



DECISION of the FEI TRIBUNAL

dated 29 July 2018

In the matter of

Federazione Italiana Sport Equestri

"ITA-NF"

and

Royal Dutch Equestrian Federation

"NED-NF"

together the "NFs" or "Appellants"

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE ("FEI")

"FEI" or "Respondent"

I. COMPOSITION OF PANEL

Mr. Henrik Arle, one member panel

II. SUMMARY OF THE FACTS

- 1. Case File:** The Tribunal duly took into consideration the Parties' written submissions and communications received to date.
- 2. Oral hearing:** none.

III. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT

1. Articles of the Statutes/Regulations which are applicable:

Statutes 23rd edition, effective 29 April 2015 ("**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2018 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3rd edition, 2 March 2018 ("**IRs**").

Veterinary Regulations, 14th edition 2018, effective 1 January 2018, Chapter IX ("**VRs**").

FEI Code of Conduct for the Welfare of the Horse.

2. The relevant Legal Provisions:

Article 38.1 of the Statutes:

"Subject to Articles 38.2 and 38.4, 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:

(i) Any infringement of the Statutes, General Regulations, Sport Rules, or Procedural Regulations of a General Assembly or of violation of the common principles of behavior, fairness, and accepted standards of sportsmanship, whether or not arising during an FEI meeting or Event;

(ii) Any issue of interpretation of the Statutes, General Regulations, and Sport Rules;

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

Article 163 – Protests and Disciplinary Cases

"4. Protests in the following matters can only be lodged with the Ground Jury:

(...)

4.4. Protests concerning irregularities or incidents during a Competition, or the results of a Competition. Such Protests must be filed no later than thirty (30) minutes after the announcement of the results of the relevant Competition."

Article 165 of the GRs – Appeals:

"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):

- 1.1 With the Appeal Committee (or with the FEI Tribunal if there is no Appeal Committee) against Decisions by the Ground Jury.
 - 1.2 With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body.
 - 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 statement of Appeal.
- 2 An Appeal is not admissible:
- 2.1 Against Decisions by the Ground Jury in cases covered by Article 159.7.1-4 (or in cases in relation to the arena, an obstacle or the course if there is no Appeal Committee); (...)
- 3 Appeals to the Appeal Committee must be in writing, signed and accompanied by supporting evidence in writing or by the presence of one or more witnesses and must be lodged no later than one (1) hour after the Decision of the Ground Jury.
- 4 If there is no Appeal Committee, Appeals to the FEI Tribunal must be in writing, signed and accompanied by supporting evidence in writing or by the presence of one or more witnesses and must reach the FEI Tribunal no later than fourteen (14) days after the end of the Event. So far as Competitions are concerned, the right of Appeal is limited to questions of the eligibility of an Athlete or Horse and questions involving the interpretation of the Sport Rules.
- 5 Appeals to the FEI Tribunal must be dispatched to the Secretary General and signed by the appellant or his authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within thirty (30) days of the date on which the Secretary General's notification of the earlier Decision was sent. (...)"

Article 18.1 of the IRs - Jurisdiction:

"In accordance with Article 38 of the FEI Statutes, the FEI Tribunal has the competence to hear and determine any matter properly submitted to it, including, but not limited to, Claims (as provided for in Article 30 of these Internal Regulations of the FEI Tribunal), those matters specified in Article 163 (Protests and Disciplinary cases) and Article 165 (Appeals) of the FEI General Regulations and all disputes and proceedings arising under the Equine Anti-Doping and Controlled Medication Regulations. (...)"

Article 1014 of the VRs - Pony Measuring Facilities:

"(...) 2. The OC must ensure that suitable conditions for Pony Measurement are provided. The Measuring Area must have:

a) a total area of at least 3m by 3m;

b) a measuring "pad" of at least 3m by 1.5m that is flat, even and level which must be checked using a spirit level or laser and the floor must be non-slippery (a concrete slab or other paved surface is most desirable; plywood, dirt, gravel or other uneven surfaces are not permitted);

- c) freedom from unnecessary disturbances and distractions;
- d) adequate lighting to facilitate the process;
- e) ideally a separate entrance and exit to allow safe movement of Ponies into and out of the area;
- f) must be sheltered; and
- g) a Waiting Area for those Ponies awaiting Second Measurement. (...)"

Article 1084 of the VRs – Ponies' Presentation:

"(...) 4. Ponies must be allowed to hold their head and body in a natural position, with their cannon bones vertical and in a normal stance. They must be standing squarely, weight- bearing on all four limbs and be allowed to relax before measuring is attempted. (...)"

Article 1085 of the VRs - Pony Measuring Procedure:

"(...) 5. Following measuring, Ponies are declared as either having:

- a) "Measured In" and permitted to compete; or
- b) "Measured Out".

6. The Measuring Veterinarians must notify the PR or their representatives of the Ponies having Measured Out using a Second Measurement Notification Form. These Ponies must be presented for Second Measurement within a maximum of 1 hour following the Initial Measurement. (...)

10. The Measuring Veterinarians must notify the PR or their representative, the GJ and the VD of any Ponies having Measured Out after the Second Measurement.

11. The Measuring Veterinarians must mark, stamp and sign the Ponies' Passport, on the Identification Page, stating the date, Event and the words "Measured Out - Pending an Appeal". A red pen must be used for that purpose. A copy of the Identification Pages must be sent to the FEI Veterinary Department within 72 hours of the conclusion of the Event.

12. Ponies having Measured Out after the Second Measurement are not permitted to compete in the Event and any future FEI Pony Events until an Appeal Measurement has been carried out and the Pony has Measured In.

13. The Measuring Veterinarians must inform the FEI Veterinary Department of any Ponies having Measured Out in the Pony Measuring Report. (...)"

14. The FEI Veterinary Department will inform the respective NF of any Ponies having Measured Out. It is the responsibility of the NF to ensure that Ponies having Measured Out are not entered in any future FEI Pony Events until an Appeal Measurement has been carried out and the Pony has Measured In."

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 Event CSIOP/CDIOP/CDIP in Hagen, Germany took place from 12 to 17 June 2018 (the "**Event**"). A pony measurement took place during the Event.

2. Procedural Background

- 2.1 On 26 July 2018, the Appellants submitted an Appeal pursuant to Article 165.1.2 of the GRs.
- 2.2 On the same day, both Parties confirmed having no objection to the appointed panel and requested the panel to decide the matter based on submissions made in writing only, without a hearing.
- 2.3 On 28 July 2018, the FEI submitted its Answer.
- 2.4 In previous communications by the Parties to the Tribunal, the FEI suggested expedited proceedings, which request the panel granted on 26 July 2018. Furthermore, the Appellants also requested for expedited proceedings in their Appeal.

3. Written submission by the Appellants

- 3.1 The Appellants submitted that the Appeal was lodged with the Tribunal in accordance with Article 165.1.2 of the GRs.
- 3.2 In essence, the Appellants requested the Tribunal to annul the pony measurement session that took place at the Event, and the outcome of which prompted the communication received from the FEI Veterinary

Department on 25 June 2018, stating the ponies measured at the Event had to be considered as "Measured Out".

3.3 More specifically, the Appellants submitted that a number of abnormalities linked to the pony measurement at the Event had taken place, namely:

A) Concerning procedures and conditions of the pony measurement at the Event:

- a) The measuring mat was used despite obvious contradictions. A qualified surveyor was called with urgency to attest the irregularity of the measuring mat, and the document produced by the surveyor confirmed these irregularities. In this regard, the Appellants provided a photo of the ground level measurement.
- b) There had been no separate entrance and exit, the area was not free of obstacles, the area was not well lighted, the area was not quiet (birds chattering) and no time for relaxation time was given.

B) Concerning decisions by the Measuring Veterinarians and members of the Ground Jury at the Event:

- c) An incorrect decision by the President of the Ground Jury and the Veterinary Commission at the Event.
- d) Ponies who were "Measured In" with the wording added in the passport "*measured in with tolerance – 152cm pending for re-measurement*". The Appellants provided a passport with such wording signed by the Measuring Veterinarians at the Event.
- e) Ponies measured at 151.5cm having no remark in the passport; a tolerance of 0.6cm was granted because of the non-compliant circumstances and abnormal results. The Appellants provided an example of a measurement recording signed by a member of the Ground Jury stating "*measured in with tolerance*" where that pony has been measured at 151.5cm at the Event.

C) Concerning final results at the Event:

- f) Ponies who are now "Measured Out" but competed in the competition, are in the classification and won prize money. Therefore, points and standings of the 2018 Pony Nations Series have been altered.

3.4 In addition, the Appellants referred to Article 1014 of the VRs regarding Pony Measuring facilities, Article 1085 of the VRs regarding passport remark requirements, and Article 1084 of the VRs which provides that ponies must be allowed to relax before measuring is attempted.

3.5 The Appellants further argued that "*In our opinion, this pony measurement should have been annulled, whilst – as the FEI Vet. Dept.*

mentioned – it was a risky choice, albeit for sur in good faith on the part of the President of the Jury, to apply a new variant to the provisions laid down in the rules.”

- 3.6 According to the Appellants there existed a similar case, which had occurred in Bonheiden in 2017, where it had been decided to annul the pony measurement because the measuring area was not deemed suitable.
- 3.7 Finally, the Appellants requested expedited proceedings due to the upcoming European Pony Championships in Bishop Burton.

4. Written submission by the FEI

- 4.1 On 28 July 2018, the FEI submitted that the Tribunal has no jurisdiction to review the conditions of the pony measurement performed at the Event. In this regard the FEI referred to the FEI Tribunal decision of 20 July 2018 in the matter of *Ms Skye Morssinkhof & Mr Stefan Morssinkhof vs. FEI*.
- 4.2 In addition, this decision was very relevant as it concerned the same pony measurement as in the present case, *i.e.*, the pony measurement at the Event.
- 4.3 Therefore, as the Tribunal already took a decision on its (lack of) jurisdiction regarding the conditions of the pony measurements at the Event, the FEI respectfully requested that the Tribunal declares the present Appeal inadmissible.

5. The Decision

- 5.1 To start with the Tribunal notes that the Appellants lodged an Appeal in accordance with Article 165.1.2 of the GRs. Article 165.1.2 of the GRs reads as follows:

"With the FEI Tribunal against Decisions of the Appeal Committee or any other person or body."

- 5.2 The wording of Article 165.1.2 of the GRs is very clear; a Decision is required for an Appeal to be lodged. The Appellants did not provide the Tribunal with the Decision against which they lodged the Appeal, nor did they specify the Decision in the Appeal. However, the Appellants refer to *"incorrect decisions by the President of the Ground Jury and the Veterinary Commission in Hagen"*. The Tribunal will therefore decide whether it has jurisdiction to decide on the "incorrect decision" claims.
- 5.3 In a first step the Tribunal takes note that the Appellants argue that the pony measurement at the Event should never have taken place, as the measuring facilities and procedures did not comply with FEI rules. The Appellants put forward several inconsistencies of the measuring

conditions at the Event. However, the Tribunal finds that it lacks jurisdiction to decide on these alleged inconsistencies for reasons outlined below.

- 5.4 In line with previous decisions, including the decision referred to by the FEI concerning pony measuring at the Event, the Tribunal finds that the Appeal regarding the conditions of the pony measurement at the Event is inadmissible, as the Appellants have not exhausted the administrative remedies available to them at the Event under the GRs and the VRs, *i.e.*, a Protest with the Ground Jury. In this respect the Tribunal understands that no Protest has been lodged at the Event (as confirmed in the Tribunal decision of 20 July 2018). A Protest during the Event would have been the adequate remedy foreseen under the GRs and the VRs, as the matters in question had arisen during the Event. The Tribunal therefore lacks jurisdiction to decide this part of the Appeal, *i.e.*, concerning the conditions of the pony measurement at the Event.
- 5.5 In a second step the Tribunal takes note of the Appellant's claim that "*incorrect decisions by the President of the Ground Jury and the Veterinary Commission in Hagen*". The Tribunal has not been made aware of any Veterinary Commission decision taken at the Event. The Appellants have provided documents signed by the Measuring Veterinarians and by a member of the Ground Jury during the Event. The latter could in the Tribunal's view be considered as a "*Decision of the Ground Jury*" in the meaning of Article 165.1.2 of the GRs.
- 5.6 Furthermore, the Tribunal understands that there was no Appeal Committee at the Event (as confirmed in the Tribunal decision of 20 July 2018). Thus, decisions of the Ground Jury can be appealed to the Tribunal. However, pursuant to Article 165.4 of the GRs, appeals to the Tribunal must reach the Tribunal no later than fourteen (14) days after the Event. The Event took place from 12 to 17 June 2018. Thus, while the Tribunal would have jurisdiction to hear and decide appeals from Ground Jury decisions (where there was no Appeals Committee at the Event), the Tribunal has to dismiss this part of the Appeal, as the Appeal was not lodged within the deadlines provided for in the FEI Rules, *i.e.*, Article 165.4 of the GRs.
- 5.7 In a last step the Tribunal takes note that the Appellants *inter alia* claim that the results of the Event, and with it the standings of the 2018 Pony Nations Series have been altered, and thus have to be corrected. The Tribunal has however no jurisdiction to decide on this part of the Appeal as, according to Article 163.4.4 of the GRs, the adequate remedy to challenge results of a Competition, is a Protest which has to be lodged only with the Ground Jury no later than thirty (30) minutes after the announcement of the results of the relevant Competition. The Tribunal has however not been informed that such Protest was lodged, and therefore presumes that this was not the case. Thus, this part of the Appeal is inadmissible.
- 5.8 For the foregoing reasons, the Tribunal (i) has either no jurisdiction, *i.e.*, regarding the conditions of the pony measurement at the Event; and (ii)

concerning the results of the Competitions at the Event; or (iii) has jurisdiction, but the Appeal has not been lodged within the deadline foreseen in the rules, *i.e.*, regarding decisions of the Ground Jury. Therefore, the Appeal, even where admissible, has to be dismissed.

5.9 All other arguments are dismissed. While the Tribunal has taken them into consideration, it did not find that they were relevant or decisive for the outcome of this Decision.

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

- 1) The part of the Appeal concerning the pony measurement conditions at the Event is inadmissible.
- 2) The part of the Appeal concerning results and rankings is inadmissible.
- 3) The remaining Appeal regarding decisions of the Ground Jury is admissible, but dismissed as not lodged within the deadline.
- 4) No deposit shall be returned to the Appellants. In addition, the Appellants shall contribute **two thousand Swiss Francs (CHF 2,000)**, which is considered to be a fair and sufficient amount, towards the costs of the proceedings.

5.11 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.

5.12 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 twenty-one (21) days of the present notification.

V. 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 'Henrik Arle', is written over a light blue rectangular background.

One member panel, Mr. Henrik Arle