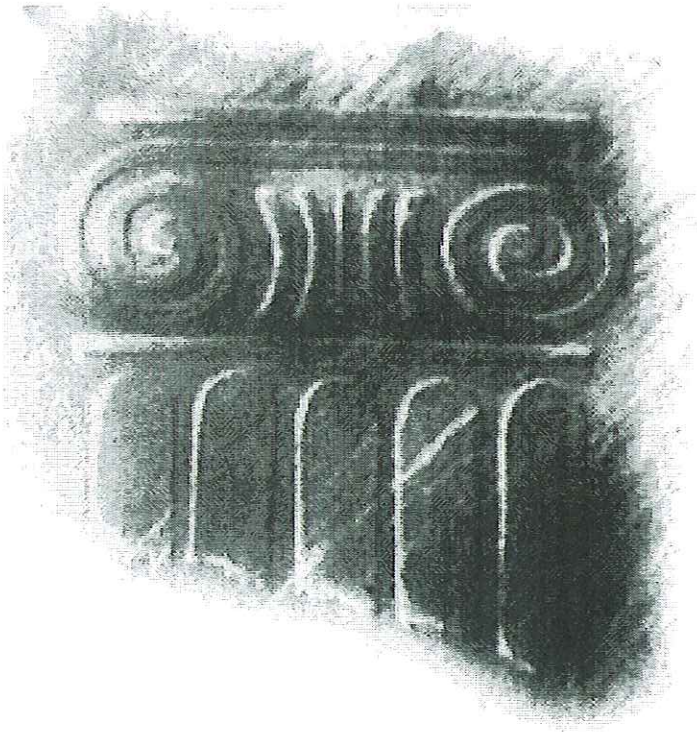
Tribunal Arbitral du Sport

Court of Arbitration for Sport



ARBITRAL AWARD

Mr Andrew HOY, Stroud, United Kingdom

v/

FEDERATION EQUESTRE INTERNATIONALE, Lausanne, Switzerland

CAS 2008/A/1636 Lausanne, January 2009

CAS 2008/A/1636 Andrew Hoy v/ FEI

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

President: Mr Luc **Argand**, Attorney-at-law, Geneva, Switzerland

Arbitrators: Mr Patrick **Lafranchi**, Attorney-at-law, Bern, Switzerland
Mr Michele A.R. **Bernasconi**, Attorney-at-law, Zurich, Switzerland

between

Mr Andrew Hoy, Stroud, United Kingdom,
Represented by Mrs Monika Gattiker, Attorney-at-law, Zurich, Switzerland

Appellant

and

Fédération Equestre Internationale, Lausanne, Switzerland,
Represented by Mr Xavier Favre-Bulle, Attorney-at-law, Geneva, Switzerland

Respondent

FACTUAL BACKGROUND

A. THE PARTIES:

1. Mr Andrew Hoy ("Mr Hoy") is a very well known event rider and trainer, member of the Equestrian Federation of Australia who has been competing internationally on the highest level for some 30 years. He has represented Australia at 6 Olympic Games between 1984 and 2004.

2. The Fédération Equestre Internationale ("FEI") is a non-governmental association of national federations recognised as the international federation governing horse sport as defined in its Statutes under all forms worldwide. Its registered office is in Lausanne, Switzerland.

B. STATEMENT OF FACTS:

3. The matter decided on 23 July 2008 by the FEI Tribunal in Case 2008/01 ("the Decision") dealt with an alleged horse abuse committed by Ms Madeleine Brugman, the Competitor, and by Mr Andrew Hoy, the alleged trainer of the Competitor, on the Competitor's horse, Sundancer 6, while warming-up for the jumping phase of the CCI 3* Barroca d'Alva event in Portugal on 9 March 2008. The Appellant had been suspected, together with Ms Brugman, of having used illegal spiked overreach boots on Sundancer 6, in order to enhance the horse's performance in the jumping competition.

4. The FEI conducted investigations and presented the evidence gathered at a hearing before the FEI Tribunal.

5. The FEI Tribunal held that no sufficient evidence was available to sanction Ms Brugman and/or Mr Hoy for horse abuse and, accordingly, ruled the following in its decision:

"5.1 As a result of the foregoing, the Tribunal concludes that the FEI did not meet its burden of proof and did not provide sufficient evidence to substantiate a case of abuse against either the Competitor [Ms Brugman] *or the Trainer* [Mr Hoy].

5.2 The Tribunal notes that, in defending the case, the PRs [Persons Responsible, i.e. Ms Brugman & Mr Hoy] *had limited travel costs (travel to the hearing of the PRs, one witness and their Swiss counsels). The somewhat prolonged hearing resulted partially from certain repetition in the various briefs submitted by PRs counsels before, during and after the hearing from the fact that such briefs were overly broad and not pin pointed to the key arguments available in defence. It is also noted that certain delays were caused in this case due to numerous pleadings made by the PRs and their counsels following the hearing and the teleconference. These required further unnecessary deliberations by the Tribunal, delaying the submission of this decision. Taking these into account, the Tribunal assessed limited costs in the amount of CHF 3'000.- to be paid by the FEI to the Competitor and to the Trainer, to be divided equally between them.*[i.e. CHF 1'500.- was to be paid to each of them]".

C. PROCEEDINGS BEFORE CAS:

6. On 21 August 2008, Mr Hoy filed his Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the decision rendered on 23 July 2008 by the FEI Tribunal and introduced 9 new documents (labelled exhibits 1 to 9). He made the following application:

"Request for Relief:

1. That n°5.2 of the decision of the FEI Tribunal of 23 July 2008 regarding reimbursement of the cost be annulled.

2. That Appellant be compensated for travel costs and for legal fees related to the investigation by the Respondent and to the hearing before the FEI Tribunal in the FEI Horse Abuse Case 2008/01 (Sundancer 6) and therefore be awarded CHF 53'781 by Respondent.

3. The Respondent shall bear the costs of the arbitration and the legal costs of Appellant."

7. On 1 September 2008, Mr Hoy filed his Appeal Brief with CAS and introduced 43 new documents (labelled exhibits 10 to 52). He indicated that in case of a hearing he wanted to hear 2 witnesses. Also, he reiterated the same request for relief made in his Statement of Appeal.

8. On 16 September 2008, the Parties were notified of the constitution of the Panel as follows:

President: Mr Luc **Argand**, Attorney-at-law, Geneva, Switzerland

Arbitrators: Mr Patrick **Lafranchi**, Attorney-at-law, Bern, Switzerland
Mr Michele A.R. **Bernasconi**, Attorney-at-law, Zurich, Switzerland

9. On 23 September 2008, the FEI filed its Answer to the Appeal Brief with CAS and introduced 10 new documents (labelled R-1 to R-10). It made the following application:

"The (...) [FEI] *respectfully requests the CAS Panel to make an Award to:*

- *Dismiss in its entirety the appeal filed by Mr Andrew Hoy and to confirm the decision of the FEI Tribunal dated 23 July 2008;*
- *Order Mr Andrew Hoy to pay any and all costs of these appeal arbitration proceedings, including a participation towards the legal costs incurred by the (...)* [FEI]*;*
- *Dismiss any other relief sought by M. Andrew Hoy.*

10. On 24 September 2008, the CAS Court office addressed the Parties as follows:

"(...) This matter is now to be decided upon. Within a deadline of 10 October 2008, the parties are invited to inform me whether they prefer a hearing to be held in this matter or that the Panel issues an award on the basis of the written submissions. In accordance with Art. R57 Code, it will in any event be for the Panel to decide eventually whether to hold a hearing or to issue an award on the sole basis of the written submissions."

11. On 9 October 2008, the Appellant informed the CAS Court Office that he "*would prefer a hearing to be held.*"

12. On 10 October 2008, the Respondent adressed the CAS Court Office in the following terms:

"The (...) [FEI] *respectfully submits that the requirements of Article R57 of the Code are fully met. This case is typically of a kind which should be decided on papers and which does not require any hearing. The prayer for relief of the Appellant is limited to the annulment of one point of (...)* [the Decision] *regarding the costs awarded to the Appellant. (...) The Appellant has in no way explained why a hearing would be necessary. His right to be heard has been complied with by lengthy submissions and evidence (5-page Statement of Appeal and 45-page Appeal Brief; 52 Exhibits). In conclusion, the written submissions and documentary evidence on the record are comprehensive and already sufficient for a reasoned decision to be made by CAS."*

13. On 15 October 2008, the CAS Court office addressed the Parties as follows:

"On behalf of the Panel, I invite the Appellant to submit a short explanation why it is absolutely necessary for him to have a hearing in this arbitration on or before 17 October 2008."

14. On 17 October 2008, the Appellant addressed the CAS Court Office in the following terms:

"(...) The hearing would be part of Appellant's right to be heard. Also in a case concerning reimbursement of damages caused resulting from illegal investigation, Appellant should have the right to be heard by the Panel and to present his final argument. Of course, if the Panel considers itself to be sufficiently well informed and therefore decides against a hearing, Appellant will accept this."

15. On 24 October 2008, the CAS Court office addressed the Parties as follows:

"(...) the Panel has decided not to hold a hearing in this matter."

16. On 20 November 2008, the Parties signed the Order of Procedure, confirming therefore their agreement that no hearing be held in this procedure.

17. Neither party raised any further objection to the constitution of the Panel, the procedure or with regard to its right to be heard. Also, neither party contested that it had been treated equally with the other party in these arbitral proceedings and that it had had a fair chance to present its position.

D. POSITION OF THE PARTIES:

18. **Mr Hoy** is of the opinion that the cost award is arbitrary and should be annulled accordingly. Indeed, in spite of the FEI Tribunal's statement on the deficiencies in reporting the horse abuse, the lack of direct evidence related thereto, the need to rely on "indirect" evidence (which resulted contradictory and insufficient), the need to hold a very complex and long evidentiary hearing which resulted in high costs for both parties, the FEI Tribunal awarded only a mere CHF 1'500.- compensation to Mr Hoy, amount not even covering the travel costs of the Appellant to the FEI Tribunal hearing.

In addition and independently to any (i) cost compensation claim, (ii) a claim for damage for tort liability (article 41ff Swiss code of obligations [SCO]) can be raised:

(i) The Appellant is entitled to compensation of his costs of proceedings based on the "general legal principles" that an athlete facing legal action by a sport federation must have the right to be defended by a lawyer, regardless of any provision in the FEI rules. By awarding CHF 1'500.- the FEI Tribunal confirmed the principle of such right.

Alternatively, the Appellant should be granted a reasonable compensation of his costs based on applicable FEI rules, at least if said rules are interpreted according to personal rights to be respected under Swiss law (articles 27/28 Swiss civil code [SCC]), general principles of law, the principle of fair procedure, the prohibition against arbitrariness, the principle of proportionality, the FEI Statutes and Swiss Cartel Law (SCL).

In particular, such should be the case of article 174.11 FEI General Regulations (GR), which should be interpreted - in light of these principles - in a way that not only the Respondent, but also the Appellant has a claim to the reimbursement of his costs. Also, the compensation to be determined cannot be limited, as in article 174.11 GR to CHF 17'500.-, but must be "reasonable" under the given circumstances.

Indeed the high risk of damaging the Appellant's reputation and career, the complexity of the subject matter which required a very complex evidentiary hearing, the fact that the Appellant acted in good faith and cooperated with the Respondent's legal department, the fact that the Respondent seriously violated the principle of fair

procedure in conducting a "one sided investigation" and violated the Appellant's right to be heard in not involving him entirely in the evidentiary procedure, required significant efforts to defend him.

The Appellant provided various evidences of travel receipts and legal invoices in connection with the proceedings before the FEI Tribunal within his submissions filed with the CAS (see annexes 37 to 50 of his appeal brief).

Under these circumstances, defence costs of nearly CHF 50'000.- and travel costs of nearly CHF 3'800.- are not unreasonable at all and should be reimbursed by the Respondent.

(ii) The claim for damage related to the investigation and hearing before the FEI Tribunal is based on article 41ff SCO (in particular article 55 SCO) as a consequence of the infringement of the Respondent's personality rights (articles 27/28 SCC) and/or a violation of article 7 paragraph 1 SCL:

- CAS has ruled that sports federations have to respect personality rights (articles 27/28 SCC). An investigation and proceedings that can result in a suspension of at least two years infringes the athlete's right of "economic liberty" and "personal fulfilment through sporting activities", protected under articles 27/28 SCC, unless justified by the person's consent, by a private or public interest or the law. No such justification exists in the present case.

  When the Respondent's legal department realized that evidence were poor it failed to stop the inquiries. Instead, a one-sided investigation was carried on in violation of the above-mentioned principles. As much as the fight against doping does not justify the manipulation of test results, the fight against horse abuse does not justify an investigation that violates basic legal principles with "manipulated" witness statements resulting in significant defence costs.

- Article 7 paragraph 1 SCL - applicable to the Respondent - prohibits the abuse of a dominant position to restrict other participant in commencing or carrying their business or discriminating the opposite party. The one sided investigation conducted by the FEI had only one purpose, i.e. to find the Appellant guilty of horse abuse. By conducting such a one-sided investigation, the Respondent abused its dominant position to restrict the Appellant in carrying out his

business. Defending himself against these illegal attempts of restriction made him suffer the above stated damages.

To that respect, a compensation for damage of CHF 53'781.- does not seem unreasonable and ought to be granted in application of articles 41ff SCO.

19. In its written submission, the **FEI** notes that the Appellant appears fully satisfied with the content and operative part of the Decision, apart from paragraph 5.2 on costs - the only part of the Decision sought to be set aside - the Appellant seeking compensation for all of his alleged expenses incurred in relation to the FEI Tribunal proceedings and the present appeal proceedings. Yet, he has surprisingly filed an extensive Appeal Brief together with 52 exhibits, including various witness statements. The present matter is very limited in scope and did certainly not require this massive litigation exercise - which is in sheer contradiction with his complaint and sole claim in these appeal arbitration proceedings about his costs incurred before the FEI Tribunal.

Regarding costs before the FEI Tribunal, he relies *inter alia* on tort law to support his claim for damages. According to article 34.2 of the FEI Statutes, a tort claim is a civil action which ought to have been brought before the civil courts in Lausanne. CAS has in principle no jurisdiction to hear such a claim in these proceedings. Nevertheless, the Respondent will not raise any jurisdictional objection and accepts the jurisdiction of this CAS Panel in order to have this matter fully and efficiently decided at once without further costs to be incurred. However, this shall not be considered as a binding precedent on the FEI and general acknowledgment of the jurisdiction of the CAS for actions for damages against the FEI in other matters.

Article 24.3 of the FEI Tribunal Internal Regulations ("IR") is a specific provision on the allocation of costs allowing the FEI Tribunal to order the FEI to participate to the costs borne by a successful "Person Responsible" ("PRs") as it deems appropriate, i.e. with full discretion as to the amount.

As a matter of procedure, no legal or regulatory basis whatsoever entitles the Appellant to claim full compensation for his legal and other costs. Even if the Appellant had a right to be assisted by a legal counsel before the FEI Tribunal, this does not necessarily mean that the Appellant was automatically entitled to full compensation of his legal costs in case of success based on any "general legal principles".

Even if "general legal principles" of Swiss procedural law were to be considered, a fundamental rule is that successful parties in civil proceedings are usually awarded a mere minor participation to costs, which very rarely covers the full legal costs. The regulations of international sport federations are even stricter and often provide that no claim for legal costs can be made by an athlete against his federation.

No full compensation may be granted based on article 174.11 General Regulations ("GR") as this provision is only applicable to PRs who were unsuccessful in the proceedings. There is no room for interpretation here and it must therefore be completely disregarded by the Panel.

In line with other international federations, the standard practice of the FEI Tribunal is to award no cost compensation to PRs who were successful. Athletes normally accept such system. In CAS proceedings in general, the practice is also to award minor costs. This is particularly true when an international federation such as the FEI wins a case.

The requirements for tort liability within the meaning of article 41ff SCO, i.e. (a) damage, (b) unlawful act, (c) causation between the unlawful act and damage, and (d) fault are not met in the presence case. Accordingly, the Appellant's claim for damages within article 41 SCO must be dismissed entirely.

The Appellant fails to provide any explanation as to the relevance of Article 7 SCL in this case. In particular, no evidence is submitted as to an alleged dominant position of the FEI, an abuse of that dominant position to the detriment of the Appellant within the meaning of article 7 SCL and how and why the Decision may have infringed this provision.

Accordingly, the participation of CHF 1'500.- towards the Appellant's costs, as it was fixed by the FEI Tribunal by taking all circumstances of this case into account, which is in accordance with its practice that legal costs are not awarded when the PRs prevails, is appropriate.

II. IN LAW

A. JURISDICTION:

20. Rightfully, the FEI raises in its brief dated 23 September 2008 the question of CAS jurisdiction concerning this matter, since the Appellant seems (a) to rely his claim on tort law and since (b) civil actions brought against the FEI are to be referred to the civil courts in Lausanne (article 34.2 of the FEI Statutes). However, in order to have this matter fully and efficiently decided at once without further costs, the FEI says that it will not raise any jurisdictional objections and accepts that the case be dealt with by CAS, as long as this case is not considered as a precedent.

21. CAS jurisdiction is therefore explicitly recognized by the parties in their respective briefs and is further confirmed in the Order of Procedure which was duly signed by both parties.

22. Accordingly, since none of the parties object to CAS jurisdiction, the Panel will deem itself competent without needing to verify whether or not it ought to be competent in application of the above-mentioned FEI rules.

23. It follows that CAS has jurisdiction to decide on the present dispute.

B. SCOPE OF THE PANEL'S REVIEW:

24. With respect to its power of examination, the Panel observes that the present appeal proceeding is governed by the provisions of articles R47ff of the Code. In particular, article R57 of the Code grants a wide power of examination as well as a full power to review the facts and the law. CAS may thus render a new decision in substitution for the challenged decision, either annulling the latter or sending the case back to the previous authority.

C. ABSENCE OF HEARING:

25. Article R57§2 of the Code provides the following:

"After consulting the parties, the Panel may, if it deems itself to be sufficiently well informed, decide not to hold a hearing. (...)."

26. Both parties were consulted on this issue by the Panel beforehand. In particular, the Appellant, who, at first, requested a hearing, confirmed on 17 October 2008 that he would accept that no hearing be held if the Panel considered itself to be sufficiently well informed and was to decide against a hearing.

27. Since the prayer for relief of the Appellant are limited to the annulment of the point of the Decision regarding the costs awarded to the Appellant (point n°5.2), since the whole context of the case has been explained extensively in the various briefs and since the Appellant accepted *in fine* that no hearing be held, de Panel decided on 24 October 2008 not to hold a hearing.

28. Also the acceptance to the absence of hearing is further confirmed in the Order of Procedure, which was duly signed by both parties on 20 November 2008.

29. Accordingly, the Panel has decided to render its decision only on the basis of the parties' written submissions.

D. APPLICABLE LAW:

30. Article R58 of the Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."

31. Pursuant to the FEI Statutes, the CAS, as an independent court of arbitration, "(...) *shall judge all appeals properly submitted to it against decisions of the FEI Tribunal, as provided in the Statutes and General Regulations*" (article 35.1 FEI Statutes). Also, *"The Parties acknowledge and agree that the seat of the CAS is in Lausanne,*

Switzerland and that proceedings before the CAS are governed by Swiss law"(article 35.3 FEI Statutes).

32. Accordingly, the Panel must decide the dispute according to the relevant FEI rules (FEI Statutes, 22nd edition, effective as of 15 April 2007; General Regulations [GR], 22nd edition, effective as of 1 June 2007; FEI Tribunal Internal Regulations as of 15 April 2007, and last modified 1 February 2008 [IR]) and Swiss law.

E. ADMISSIBILITY OF THE APPEAL:

33. Mr Hoy's Statement of Appeal was filed within the deadline provided by Article 170 GR, i.e. within 30 days after notification of the Decision. It furthermore complies with all the other requirements of Article R48 Code.

34. Accordingly, it is admissible.

F. MERITS:

35. The Panel notes that the present matter is very limited in scope, the Appellant seeking solely to obtain full compensation of costs allegedly incurred in the proceedings before the FEI Tribunal.

36. Accordingly, the only matter at hands is whether or not the FEI Tribunal did rightfully grant Mr Hoy a CHF 1'500.- indemnity whereas he did indeed prevail in the proceedings initiated by the FEI against him and Ms Brugman (who was also granted CHF 1'500.- but did not appeal), and if not, which indemnity should be paid by the FEI to Mr Hoy.

37. The Panel will now specifically discuss each argument raised by the Appellant and the Respondent in light of its conclusions on the submissions and evidence of the parties.

(I) **COST COMPENSATION:**

38. The Panel notes that while the FEI is of the opinion that the issue of cost compensation is to be decided solely on article 24.3 IR, the Appellant, on the contrary, believes that it ought to be decided according to article 174.11 GR and/or other "*general legal principles*":

- Article 24.3 IR provides as follows:

  "*The Panel* [of the FEI Tribunal] *shall be entitled to make such orders in relation to costs as it deems appropriate*".

  The Panel finds that article 24.3 IR is a specific provision on the issue of costs allocation by the FEI Tribunal, which - likewise to article R64.5[1] and/or R65.3[2] CAS Code, leaves full discretion to the FEI Tribunal to fix the amount of costs allocated to the prevailing party as it deems appropriate.

- Article 174.11 GR provides as follows:

  "*Decision of the FEI Tribunal may also impose on unsuccessful parties the payment of costs borne by the FEI for the judicial procedure in the amount of CHF 500.- to 7'500.-. In addition, a party may be ordered to pay further costs not exceeding CHF 10'000.- if the costs of the procedure borne by the FEI have been increased by conducting a hearing or by excessive prolongation of the procedures or other exceptional cause.*"

  The Panel finds that article 174.11 GR is - according to its express language - only applicable to "PRs" who were unsuccessful in the proceedings and that there is no room for interpretation that could conduct to the application of this rule *mutatis mutandis* to the FEI in case a PR is - as in the present case - successful before the FEI Tribunal.

  Likewise, the Panel is also convinced that there is no reason to look for any analogy in article 174.11 GR since a specific provision - article 24.3 IR - exists as to the discretionary power of the FEI Tribunal to award costs as it deems appropriate.

---

[1] R64.5 (rule): "*The arbitral award shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witness and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

[2] R65.3 (for disciplinary cases of an international nature): "*The costs of the parties, witnesses, experts and interpreters shall be advances by the parties. In the award, the Panel shall decide which party shall bear them or in what proportion the parties shall share them, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.*"

- Concerning any applicable "*general legal principles*", the Panel is convinced that a specific provision on the allocation of costs by the FEI Tribunal such as article 24.3 IR should supersede any such principles - whatever they are - when deciding the amount of costs to be allocated to the prevailing party.

  Also, if "*general legal principles*" of Swiss procedural law were to be considered a fundamental rule, no full compensation could also be granted to the Appellant since successful parties in civil proceedings are usually awarded a mere minor participation to their costs, which rarely covers the full legal costs. The regulations of international sport federations are even stricter and often provide that no claim for legal costs can be made by an athlete against the federation, so no full compensation can also be deducted from these regulations.

39. Therefore, the Panel is convinced that the issue of cost allocation by the FEI Tribunal ought to be decided solely according to articles 24.3 IR and will decide accordingly.

(II) TORT LIABILITY:

40. The Appellant further claims an indemnity amounting to CHF 53'781.- based on article 41 SCO. Said provision reads as follows:

> *"Whoever unlawfully causes damage to another, whether wilfully or negligently, shall be liable for damages."*

41. The Appellant, as the alleged "victim" in the present case, bears the burden of proof concerning the following four cumulative requirements which shall be met in order for a party to be liable towards the "victim":

(i) Damage: There is no need for the Panel to decide - as submitted by the FEI - whether the claimed amount to CHF 53'781.- is justified or not, the other requirements of article 41 SCO being not met in the present case.

Accordingly, the Panel will leave this issue open.

(ii) Unlawful act: An unlawful act within the meaning of article 41 SCO may derive from the breach of an absolute personality right (such as physical integrity, personality or property).

To that respect, the Appellant submits (a) that a breach of his personality rights occurred due to the risk of damage to his reputation in case of horse abuse and (b) that the FEI violated article 7 paragraph 1 SCL.

a. The Panel notes that in its decision, the FEI Tribunal held that no horse abuse was committed and that the Appellant was released from any charge. Thus, the Appellant's personality rights have not been breached by the FEI since his reputation has been cleared by the Decision.

   Also, the Panel notes that in a recent leading precedent in horse-related doping-case[3], the Swiss Federal Supreme Court held that a breach of private interests of athletes - such as personality rights - by a sport federation is in principle lawful and justified by the overwhelming interest of the international fight against doping in sport and, more generally, the protection of the welfare of horses. Likewise to the FEI, the Panel is also convinced that said rule must apply *mutatis mutandis* to the present case.

b. Concerning an alleged breach of SCL, the Panel is also of the opinion, likewise to the FEI, that the Appellant failed to provide any explanation as to the relevance of article 7 SCL in this case. In particular, no evidence was submitted as to (a) an alleged dominant position of the FEI, (b) an abuse of that dominant position to the detriment of the Appellant within the meaning of article 7 SCL and (c) how and why the Decision may have infringed this provision, all the more so because the decision was favourable to the Appellant and dismissed the case brought by the FEI.

Accordingly, since no unlawful act has been committed by the FEI towards M. Hoy, under no circumstances can the Appellant claim an indemnity based on article 41 SCO.

(iii) Causation between the unlawful act and damage: Since no unlawful act has been committed by the FEI towards the Appellant, no causal link can exist with the alleged damage.

---

[3] cf. ATF 134 III 193

(iv) Fault: The Panel notes that the Appellant has failed to prove any negligent or wilful conduct of the Respondent which could be classified as fault within the meaning of article 41 SCO, the FEI having simply followed its standard procedure in case of horse abuse suspicion.

42. Accordingly, since the requirement of article 41 SCO are not met, the Panel concludes that the Appellant's claim for damages must be dismissed entirely.

(III) COST ALLOCATION BY THE FEI TRIBUNAL:

43. In light of the foregoing, the issue of cost allocation by the FEI Tribunal ought only to be discussed according to article 24.3 IR.

44. To that respect, the Panel believes that it ought to make a parallel with the way an indemnity for costs is allocated by CAS, i.e. by keeping in mind the core principle that a procedure should be "fast, fair and free". However, in that sense, "free" should not be understood as free of any cost or charge but rather that costs should not be considered as a barrier for one of the parties.

45. In the present case, the Panel feels that the extensive disciplinary procedure initiated against Mr Hoy and Mrs Brugman on mere assumptions that a presumed horse abuse on Sundance 6 may have been commited on 9 March 2008 - the Appellant having been suspected, together with the rider, of having used illegal spiked overreach boots on Sundance 6, in order to enhance the horse's performance in the jumping competition - and which led to a successful end for both Mr Hoy and Ms Brugman, should have also led the FEI Tribunal, upon discharging them, to grant them a higher indemnity than a mere CHF 1'500.- each, amount which did not even cover their travelling costs.

46. Accordingly, with reference to para 18 (i) above, the Panel finds it appropriate, in accordance with article 24.3 IR, that the Appellant should be awarded the following amounts:

- For travel costs: CHF 2'100.- (two thousand one hundred Swiss Francs).
- For attorney costs: CHF 10'000.- (ten thousand Swiss Francs).

47. In light of the foregoing and in accordance with article R57 of the Code, the Panel will therefore hold that the FEI Tribunal decision should be set aside as far as the issue of costs is concerned (paragraph 5.2) and decides that Mr. Hoy is to be awarded the above-mentioned amounts for the costs incurred before the FEI Tribunal. If the FEI has already paid the amount of CHF 1'500.- awarded by the FEI Tribunal in the Decision, such amount shall be deducted.

48. Against this background, all other prayers for relief shall be rejected.

G. COSTS:

49. Pursuant to Article R65.1 of the Code, disciplinary cases of an international nature shall be free of charge, except for the Court Office fee to be paid by the Appellant and retained by the CAS.

50. As this is a disciplinary case of an international nature, which was brought to CAS further to a decision issued by the FEI Tribunal, the proceedings will be free, except for the minimum Court Office fee, already paid by the Appellant, which is retained by the CAS and shall be split equally amongst the parties. Accordingly, the Respondent shall reimburse to Appellant a sum of CHF 250.-.

51. Article R65.3 of the Code provides that the Panel shall decide which party shall bear, or in what proportion the parties shall share, the costs of the parties, witnesses, experts and interpreters, taking into account the outcome of the proceedings, as well as the conduct and financial resources of the parties.

52. In the present case, the Appeal lodged by Mr Hoy is upheld to the extent that the Panel decided to grant him an indemnity for his travel and attorney costs before the FEI Tribunal.

53. Therefore, the Panel finds it appropriate that the Respondent bears the legal costs of the Appellant in the amount of CHF 5'000.-.

ON THESE GROUNDS

The Court of Arbitration for Sport pronounces:

1. The appeal filed by Mr Hoy against the Decision rendered on 23 July 2008 by the FEI Tribunal is admissible;

2. Paragraph 5.2 of the Decision rendered on 23 July 2008 by the FEI Tribunal is set aside;

3. The Appellant shall be compensated for travel costs in the amount of CHF 2'100.- (two thousand one hundred Swiss Francs) and for legal fees related to the investigation and to the hearing before the FEI Tribunal in the FEI Horse Abuse Case 2008/01 (*Sundancer 6*) in the amount of CHF 10'000.- (ten thousand Swiss Francs). The amount of CHF 1'500.- (one thousand five hundred Swiss Francs) granted by the FEI Tribunal to Mr Hoy in the Decision rendered on 23 July 2008 shall be deducted from these amounts if already paid by the FEI;

4. This award is pronounced without costs, except for the court office fee of CHF 500 (five hundred Swiss Francs) paid by Mr Hoy, which is retained by the CAS and shall be split equally amongst the parties. Accordingly, the FEI is ordered to pay CHF 250.- (two hundred fifty Swiss Francs) to Mr Hoy as participation to the costs of CAS arbitration;

5. The Respondent shall bear the legal costs of the Appellant in the amount of CHF 5'000.- (five thousand Swiss Francs);

6. All other prayers for relief are dismissed.

Lausanne, 27 January 2009

THE COURT OF ARBITRATION FOR SPORT

Luc **Argand**
President of the Panel

Patrick **Lafranchi**
Arbitrator

Michele A.R. **Bernasconi**
Arbitrator