Controlled Medication Substance under the FEI Equine Prohibited Substances List. No

Equine Therapeutic Use Exemption ("ETUE") had been provided by the PR for the use of Procaine on the Horse. Therefore, the positive finding for Procaine in the Horse's sample during the Event gives rise to a Controlled Medication Rule Violation under the FEI EADCMRs.

4.2 The Proceedings

4. The presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the Consequences implicated, were officially notified to the PR by the FEI Legal Department on 7 October 2011, through the Uruguayan Federation of Equestrian Sports ("URU-NF").

5. The Proceedings were initiated under the Administrative Procedure (otherwise referred to as the "Fast Track" procedure) insofar as the respective prerequisites under Article 8.3 of the ECM Rules were fulfilled. The PR was afforded the opportunity to accept the following administrative sanctions: (i) Disqualification from the whole Event including the forfeiture of all prizes and prize money won at the Event, (ii) a fine of CHF 1,500, and (iii) the payment of CHF 1,000 in costs. The PR was further informed that in case she did not accept the administered sanctions offered, the case would be submitted to the FEI Tribunal, to be dealt with under the usual Tribunal process. That following the Tribunal procedure, and provided the presence of the substance is established, the Tribunal will impose penalties which may be more or less severe than the administrative sanctions offered.

4.3 The B-Sample Analysis

6. Together with the Notification Letter of 7 October 2011, the PR also received notice that she was entitled to the performance of a B-Sample confirmatory analysis on the positive sample. The PR was also informed of her right to attend or be represented at the B-Sample analysis, and to request that the B-Sample be analysed in a different laboratory than the A-Sample.

7. The PR did not request for the B-Sample to be analysed and accepted the results of the A-Sample analysis.

4.4 The further Proceedings

8. The PR did not elect for the Administrative Procedure within the fixed time limit of 14 days. Additionally, by email dated 3 November 2011, the URU-NF confirmed that the PR would not elect for the Administrative Procedure and did not accept the administrative sanctions offered to her in the Notification Letter. In accordance with Article 8.3.6 of the ECM Rules, the case was therefore submitted to the FEI Tribunal.

9. By letter dated 25 October 2011, received by the Legal Department on 2 November 2011 from the URU-NF, the PR explained that she had informed her National Federation that, in the week prior to the

competition, she had administered the antibiotic Penicillin Streptomycin to the Horse because it had been "beating". The PR further explained that the treatment had been intended as preventative to avoid further complications, and stated that it was not her intention to use this medication to enhance the Horse's performance. The PR noted that in her opinion, Procainamide as a local anaesthetic has an effect of only 15 minutes and therefore it had not been administered to hide any pain in the Horse during the Event.

10. The PR admitted that she had erred in her calculation of the withdrawal time for the antibiotic, and that she had not considered filing an ETUE form for the treatment. She apologised for not respecting the ETUE procedure.

11. By letter dated 1 November 2011, Mr. Roberto Abella, President of the URU-NF, submitted a character reference in favour of the PR. He claimed that the PR was an *"outstanding athlete, a good woman"* and that the URU-NF considered that it was *"very unlikely that she has used the substances with doping intentions."* Mr. Abella requested that the sanction to be imposed on the PR be reconsidered. He asked that consideration be given to the fact that the PR had competed in Endurance riding for 10 years, *"always under the established rules and the Code of Conduct and also with an excellent attitude"*.

12. On 22 November 2011, the FEI provided its response to the PR's submission. The FEI submitted that its burden, as stipulated in Article 3.1 of the ECM Rules, is to prove to the "comfortable satisfaction" of the FEI Tribunal, that an ECM Rule violation has occurred. That a violation of Article 2.1 of the ECM Rules is a strict liability offence, established merely by proof that a Controlled Medication Substance was present in a horse's sample at an Event. That it is the PR's responsibility to ensure no Controlled Medication Substances enter the Horse's system. The FEI stated that where an FEI approved laboratory finds a Controlled Medication Substance to be present in the A-Sample taken at the Event, and the PR waived his or her right to a confirmatory analysis of the B-Sample, this is deemed sufficient proof of the presence of the Controlled Medication Substance. The FEI therefore concluded that its burden had been satisfied.

13. With regards to sanctions, the FEI requested the automatic disqualification of results obtained at the Event pursuant to Article 9 of the ECM Rules. Furthermore the FEI submitted that, as stipulated in Article 10.2 of the ECM Rules, the PR will be subject to a period of Ineligibility of 0 to 2 years, unless the conditions for eliminating or reducing this period of Ineligibility under Article 10.4, or increasing it subject to Article 10.5 of the ECM Rules, are met. That in order to reduce or eliminate the sanctions to be imposed on the PR for the positive finding, the PR had to establish how the Procaine entered the Horse's system. If the PR can establish this he must then show that the Prohibited Substance got into the Horse's system despite the use of 'utmost caution' on the part of the

PR to avoid ingestion. The FEI accepted that the PR's admission to use of the antibiotic Streptomycin was sufficient proof of how the Prohibited Substance entered the Horse's system. That however she could not sustain her burden of showing No Fault (or No Significant Fault) or Negligence for the rule violation. The FEI stated that (i) the PR had administered the Procaine herself, without professional veterinary advice, (ii) she did not take into account the applicable elimination times, (iii) did not request an ETUE. The FEI concluded that the PR had failed to ensure that no Controlled Medication Substances came to be in the Horse's system during the Event.

14. The FEI proposed a fine of CHF 1,500 and that the PR should be ordered to pay the legal costs incurred.

15. On 9 January 2012, the PR filed a rebuttal submission. She explained that she had chosen not to elect for the Administrative Procedure since in her understanding, by doing so the Tribunal would only decide upon a period of Ineligibility, but not additionally consider a monetary fine. The PR pointed out that a good monthly salary in her country was only US\$ 750. The PR stated that she was only in a position to continue competing because she trained and rode for other owners. That in Uruguay, the level of understanding and information regarding doping control is very poor. Notwithstanding this she stated that in her career as a veterinarian she had never had a positive doping test and always considered the health of her horse as paramount. Together with her response, the PR submitted a letter from Ms. Valerie Kanavy, a current employer of the PR, in favour of the PR, claiming that *"we worked together, trained horses and raced together"* and that furthermore *"she always impressed me with her knowledge, work ethic and honesty"*.

16. By email dated 7 May 2012, the URU-NF informed the FEI that the PR had been placed under a Provisional Suspension by the Uruguayan Endurance Association ("AUDEE") on 14 July 2011. That on 3 August 2011 this Provisional Suspension was ratified and the PR was suspended for a period of ninety days (90), effective from the date of the Event, 25-26 June 2011. The URU-NF stated that it was its understanding that the PR was also provisionally suspended by the FEI pending the resolution of the matter, and that the PR had therefore not competed since the time of suspension imposed by AUDEE. The URU-NF requested that the FEI Tribunal takes the period of suspension imposed by AUDEE into consideration when reaching its final decision.

4.5 Jurisdiction

17. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and EADCM Rules.

4.6 The Person Responsible

18. The PR is the Person Responsible for the Horse, in accordance with GRs Article 118.3, as she was the rider of the Horse at the Event.

4.7 The Decision

19. The Tribunal is satisfied that the laboratory reports relating to the A-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the USEF Laboratory are accurate. The Tribunal is satisfied that the test results evidence the presence of Procaine in the Sample taken from the Horse at the Event. The PR did not contest the accuracy of the test results or the positive findings. Procaine is classified as a Controlled Medication Substance under the FEI Equine Prohibited Substances List.

20. The FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the ECM Rules. This is undisputed.

21. In cases under the EADCMRs, a strict liability principle applies as described in the Article 2.1.1 of the ECM Rules.

22. Once an ECM Rule violation has been established by the FEI, and the PR did not accept the administrative sanctions offered to him or her under the [Fast Track procedure](#), the PR has the burden of proving that he bears "No Fault or Negligence" for the positive findings as set forth in Article 10.4.1 of the ECM Rules, or "No Significant Fault or Negligence," as set forth in Article 10.4.2 of the ECM Rules.

23. However, in order to benefit from any elimination or reduction of the applicable sanction under Article 10.4 of the ECM Rules, the PR must first establish how the Prohibited Substance entered the Horse's system. This element is a prerequisite to the application of Article 10.4. With regard to the standard of proof to be met by the PR, Article 3.1 of the ECM Rules stipulates that the PR must establish "specified facts or circumstances" "by a balance of probability".

24. The Tribunal finds that the PR, through her own admission, has established how the Prohibited Substance, detected in the Horse's sample taken on 25 June 2011, entered into the Horse's system. The PR admitted to administering the antibiotic 'Penicillin Streptomycin' to the Horse in the week prior to the Event. It is the Tribunal's understanding that Procaine is an active ingredient of this medication. The Tribunal therefore finds that the PR has established how the Prohibited Substance entered into the Horse's system.

25. Consequently the Tribunal has to address the question of whether or not the PR demonstrated that she bore "No Fault or Negligence" or no "Significant Fault or Negligence" for the positive finding as required by

Articles 10.4.1 and 10.4.2 of the ECM Rules in order to eliminate or reduce sanctions. The Tribunal takes note of the PR's explanation that she had miscalculated the "elimination times of the antibiotic" and did not consider filing an ETUE Form at the Event. It follows from the explanations by the PR that she had not fully considered the consequences of the treatment administered to her Horse. Article 2.1 of the ECM Rules requires that the Person Responsible ensure "*that no Controlled Medication Substance is present in the Horse's body during an Event*". The choice of the word "ensure" establishes that the responsibility of the PR is very broad and requires PRs to take a variety of actions. These include educating themselves, their veterinarians and anyone else in charge of the Horse on the Equine Anti Doping and Controlled Medication Rules, and the use of Prohibited Substances prior to an Event. Further, according to the FEI Veterinary Regulations (Annex XIII (III)), PRs are also required to follow their Horse's health history by maintaining a Medication Logbook in which all treatments administered to the Horse are recorded. The Tribunal holds that the PR, being a veterinarian herself, did not consider the consequences of the treatment carefully enough, and that by failing so, she bears some fault for the rule violation.

26. With regards to sanctions, the Tribunal holds that insofar as the PR did not accept the administrative sanctions offered to her under the Fast Track procedure, it is not bound by the sanctions originally proposed under the Fast Track procedure, but has to impose sanctions in accordance with the ECM Rules, in particular Article 10 of the ECM Rules. In accordance with Article 10.2 of the ECM Rules, the Tribunal has a wide range of discretion from zero (0) up to two (2) years of Ineligibility, without the presumptive starting point of two (2) years as provided in the EAD Rules (Article 10.5 of the EAD Rules). Within this context, the Tribunal takes into consideration, on the one hand, the ECM violation and type of substance involved as well as the conduct of the PR in administering the Prohibited Substance and, on the other hand and in mitigation, the fact that the PR was afforded the opportunity to accept administrative sanctions, the apparent clean record of the PR and the PR's cooperation in the investigation. With regard to the request by the URU-NF to take into account the suspension period imposed on the PR by the AUDDE, the Tribunal finds that it is bound by Article 10.8.5 of the ECM Rules, and that therefore, no credit may be awarded for the period of suspension imposed by the AUDDE, even if the PR complied with that suspension.

27. According to the Article 9 of the ECM Rules, a violation of the ECM Rules in connection with a Test in a given Competition automatically leads to the Disqualification of the result of the Person Responsible and Horse combination in that Competition.

28. In accordance with Article 168.4 of the GR's, the Decision will be effective from the date of written notification to the persons and bodies concerned.

4.8 Disqualification

29. For the reasons set forth above, the FEI Tribunal is disqualifying the Horse and the PR combination from the Competition and all medals, points and prize money won must be forfeited, in accordance with Article 9 of the ECM Rules.

4.9 Sanctions

30. Under Article 10.2 of the ECM Rules, the sanction for an Adverse Analytical Finding for a Controlled Medication Substance is an Ineligibility period of **up to** two (2) years for a first time offender. Based on the submissions and arguments above the FEI Tribunal imposes the following sanctions on the PR, in accordance with GRs Article 169 and Articles 10.2 and 10.7 of the ECM Rules:

- 1) The PR shall be suspended for a period of **four (4) months** to be effective immediately and without further notice from the date of the notification.
- 2) The PR is fined **CHF 1000**.
- 3) The PR shall contribute **CHF 1000** towards the legal costs of the judicial procedure.

5. Right of Appeal

31. In accordance with Article 12 of the ECM Rules, the PR may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport within 30 days of receipt hereof.

6. DECISION TO BE FORWARDED TO:

6.1 The person sanctioned: Yes

6.2 The President of the NF of the person sanctioned: Yes

6.3 The President of the Organising Committee of the Event through his NF: Yes

6.4 Any other: No

FOR THE PANEL



Pierre Ketterer