



DECISION of the FEI TRIBUNAL

dated 21 April 2011

Human Anti-Doping Case No.: 2010/01

Athlete / NF: Josep Massana / ESP

FEI ID: 10035006

Event: CDI Arruda Dos Vinhos (POR)

Sampling Date: In-competition test, 12 December 2009

Prohibited Substances: Cocaine and Cannabinoids

1. COMPOSITION OF PANEL

Prof. Dr. Jens Adolphsen
Mr. Ken Lalo
Mr. Patrick A. Boelens

2. SUMMARY OF THE FACTS

2.1 Memorandum of case: By Legal Department.

2.2 Summary information provided by the Athlete: The FEI Tribunal took into consideration all evidence and documents presented in the **case file, as also made available by and to the Athlete.**

2.3 Oral hearing: None: by correspondence.

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 ("**Statutes**"), Arts. 34 and 37.

General Regulations, 23rd edition, effective 1 January 2009, Arts. 143 and 169 ("**GR**").



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

FEI Anti-Doping Rules for Human Athletes, 2nd edition, effective 1 January 2009 ("ADRHAs").

World Anti-Doping Code 2009.

3.2 The Athlete: Mr. Josep Massana

3.3 Justification for sanction:

GR Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes, in conjunction with The World Anti-Doping Code, and in the Equine Anti-Doping and Medication Control Rules.

Art. 2.1.1 ADRHA: "It is each *Athlete's* personal duty to ensure that no *Prohibited Substance* enters his or her body. *Athletes* are responsible for any *Prohibited Substance* or its *Metabolites* or *Markers* found to be present in their *Samples*. Accordingly, it is not necessary that intent, fault, negligence or knowing *Use* on the *Athlete's* part be demonstrated in order to establish an anti-doping violation under Article 2.1."

Art. 4.1 ADRHA: "These Anti-Doping Rules incorporate the *Prohibited List* which is published and revised by *WADA* as described in Article 4.1 of the *Code*. The FEI will make the current *Prohibited List* available to each *National Federation*, and each *National Federation* shall ensure that the current *Prohibited List* is available to its members and constituents."

4. DECISION

4.1 Factual Background

1. Mr. Josep Massana (the "**Athlete**") participated at the CDI in Arruda Dos Vinhos, Portugal (POR) (the "**Event**"), from 11 to 13 December 2009. Upon request of the Portuguese Equestrian Federation ("**POR NF**"), the Portuguese National Anti-Doping Agency ("**ADOP**") performed anti-doping controls at the Event.
2. On 12 December 2009, the Athlete was selected for in-competition testing. Analysis of urine sample no. 394780 taken from the Athlete at the Event was performed at the Laboratório de Análises de Dopagem ("**LAD**"), a WADA accredited laboratory. The analysis revealed the presence of Cocaine and Cannabinoids (Certificate of Analysis dated 9 February 2010).
3. The Prohibited Substances detected are Cocaine and



Cannabinoids. Cocaine is a Non Specified Stimulant, listed in the category of S6.a of Prohibited Substances as set forth on the 2009 Prohibited List. Cannabinoids are metabolites of Cannabis and are listed in the category of S8 of Prohibited Substances on the 2009 Prohibited List. Cocaine is not a "Specified Substance" while Cannabinoids are "Specified Substances". The presence of Cocaine and Cannabinoids in the Athlete's sample therefore constitutes an *Anti-Doping* rule violation.

4.2 The first B-Sample Analysis

4. On 18 February 2010, the LAD proceeded to the analysis of the B-Sample prior to the Athlete being officially informed of the positive test result by the FEI. The analysis of urine B-Sample no. 394780 confirmed the presence of Cocaine and Cannabinoids (Certificate of Analysis dated 19 February 2010).

4.3 The Proceedings

5. The presence of the Prohibited Substances following the laboratory analyses, the possible rule violation and the consequences implicated, were officially notified to the Athlete by the FEI Legal Department on 11 March 2010. The Notification Letter included notice that the Athlete was provisionally suspended and granted him the opportunity to be heard at a Preliminary Hearing before the FEI Tribunal. The Athlete did not exercise his right to a Preliminary Hearing.
6. Together with the Notification Letter of 11 March 2010, the Athlete was also informed that following an error of communication, LAD had already proceeded to an analysis of the first B-Sample on 18 February 2010, and that the results of the first B-Sample analysis confirmed the Adverse Analytical Findings. The Athlete also received notice that LAD had advised that the remaining B-Sample (Sample 394780) portion contained at least 20ml, being sufficient to perform a second B-Sample analysis. Further, that according to LAD, the documentation at its disposal established that the Chain of Custody of the first B-Sample analysis was satisfactory. This letter further informed the Athlete that he was entitled to the performance of a second B-Sample confirmatory analysis on the remaining portion of the B-Sample, and that he had the right to attend or be represented at the opening and analysis of the remaining portion of the B-Sample within the time period prescribed in the International Standard for Laboratories.

4.4 The second B-Sample Analysis

7. The Athlete confirmed on 18 March 2010 that he wished for the second B-Sample analysis to be performed. Together with his



request for the second B-Sample analysis, the Athlete alleged that the initial sample analysis had been performed on the B-Sample instead of the A-Sample. The Athlete further formally protested against the fact that the first portion of the B-Sample had been opened and re-sealed without his presence or the presence of any representative, and that the first B-Sample analysis had been performed without his knowledge and without him being given the possibility to be present. The Athlete noted that his request to re-analyse the B-Sample should not be considered as consent or conformity with the proceedings.

8. The second B-Sample analysis was performed on the remaining portion of the urine sample on 29 March 2010, at the LAD by Mr. João Ruivo, Deputy Director, and Ms. Andreina Lourenço, Responsible for Screening, under the supervision of Mr. Michael Sekera, Scientific Coordinator of LAD.
9. The Athlete did not attend the analysis and did not send a representative to the Laboratory. Therefore, Mr. José Luis Rocha and Ms. Maria Violante De Melo e Castri Salzar Lebre, Representative of the POR NF, witnessed the identification of the second portion of the B-Sample as external witnesses.
10. In the Sample Report of the Counter Analysis dated 29 March 2010, Mr. Rocha and Ms. De Melo e Castri Salzar Lebre declared that they verified the integrity of the seal and sample container and considered them intact.
11. The second B-Sample analysis of the remaining urine portion confirmed the presence of Cocaine and Cannabinoids (Certificate of Analysis D-1117/3795 – 2009 dated 31 March 2010).
12. The results of the second B-Sample analysis were notified to the Athlete on 12 April 2010, through the Spanish Equestrian Federation (ESP).

4.5 The further Proceedings

13. On 20 April 2010, the Athlete requested the full Laboratory Documentation Information Package for the three analyses having been performed on urine sample no. 394780. On the same day, the Athlete also requested a Final Hearing to be held.
14. On 14 June 2010, the Laboratory Documentation Information Packages for the three analyses were submitted to the Athlete by the FEI.
15. On 14 July 2010, the Athlete provided his explanations. With regard to the A-Sample analysis, the Athlete criticized that he had only been notified of the results about two months after the



analysis had been started. He further reiterated his allegation that the A-Sample analysis had been performed on the B-Sample, which, according to him, was furthermore opened and re-sealed without the presence of his representative. With regards to the first B-Sample analysis, the Athlete argued that insofar as the first B-Sample analysis had taken place without his knowledge and therefore without anybody witnessing it on his behalf, the first B-Sample analysis was invalid. The Athlete finally contended that the second B-Sample analysis was not performed in accordance with the applicable standards since the Sample had already been opened before. He also alleged that a different Sample than the one provided by him had been analysed. In support of the latter allegation, the Athlete argued that the urine Sample provided by him at the Event had been introduced into a recipient identified as sample 394780, and marked with control code "INTERPELLAR". That the witness present during the opening of the second B-Sample had however reported that sample B 394780 was sealed with seal control code n° 013329, allowing the conclusion that a different sample had been analysed during the second B-Sample analysis. The Athlete therefore contended having established a departure from the International Standard for Laboratories and that this departure could have reasonably caused the Adverse Analytical Finding. Finally, that the FEI had not met its burden of proof that the departure from the International Standard for Laboratories had not caused the Adverse Analytical Finding. With regard to each of the three analyses performed, the Athlete first argued that no witness had attended the analysis procedures. Second, the Athlete contested that the same individuals that had been directly involved in the A-Sample analysis as well as the B-Sample analyses had also signed the respective analysis reports. Third and lastly, the Athlete denied having intentionally consumed the Prohibited Substances Cocaine and Cannabinoids.

16. On 4 October 2010, the FEI responded to the Athlete's submission. Together with its response, the FEI submitted a statement by Mr. Luis Horta, ADOP President, and Mr. Sekera of 30 September 2010, as well as excerpts of the WADA International Standard for Laboratories. In order to clarify the background of the case, and referring to the statement by Mr. Horta and Mr. Sekera of 30 September 2010, the FEI explained that ADOP had not been informed that the Event was an international event, and had wrongly classified it as national. That therefore, the doping controls performed at the competition in question were part of the National Anti-Doping Program, and that for this reason, the results management had been conducted according to the Portuguese National Anti-Doping Law. That the Portuguese National Anti-Doping Law was totally aligned with the International Standard for Laboratories.



Further, that because of the wrong classification, the positive test result had been notified to the POR NF instead of the FEI. That LAD had not received any response by the POR NF with regard to the proposed B-Sample analysis date, and had therefore proceeded with the B-Sample analysis as required under the Portuguese National Anti-Doping law. That ADOP had only learnt after the first B-Sample analysis had been performed that the Event was an international event, following which it had requested the POR NF to involve the FEI. In response to the Athlete's complaint that he only received the A-Sample results two months after the sample had been taken, the FEI, referring to the statement of Mr. Horta and Mr. Sekera, explained that the report had not been given priority by the LAD since it had been classified as a "national" test result. That furthermore, two reports had to be drafted, one for Cocaine, and one for Cannabinoids. That finally, the reports had been drafted over the festive season of 2009 and 2010, when fewer members of the laboratory staff were working. Relying on the statement of Mr. Horta and Mr. Sekera, the FEI further confirmed that the initial analysis of sample 394780 had been performed on the A-Sample, and not as alleged by the Athlete on the B-Sample. The FEI also emphasised that despite the fact that the Event had been classified as national event, the analysis had been performed in accordance with the International Standard for Laboratories. Lastly, that full reports for both the A-Sample analysis as well as the B-Sample analyses had been sent to the Athlete giving him in depth access to the details of the three analyses.

17. With respect to the first B-Sample analysis, the FEI conceded that - due to the incorrect classification of the Event as a national event and the resulting confusion - the first B-Sample analysis had taken place without the Athlete's knowledge, and without the Athlete having been offered the possibility to attend the analysis. Further, that the full report of the first B-Sample analysis had been provided to the Athlete for the sake of transparency. The FEI explained further that firstly, in order to comply with the International Standard for Laboratories, and in the absence of any response by the POR NF, LAD had been obliged to proceed with the B-Sample analysis no later than seven days after the notification of the A-Sample positive finding to the POR NF, i.e. as had happened on 18 February 2010. Referring to the Comment to Article 2.1.2 of the WADA Code, the FEI secondly argued that as the Anti-Doping organisation with results management authority, it could even have opted to have the B-Sample analysed without the Athlete requesting the analysis. Thirdly, that the Athlete himself showed contradictory behaviour insofar as he contested the validity of the first B-Sample analysis on the grounds of his absence, but did not attend the second B-Sample analysis, or even send a



representative on his behalf.

18. In response to the Athlete's contention that the second B-Sample analysis was invalid insofar as the B-Sample had already been opened earlier in the context of the first B-Sample analysis, the FEI argued that the International Standard for Laboratories generally allowed for B-Samples being opened and re-sealed afterwards. Furthermore, and relying on FEI ADRHA Article 6.5 and 6.2, the FEI highlighted that it had the right to re-analyze samples at its discretion in order to detect and identify Prohibited Substances. That the right to re-analyze samples also included that the FEI may validly rely on the results of the re-analysis. That conclusively, the fact that a sample had already been opened did not necessarily invalidate the later analysis or the analysis results. Furthermore, and referring to the statement of Mr. Horta and Mr. Sekera, the FEI affirmed that the remaining portion of the B-Sample had been re-sealed in accordance with the International Standard for Laboratories. The FEI therefore contended that the Athlete had not established any departure by LAD from the International Standard for Laboratories. In addition, even if a departure from the International Standard for Laboratories had been established by the Athlete, under FEI ADRHA Article 3.2.1, the Athlete would have been obliged to establish that the alleged departure from the International Standard for Laboratories *"could reasonably have caused the Adverse Analytical Finding"*. The FEI further argued that the two earlier laboratory analyses of Sample 394780 had both lead to positive test results for the same two Prohibited Substances, and that it was therefore highly unlikely that the alleged departure could have *"reasonably caused"* the positive test result of the second B-Sample analysis. Finally, the FEI contended that the Athlete, in requesting the second B-Sample analysis to be performed, had to a certain extent accepted the procedure proposed, since otherwise it would not have made any sense to request the second B-Sample analysis if ultimately, the results could not be relied upon. With respect to the Athlete's argument that the portion of the Sample which was analyzed during the second B-Sample analysis was taken from a different Sample than the Sample provided by him and analysed during the first B-Sample analysis, the FEI referred to the explanations provided in this context in the statement by Mr. Horta and Mr. Sekera. According to those explanations, *"INTERPELAR"* was the mission code of the anti-doping control mission performed at the Event. That in the course of the anti-doping mission *"INTERPELAR"*, the Athlete had provided urine Sample 394780, which was sealed in containers and bottles bearing the code *"A"* and *"B"* 394780. That the A-Sample analysis was thereupon performed on aliquots taken from the *"A"* 394780 bottle, and the first B-Sample analysis on aliquots taken from the *"B"* 394780 bottle.



That the bottle with the remaining "B" 394780 Sample was immediately closed in a container in the presence of an independent witness, and sealed with seal number 013329. That therefore, the Sample bearing seal number 013329, opened during the second B-Sample analysis, was the Sample provided by the Athlete in the course of the Event, and that aliquots of the same Sample had been analysed during the A-Sample analysis and the first B-Sample analysis.

19. As to the allegation by the Athlete that no witnesses had been present during the analyses, the FEI emphasized that no witness was obligatory for an A-Sample analysis. That moreover, according to the WADA Code as well as under the FEI ADRHA, athletes have the right to attend the B-Sample analysis, or to send a representative. That however, as confirmed by Mr. Horta and Mr. Sekera in their statement of 30 September 2010, no obligation emanated from this right for anybody to attend the B-Sample analysis on behalf of the athlete in case the athlete himself did not exercise his right. That, in order to comply with the International Standard for Laboratories, a witness had to observe the opening of the B-Sample only, not the entire B-Sample analysis. Referring to both the two B-Sample analysis reports and the statement of Mr. Horta and Mr. Sekera, the FEI explained that both LAD internal as well as independent witnesses had been present for the first and the second B-Sample analysis. That the International Standard for Laboratories had been entirely complied with, and that therefore the analyses were valid.
20. In response to the Athlete's allegation concerning the persons involved in the three Sample analyses, the FEI contended that the former "different analyst rule" apparently referred to by the Athlete and included in former versions of the International Standard for Laboratories, was not applicable in the case at hand. That moreover, even if the "different analyst rule" was still applicable, it had been complied with by the LAD insofar, as only the direct involvement by the same laboratory analyst in both A-Sample and B-Sample analysis was excluded. That however in the case at hand, the individual in question had only been indirectly involved with the A-Sample analysis, and directly with the B-Sample analyses. Relying on the statement of Mr. Horta and Mr. Sekera, the FEI further argued that the individual in question, being the LAD Deputy Scientific Director, had further rightfully signed the A-Sample analysis report in the absence and on behalf of LAD Scientific Director Mr. Sekera. The FEI therefore concluded that the three analyses, as well as the analysis reports, were valid.
21. Addressing the Athlete's argument that he did not intentionally consume the Prohibited Substances detected, the FEI reminded



the Athlete of the strict liability principle governing the anti-doping system of the FEI as well as that of the World Anti-Doping Agency (WADA). The FEI emphasized that according to the strict liability principle, the mere presence of a Prohibited Substance in any Athlete's Sample constituted a rule violation, irrespective of the Athlete's intended use of the Prohibited Substance, or the Athlete's knowledge, if any, of such use.

22. Lastly, and alternatively only, the FEI argued that it had established, in accordance with FEI ADRHA Article 2.2, the "Use" by the Athlete of the Prohibited Substances Cocaine and Cannabinoids. In this context, the FEI referred to the Comment to Article 2.2 of the WADA Code, stipulating that the "Use" of a Prohibited Substance *"may be established by any reliable means"*, in particular by means of *"other analytical information which does not otherwise specify all the requirements to establish "Presence" of a Prohibited Substance under Article 2.1"*. Specifically, the FEI referenced the example provided by the Comment to Article 2.2 of the WADA Code, that "Use" may be established based upon reliable analytical data from the analysis of an A-Sample only, without confirmation from the analysis of a B-Sample. In conclusion, the FEI argued that insofar as the Athlete had not successfully contested the A-Sample results, "Use" by the Athlete of the Prohibited Substances Cocaine and Cannabinoids had been established by the FEI in accordance with FEI ADRHA Articles 2.2 and 3.1.
23. Turning to the question of sanctions, the FEI argued that the Athlete had not established, as required under the provisions governing sanctions, how the Prohibited Substances had entered his body. That to the contrary, the Athlete had not made any attempt to explain how the Prohibited Substances had entered his body, and that furthermore, the Athlete had not provided, as required under FEI ADRHA Articles 10.4 in the case of Specified Substances, a single piece of evidence establishing the absence of intent to enhance his sport performance. The FEI concluded that the Athlete was not entitled to benefit from any elimination or reduction of the otherwise applicable period of Ineligibility under FEI ADRHA Articles 10.4 or 10.5.
24. The Athlete submitted his further comments on 3 December 2010. The Athlete further insisted on the alleged delays incurred during the A-Sample analysis, emphasising that according to WADA International Standard for Laboratories Article 5.2.6.5, A-Sample results have to be reported within ten (10) working days of the receipt of the sample. With regard to the first B-Sample analysis, the Athlete contended that his case had been reported to the FEI on 15 February 2010, two days prior to the scheduled B-Sample analysis, and that therefore, the FEI could have had notified the Athlete timely in order to assist the first



B-Sample analysis. The Athlete concluded that the FEI had failed to immediately notify him, as required under WADA Code Article 7.2. Furthermore, the Athlete argued that, in order to be compliant with the B-Sample analysis time limits of the International Standard for Laboratories, LAD was only obliged to perform the B-Sample analysis seven (7) working days after notification of the Adverse Analytical Finding to the relevant Testing Authority. The Athlete further argued that since the wrong results management authority was originally notified, the time period for calculating the deadline for conducting the B-Sample analysis should only have started to run from the time the FEI, the proper results management authority, was notified of the A-Sample results. In conclusion, the Athlete contended that LAD was only obliged to start the B-Sample analysis on 23 February 2010, and did not have the right to perform it as early as 18 February. Therefore, the Athlete concluded that he had established that LAD had not performed the analysis, as required under FEI ADRHA Article 3.2.1, in accordance with the International Standard for Laboratories. With respect to the FEI's argument that, as an Anti-Doping organisation with results management authority, the FEI could have even opted to have the B-Sample analysed, without the Athlete requesting the analysis, the Athlete contended that this was only true in cases where the athlete had effectively waived his right to the B-Sample analysis. The Athlete further stated that he or a representative should have been allowed to be present at the Sample opening of any such analysis.

25. As regards to his request for the second B-Sample analysis, the Athlete explained that, in the event that he had waived his right to the second B-Sample analysis, he would have been viewed as accepting the A-Sample results as valid.
26. Referring to WADA Code Article 15.1 and FEI ADRHA Article 5.7.1, the Athlete furthermore contended that the FEI would have been the relevant Testing Authority, and that the POR NF had unlawfully assumed testing authority functions in selecting the respective athletes for the anti-doping test without following the authorization procedure envisaged in WADA Code Article 15.2.
27. With regards to the alternative charge by the FEI of a violation of FEI ADRHA Article 2.2, the Athlete argued that the FEI was not entitled to vary the charges against him. That the alternative charge violated both his right to be timely informed of the anti-doping violation hold against him, and his right to challenge the charges against him. On the merits, the Athlete argued that no sufficient evidence had been adduced either for the alleged "use" or the "intent to use" Prohibited Substances. Finally, the Athlete withdrew his request for a Final Hearing,



explaining that he intended to avoid any further delay of the decision.

4.6 Jurisdiction

28. The Tribunal has jurisdiction over this matter pursuant to the Statutes, GRs and the FEI ADRHA Rules.

4.7 The Decision

4.7.1 The A-Sample analysis

29. With regard to the Athlete's complaint about the duration of the A-Sample analysis and the reporting of the respective A-Sample results, the Athlete's argument that in accordance with WADA International Standard for Laboratories Article 5.2.6.5, A-Sample results have to be reported within ten working days of the receipt of the Sample, has to be rejected. Indeed, WADA International Standard for Laboratories Article 5.2.6.5 stipulates that reporting of A-Sample results "*should*" occur within ten working days of the receipt of the sample. As can be concluded from the wording of the provision, no rigid time limits are set for reporting, allowing some flexibility to the laboratory as to the date of the reporting. In the opinion of the Tribunal, laboratories are however obliged to ensure timely reporting of the A-Sample analysis results, avoiding any unnecessary delays. In the case at hand, the Tribunal is of the opinion that Mr. Horta and Mr. Sekera, in their statement of 30 September 2010, have satisfactorily explained the reasons for the duration of the A-Sample analysis and the reporting of the Sample results. Furthermore, Mr. Horta and Mr. Sekera have explained to the Tribunal's satisfaction that the initial analysis of the Sample has been performed on the A-Sample, and not on the B-Sample. Taking further into account the explanation by Mr. Horta and Mr. Sekera that despite the misclassification of the Event by LAD, the analysis had been performed in accordance with the International Standard for Laboratories, the Tribunal considers that the A-Sample analysis has been duly performed and reported.

4.7.2 The first B-Sample analysis

30. With respect to the first B-Sample analysis, the Tribunal takes note that the FEI is not formerly relying either on the analysis or on the test result and that instead the analysis results have been submitted primarily for the sake of completeness and transparency. The Tribunal is of the opinion that it is not necessary to consider the parties' arguments concerning the validity of the first B-Sample analysis as the second B-Sample

analysis is valid.

4.7.3 The second B-Sample Analysis

31. In the context of the Athlete's argument that the portion of the Sample which was analyzed during the second B-Sample analysis was from a different Sample than the Sample provided by him and analysed during the first B-Sample analysis, the Tribunal relies on the explanations provided by Mr. Horta and Mr. Sekera. Mr. Horta and Mr. Sekera have explained to the Tribunal's satisfaction that the mission code of the anti-doping control mission in the course of which the Athlete had provided urine sample 394780 was "INTERPELAR". That urine sample 394780 was closed in containers and bottles bearing the code "A" and "B" 394780. The Tribunal is further convinced that the A-Sample analysis was performed on aliquots taken from the "A" 394780 bottle, and the first B-Sample analysis on aliquots taken from the "B" 394780 bottle. Further, that the bottle with the remaining "B" 394780 Sample had been closed in the presence of an independent witness, and sealed with seal number 013329. Lastly, and relying on the statement by Mr. Horta and Mr. Sekera, the Tribunal concludes that the FEI has established that the Sample opened during the second B-Sample analysis and bearing seal number 013329, was the Sample provided by the Athlete in the course of the Event, and that the aliquot analysed in the course of the second B-Sample analysis was taken from the same Sample as those portions analysed during the A-Sample analysis and the first B-Sample analysis. Therefore, since no departure from the International Standard for Laboratories has been established, the Tribunal does not have to determine whether the alleged departure from the International Standard for Laboratories could have reasonably caused the Adverse Analytical Finding.

32. In the opinion of the Tribunal, the second B-Sample analysis was not invalidated by the fact that the B-Sample had been opened earlier in the context of the first B-Sample analysis, and in the absence of the Athlete. To start with, the International Standard for Laboratories envisions the possibility of opening and re-sealing B-Samples, as indicated by International Standard for Laboratories Article 5.2.4.3.2.7 read together with Article 5.2.2.12. Furthermore, in light of the fact that under FEI ADRHA Article 6.5 and 6.2, the FEI is entitled to reanalyze Samples at its discretion, the FEI may also validly rely on the results of the respective re-analysis. Finally, Mr. Horta and Mr. Sekera have convinced the Tribunal by their statement of 30 September 2010 that the remaining portion of the B-Sample had been re-sealed in accordance with the International Standard for Laboratories. The Tribunal therefore holds that the Athlete has not established a departure from the International



Standard for Laboratories. It therefore does not have to determine whether the alleged departure could reasonably have caused the Adverse Analytical Finding.

4.7.4 Presence of witnesses during the analyses

33. With regards to any requirement relating to the presence of witnesses during the different analytical procedures, the Tribunal holds that no witness is required for A-Sample analyses. Moreover, that the right of athletes to attend the B-Sample analysis, or to send a representative, is established both under the WADA Code as well as under the FEI ADRHA. That however, no obligation existed on any other person or entity to attend the B-Sample analysis on behalf of the athlete in cases where the athlete himself did not exercise his rights. Relying on the two B-Sample analyses reports as well as the statement of Mr. Horta and Mr. Sekera of 30 September 2010, the Tribunal is however assured that the minimum requirement under the International Standard for Laboratories, i.e. the attendance by a witness of the opening of the B-Sample, had been complied with by LAD, both in the context of the first as well as of the second B-Sample analyses. The Tribunal therefore holds that the International Standard for Laboratories has been entirely complied with in regards to the attendance of witnesses during the B-Sample analyses.

4.7.5 Individuals involved in the analyses

34. As to the question of the individuals that have been involved in the analyses, and have signed the analyses reports, the Tribunal has to reject the Athlete's contentions. To start with, the so called "different analyst rule" is not applicable to the case at hand. Moreover, as explained by Mr. Horta and Mr. Sekera, LAD complied with the rule that individuals directly involved in one Sample analysis were only indirectly involved in the other Sample analysis. Furthermore, the Tribunal is convinced from the statement of Mr. Horta and Mr. Sekera that the respective signatures on the analyses reports were by individuals duly authorized to sign.

35. In conclusion, the FEI Tribunal is satisfied that the laboratory reports relating to the A- and the B-Samples reflect that the analytical tests were performed in an acceptable manner and that the findings of the LAD are accurate. The FEI Tribunal is satisfied that the A-Sample test results show the presence of the Prohibited Substances. With respect to Cannabinoids, a quantity exceeding the threshold level, i.e. 15 ng/ml, has been detected. The B-Sample analyses results confirmed the presence of the Prohibited Substances, and the Athlete did not successfully contest the accuracy of the testing methods or the



test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence pursuant to FEI ADRHA Rules Article 2.1.1, in accordance with FEI ADRHA Rules Article 3.

4.7.6 Testing Authority

36. The Tribunal takes note that the Athlete, referring to WADA Code Article 15.1 and FEI ADRHA Article 5.7.1, contended that the FEI, not the POR NF, would have been the relevant Testing Authority for the competition in question, entitled to select the respective athletes for anti-doping tests. The Tribunal considers however that the Athlete's arguments do not render the testing invalid, for the following reasons. First, under FEI ADRHA Article 3.2.2, in order to invalidate the test results based on the argument that there was a departure from the testing authority regulations, the Athlete would have had to establish that the "*departure could reasonably have caused the Adverse Analytical Finding*". The Athlete however does not address how the alleged departure from the testing authority regulations could have possibly caused the positive test result. In this context, the Tribunal notes that the departure alleged by the Athlete is a simple formal issue of authorization of the testing personnel. No deviation from the applicable testing procedure is alleged. Therefore, in the opinion of the Tribunal, the departure alleged by the Athlete was by no means likely to have had any impact on the accuracy of the testing procedure, and has therefore not reasonably caused the positive test result. With respect to the Athlete's reference to WADA Code Articles 15.1 and 15.2, the Tribunal wishes to clarify that the WADA Code is not directly applicable in the case at hand insofar as the FEI has adopted its own anti-doping system, i.e. the FEI ADRHA. The FEI ADRHA have been approved by WADA, which means that the regulations are in compliance with the WADA Code. Furthermore, the FEI only partly incorporated the WADA Code in the FEI ADRHA. Specifically, an approval process as stipulated under WADA Code Articles 15.1.1 and referred to by the Athlete as being violated, is not part of the FEI ADRHA. Moreover, WADA Code Article 15.2 only relates to out-of-competition testing, not to in-competition testing as undertaken in the case at hand. In conclusion, in light of the fact that the Athlete has not established that the departure alleged by him may have caused the positive test result, the test results are not invalidated.

4.7.7 No intent

37. In light of the strict liability concept underlying the FEI's Anti-Doping system, the Athlete's argument that he did not intentionally consume any Prohibited Substances does not



release him from his liability for the positive test results.

4.7.8 Alternative charges

38. The Tribunal can leave the question open whether the alternative charge of the violation of FEI ADRHA Article 2.2 violated the Athlete's rights. As the FEI has proven an antidoping rule violation under Art. 2.1 FEI ADRHA (presence of a Prohibited Substance) it is not necessary to discuss the question whether the two options of Anti Doping rule Violations (Art. 2.1 and Art. 2.2 FEI ADRHA) can be applied alternatively in the present case.

4.7.9 Sanctions

39. Pursuant to FEI ADRHA Rules Article 10.2, the mandatory period for a first breach of FEI ADRHA Rules Articles 2.1 and 2.2 is a period of two years' ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of ineligibility is possible under the conditions of FEI ADRHA Rules Articles 10.4 and 10.5.

40. The Tribunal does not have to decide whether FEI ADRHA Rules Article 10.4 is applicable in the case at hand. In order to benefit from any elimination or reduction of the otherwise applicable period of ineligibility, both FEI ADRHA Rules Articles 10.4 and 10.5 require that the Athlete establishes how the Prohibited Substances entered his body.

41. In the absence of any explanation by the Athlete as to how the Prohibited Substances entered his body the Tribunal holds that no elimination or reduction applies in the case at hand.

4.8 Disqualification

42. As a result of the foregoing, the Tribunal has decided to disqualify the Athlete from the Event and all medals, points and prize money won at the Event must be forfeited, in accordance with FEI ADRHA Article 9.

4.9 Sanctions

As a consequence of the foregoing, the FEI Tribunal decides to impose the following sanctions on the Athlete, in accordance with GRs Article 169 and FEI ADRHA Article 10:

- 1) The Athlete shall be suspended for a period of 24 (twenty four) months to be effective immediately and without further notice

from the date of the notification. The period of Provisional Suspension, effective from 11 March 2010 to 21 April 2011, shall be credited against the Period of Ineligibility imposed in this decision. Therefore, the PR shall be ineligible to participate in FEI activities through 10 March 2012.

- 2) The Athlete is fined **CHF 1500.-**.
- 3) The Athlete shall contribute **CHF 2500.-** towards the legal costs of the legal procedure.

5. DECISION TO BE FORWARDED TO:

5.1 The person sanctioned: Yes

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

5.2 The President of the Organising Committee of the event through his NF: Yes

5.4 Any other: WADA

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Jens Adolphsen', written in a cursive style.

THE CHAIRMAN Jens Adolphsen