



DECISION of the FEI TRIBUNAL

Alleged Horse Abuse of horse HAPPY JACK

dated 13 February 2018

In the matter of

FÉDÉRATION EQUESTRE INTERNATIONALE

(the "FEI" or the «Claimant»)

vs.

Mr. Khaled Ebrahim Khalil Khairi

("Mr. Khairi" or the "Respondent")

I. COMPOSITION OF PANEL

Mr. Henrik Arle (FIN), chair

Mr. Laurent Niddam (HUN), member

Ms. Harveen Thauli (CAN), member

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.

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 (the "**Statutes**").

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2017 (the "**GRs**").

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

FEI Endurance Rules, Updated 9th Edition, Effective 1 January 2017 (the "**ERs**").

FEI Code of Conduct for the Welfare of the Horse.

2. Relevant Legal Provisions

GRs Article 142.1: "No person may abuse a Horse during an Event or at any other time. "Abuse" means an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse, including but not limited to:

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

GRs Article 169.6.2: "Abuse of Horses in any form (lapping, abnormal sensitisation or desensitisation of limbs, banned schooling methods etc.) may entail a fine of up to 15,000.- and/or a Suspension of a minimum of three (3) months up to life;"

ERs Article 807.7.4:

"Being followed, preceded or accompanied on any part of the course or immediate adjacent access track as defined by any vehicle (notwithstanding art. 807.6.1) under penalty of a Yellow Warning Card."

ERs Article 810.2: "Whips (or the use of any other item as a whip) and Spurs are prohibited."

ERs Article 811: "Any act or series of actions which, in the opinion of the Ground Jury can clearly be defined as cruelty or abuse shall be penalised by disqualification and as otherwise allowed under the GRs, and the individual concerned shall be reported to the FEI."

FEI Code of Conduct for the Welfare of the Horse Article 2. f) Misuse of aids: "Abuse of a Horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) will not be tolerated."

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments 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 Tribunal has fully 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 Mr. Khairi is a 22-year-old endurance rider with Bahrain nationality. At the time of the alleged horse abuse, Mr. Khairi was registered with the FEI with the FEI ID number 10072944. His administering National Federation was the Bahrain National Federation ("BRN-NF").
- 1.2 The BRN-NF has informed the FEI that Mr. Khairi is being considered for a scholarship and a promising young rider.

2. Procedural Background

- 2.1 On 20 February 2017, the FEI notified Mr. Khairi that the FEI has received a protest on 17 January 2017, in accordance with Articles 142 and 163 of the GRs, from a witness containing an allegation against Mr. Khairi concerning the abuse of the horse HAPPY JACK (the "**Horse**") (FEI ID 102VA35) at the CEI2* 120 km in Sakhir, Bahrain International Village, on 14 January 2017 (the "**Event**").

- 2.2 On 22 February 2017, Mr. Khairi provided his response to the allegations.
- 2.3 On 6 December 2017, the FEI submitted its Brief pursuant to Article 19.10.2(a) of the IRs.
- 2.4 On 10 January 2018, the FEI submitted the Case File to the Tribunal for adjudication. In addition, the FEI informed the Tribunal that the Respondent does not wish to comment any further on the FEI Brief.

3. Claim

- 3.1 In its Notification Letter and in its Brief, the FEI alleged in essence that Mr. Khairi has engaged in horse abuse, and has violated Article 142 of the GRs.
- 3.2 Together with its Notification Letter and its Brief the FEI submitted an anonymous Protest Form stating as follows:

"As a viewer and a fan I travelled to see the competition in Bahrain, and as a horse lover and fan of this sport I have seen very bad sportsmanship from the rider who abused the horse harshly, that disturbed me as a viewer and many who were watching".
- 3.3 Furthermore, the FEI submitted a video, which had been received together with the protest form. In this respect the FEI submitted that the video shows a tired horse that is pushed by its rider to keep on going, and that Mr. Khairi used a whip on the Horse excessively and pushed it in order to force the Horse to keep on galloping. The video shows that the Horse was followed by a vehicle during the ride, and that the rider used some kind of "whip" – an extra pair of reins –, which the rider at a later stage handed over to the driver of the car.
- 3.4 The FEI submitted that the actions of Mr. Khairi, as could be seen in the video were, in the FEI's view, *prima facie* evidence of "Abuse" within the meaning of Article 142 of the GRs. The FEI further argued that the GRs, Article 142, were clear; Abuse of Horse was a conduct that is punishable under the FEI Rules.
- 3.5 Furthermore, in accordance with Article 810.2 of the ERs, "*Whips (or the use of any other item as a whip) and Spurs are prohibited.*" And any misuse of aids can constitute abuse of a horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) will not be tolerated (FEI Code of Conduct for the Welfare of the Horse).

- 3.6 Moreover, the FEI submitted that the FEI would like to highlight that Mr. Khairi has admitted that he whipped the Horse at the Event (as outlined further below). The FEI was further surprised that Mr. Khairi used a whip despite the prohibition to do so, and further that according to him, it was a "*mild response to the horse's behaviour*". The FEI was of the opinion that such behaviour of a rider had to be sanctioned, in order to protect the welfare of the Horse, but also to have a deterrent effect for the future.
- 3.7 The FEI therefore concluded that Mr. Khairi inflicted unnecessary pain and discomfort to the Horse, by violating the prohibition against whips and also violated the prohibition of vehicles following the Horse on the course, pursuant to Article 807.7.4 of the ERs.
- 3.8 In addition, the FEI submitted that abuse of horse using natural riding aids or artificial aids (e.g. whips, spurs, etc.) was not tolerated. To push a tired horse by using a whip and forcing it to continue to gallop as Mr. Khairi did, created a welfare risk for the horse that deserved punishment.
- 3.9 Furthermore, in accordance with Article 811 of the ERs, if this abuse of horse and use of whip had been noted by the officials during the Event, the consequences would have been disqualification of the PR and the Horse.
- 3.10 Based on its submission, the FEI requested the Tribunal to evaluate the proportionality of imposing a suspension of Mr. Khairi in accordance with the minimum requirements in Article 169.6.2 of the GRs. Furthermore, the FEI requested the Tribunal to:
- "- *Uphold the FEI's claim against Mr Khairi;*
- *Declare that Mr Khairi has engaged in horse abuse and has thereby violated Article 142 of the FEI GRs;*
- *Declare that Mr Khairi has violated Articles 810.2 and 807.7.4 of the Endurance Rules;*
- *Disqualify all the results achieved by the PR with the Horse at the Event, including forfeiture of medals, points and prizes; and*
- *Impose a fine of CHF 2 000 on Mr Khairi."*

4. Response

- 4.1 In essence, the Respondent admitted to have whipped the Horse, but argued that his whipping "*was not a harsh response from me but a mild response to the horse's behaviour that was not befitting the ride as the horse became lonely. This particular horse requires to be accompanied by group of horses during the ride. I had whipped the horse for motivation and did not abuse it.*"
- 4.2 Mr. Khairi further also admitted that the crew vehicle did follow them, but stated that "*it crossed into the trail after the crew found my actions inappropriate and relieved me of the rein which I had used to whip the horse*".
- 4.3 In addition, Mr. Khairi stated that prior to this incident he had never abused any horse on-trail or even while training. Finally, he apologised for his actions, and reassured that such incident was not to happen again.

5. Jurisdiction

The Tribunal has jurisdiction over the matter pursuant to the Statutes, GRs and IRs.

6. Admissibility of the Claim

The Protest submitted to the Tribunal by the FEI Secretary General through the FEI Legal Department against Mr. Khairi arises from an alleged horse abuse since Mr. Khairi was registered with the FEI at the time of the incident. Any such Protest may be lodged by anybody under Article 163.2 of the GRs. The Protest is therefore admissible and the Tribunal will thus decide on the matter in accordance with applicable rules and regulations.

7. Decision

- 7.1 Regarding the merits in the case at hand, the Tribunal has to decide firstly whether the Respondent has violated any provisions of the ERs, and secondly whether a horse abuse in the meaning of Article 142 of the GRs occurred.
- 7.2 To start with the Tribunal finds that by carrying extra reins as a disguised substitute for a whip, by using such whip and by being followed on a part

of the course by a vehicle, the Respondent violated Articles 807.7.4 and 810.2 of the ERs. Article 810.2 of the ERs clearly forbids the use of whips (or any other item as a whip). In addition, Article 807.7.4 of the ERs foresees sanctions where a rider is followed on any part of the course by any vehicle. The Respondent himself admits having used a rein to whip the Horse, and further also admits that the crew vehicle followed him on part of the course.

- 7.3 As a result, the Respondent has violated Articles 807.7.4 and 810.2 of the ERs.
- 7.4 The next question is to determine whether the conduct of Mr. Khairi constituted horse abuse under applicable FEI rules and regulations. To start with, the FEI Code of Conduct for the Welfare of the Horse considers the misuse of aids, such as natural riding aids or artificial aids, e.g., whips, as abuse of a horse.
- 7.5 Furthermore, Article 142.1 of the GRs set out the principle that no person may abuse a horse during an event or at any other time. That same article defines the word "*abuse*" to mean "*an action or omission which causes or is likely to cause pain or unnecessary discomfort to a Horse,*" and gives a non-exhaustive illustrative list of what constitutes horse abuse, which includes to "*whip or beat a Horse excessively.*" Since the use of a whip is forbidden during Endurance events in accordance with the ERs, and since the misuse of aids, such as whips, is considered as abuse of a horse according to the FEI Code of Conduct for the Welfare of the Horse, it can be concluded that whipping the Horse during the Event, where no whips are allowed and for the purpose of keeping a tired horse cantering causes "*pain or unnecessary discomfort to a Horse*", and thus abuse of the Horse.
- 7.6 The Tribunal therefore concludes that under the definition of horse abuse in the GRs, read together with the ERs, the FEI discharged its burden of proof to establish horse abuse under the applicable FEI Rules and Regulations, namely Article 142.1 of the GRs, in connection with the FEI Code of Conduct for the Welfare of the Horse.
- 7.7 Moreover, the Tribunal finds the behaviour of Mr. Khairi, i.e., whipping the Horse during an event where no whips are allowed, as unacceptable, and such behaviour has to be sanctioned. At the same time, however, the Tribunal acknowledges the PR's apology. As a result, and given the circumstances in the case at hand, the Tribunal finds the minimum suspension of three (3) months, in accordance with Article 169.6.2 of the GRs, in combination with a fine and disqualification, as provided for in Article 169.8 of the GRs, as proportionate.

7.8 As a result of the foregoing, the Tribunal finds that Mr. Khairi has violated Articles 810.2 and 807.7.4 of the ERs. Furthermore, the Tribunal finds that the actions of Mr. Khairi are considered as horse abuse within the meaning of Article 142.1 of the GRs. For the above reasons, and in accordance with Articles 142.1, 169.6.2 and 169.8 of the GRs, the Tribunal therefore decides as follows:

- 1.** The Protest is admissible.
- 2.** Mr. Khairi has violated Articles 810.2 and 807.7.4 of the ERs.
- 3.** Mr. Khairi has engaged in horse abuse and thereby violated Article 142 of the GRs.
- 4.** Mr. Khairi shall be suspended for a period of **three (3) months** starting from the date of the present decision.
- 5.** All results achieved by Mr. Khairi with the Horse at the Event, including forfeiture of medals, points and prizes shall be **disqualified**.
- 6.** Mr. Khairi shall be fined **two thousand Swiss Francs (CHF 2'000)**.
- 7.** Mr. Khairi shall contribute **one thousand Swiss Francs (CHF 1'000)** towards the cost of these proceedings.

7.9 According to Article 168 of the GRs this Decision is effective from the date of its oral or written notification to the affected party or parties.

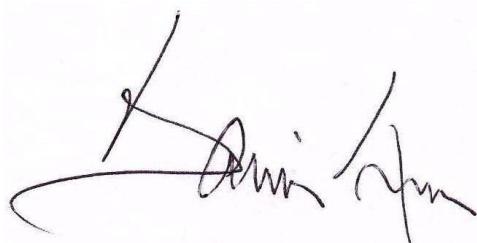
7.10 According to Articles 165.1.3 and 165.6.1 of the GRs, this Decision can be appealed before the Court of Arbitration for Sport (CAS) within twenty-one (21) days of the present notification.

V. DECISION TO BE FORWARDED TO:

The Parties: Yes

Any other: NF

FOR THE PANEL



The Chair, Mr. Henrik Arle