



DECISION of the FEI TRIBUNAL

dated 15 February 2018

Positive Anti-Doping Case No.: 2017/BS18

Horse: CHANEL VAN DE ZESHOEK

FEI Passport No: 103GA48/RSA

Person Responsible/NF/ID: Jeanne Engela/RSA/10073226

Represented by: Mr. Martin Charles Pike of Martin Pike Incorporated, Kyalami, South Africa

Event/ID: CSI1*-W - Polokwane (RSA) - 2016_CI_0995_S_S_01

Date: 31 August to 4 September 2016

Prohibited Substance: Paracetamol

I. COMPOSITION OF PANEL

Mr. Henrik Arle, chair
Mr. Chris Hodson QC, member
Ms. Harveen Thauli, member

II. SUMMARY OF THE FACTS

- 1. Memorandum of case:** By Legal Department.
- 2. Summary information provided by Person Responsible (PR):**
The FEI Tribunal duly took into consideration all evidence, submissions and documents presented in the case file, as also made available by and to the PR.
- 3. 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**"), Arts. 1.4, 38 and 39.

General Regulations, 23rd edition, 1 January 2009, updates effective 1 January 2016, Arts. 118, 143.1, 161, 168 and 169 ("**GRs**").

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

FEI Equine Anti-Doping and Controlled Medication Regulations ("**EADCMRs**"), 2nd edition, effective 1 January 2016.

FEI Equine Anti-Doping Rules ("**EAD Rules**"), 2nd edition, effective 1 January 2016.

Veterinary Regulations ("**VRs**"), 13th edition 2015, effective 1 January 2016, Art. 1055 and seq.

FEI Code of Conduct for the Welfare of the Horse.

2. Person Responsible: Ms. Jeanne Engela

3. Justification for sanction:

GRs Art. 143.1: "Medication Control and Anti-Doping provisions are stated in the Anti-Doping Rules for Human Athletes (ADRHA), in conjunction with the World Anti-Doping Code, and in the Equine Anti-Doping and Controlled Medication Regulations (EADCM Regulations)."

EAD Rules Art. 2.1.1: "It is each *Person Responsible's* personal duty to ensure that no *Banned Substance* is present in the *Horse's* body. *Persons Responsible* are responsible for any *Banned Substance* found to be present in their *Horse's Samples*, even though their *Support Personnel* will be considered additionally responsible under Articles 2.2 – 2.8 below where the circumstances so warrant. It is not necessary that intent, Fault, negligence or knowing *Use* be demonstrated in order to establish an *EAD Rule* violation under Article 2.1."

EAD Rules Art. 10.6.3: "Prompt Admission of an Anti-Doping Rule Violation after being Confronted with a Violation Sanctionable under Article 10.2.1 or Article 10.3.1

A *Person Responsible* and/or member of the *Support Personnel* potentially subject to a two year sanction under Article 10.2.1 or 10.3.1 (for evading or refusing *Sample Collection* or *Tampering with Sample Collection*), by promptly admitting the asserted anti-doping rule violation after being confronted by the *FEI*, and also upon the approval and at the discretion the *FEI*, may receive a reduction in the period of *Ineligibility* down to a minimum of one half of the otherwise applicable period of *Ineligibility*, depending on the seriousness of the violation and the *Person Responsible* and/or member of the *Support Personnel's* degree of *Fault*."

EAD Rules Art. 10.10.2: "Delays Not Attributable to the *Person Responsible* or member of the *Support Personnel*

Where there have been substantial delays in the hearing process or other aspects of *Doping Control* not attributable to the *Person Responsible* and/or member of the *Support Personnel* alleged to have committed the *EAD Rule* violation, the *Hearing Panel* may start the period of *Ineligibility* at an earlier date commencing as early as the date of *Sample* collection or the date on which another *EAD Rule* violation last occurred. All competitive results achieved during the period of *Ineligibility* including retroactive *Ineligibility* shall be *Disqualified*."

EAD Rules Art. 10.10.3: "Timely Admission

Where the *Person Responsible* and/or member of the *Support Personnel* (where applicable) promptly (which, for the *Person Responsible*, in all circumstances, means before the *Person Responsible* competes again) admits the *EAD Rule* violation after being confronted with the *EAD Rule* violation by the *FEI*, the period of *Ineligibility* may start as early as the date of *Sample* collection or the date on which another *EAD Rule* violation last occurred. In each case however where this Article is applied, the *Person* who committed the *EAD Rule* violation shall serve at least one-half of the period of *Ineligibility* going forward from the date *Ineligibility* is imposed or accepted.

This Article shall not apply where the period of *Ineligibility* has already been reduced under Article 10.6.3."

EADCMRs APPENDIX 1 – Definitions:

"**Fault.** Fault is any breach of duty or any lack of care appropriate to a particular situation. Factors to be taken into consideration in assessing an *Person Responsible* and/or member of the *Support Personnel*'s degree of *Fault* include, for example, the *Person Responsible*'s and/or member of the *Support Personnel*'s experience, whether the *Person Responsible* and/or member of the *Support Personnel* is a *Minor*, special considerations such as impairment, the degree of risk that should have been perceived by the *Person Responsible* and/or member of the *Support Personnel* and the level of care and investigation exercised by the *Person Responsible* and/or member of the *Support Personnel* in relation to what should have been the perceived level of risk. In assessing the *Person Responsible*'s and/or member of the *Support Personnel*'s degree of *Fault*, the circumstances considered must be specific and relevant to explain the *Person Responsible*'s and/or member of the *Support Personnel*'s departure from the expected standard of behaviour. Thus, for example, the fact that the *Person Responsible* would lose the opportunity to earn large sums of money during a period of *Ineligibility*, or the fact that the *Person Responsible* only has a short

time left in his or her career, or the timing of the sporting calendar, would not be relevant factors to be considered in reducing the period of Ineligibility under Article 10.5.1 or 10.5.2.”

“No Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that he or she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that he or she had administered to the Horse, or the Horse’s system otherwise contained, a Banned or Controlled Medication Substance or he or she had Used on the Horse, a Banned or Controlled Medication Method or otherwise violated an EAD or ECM Rule. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.”

“No Significant Fault or Negligence. The Person Responsible and/or member of the Support Personnel establishing that his fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the EADCM Regulation violation. Except in the case of a Minor, for any violation of Article 2.1 of the EAD Rules, the Athlete must also establish how the Prohibited Substance entered his or her system.”

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 CHANEL VAN DE ZESHOEK (the “**Horse**”) participated at the CSI1*-W in Polokwane, South Africa, from 31 August to 4 September 2016 (the “**Event**”), in the discipline of Jumping. The Horse was ridden by Ms. Jeanne Engela who is the Person Responsible in accordance with Article 118.3 of the GRs (the “**PR**”). Ms. Jeanne Engela is also the Owner of the Horse.
- 1.2 The Horse was selected for sampling during the Event, on 3 September 2016.
- 1.3 Analysis of the urine and plasma sample with bar code no. 5545767 taken from the Horse at the Event was performed at the FEI approved

laboratory, the LGC, Newmarket Road, Fordham, in the United Kingdom (**the "Laboratory"**). The analysis of the sample revealed the presence of Paracetamol in the urine.

- 1.4 The Prohibited Substance detected is Paracetamol. Paracetamol is an analgesic used to reduce pain and fever, and is classified as a Banned Substance under the FEI Equine Prohibited Substances List (the "**FEI List**"). Therefore, the positive finding for Paracetamol in the Horse's sample gives rise to an Anti-Doping Rule violation under the EAD Rules.

2. The Further Proceedings

- 2.1 On 18 April 2017, the FEI Legal Department officially notified the PR through the South African National Federation ("**RSA-NF**"), of the presence of the Prohibited Substance following the laboratory analysis, the possible rule violation and the possible consequences. The Notification Letter included notice that the PR was provisionally suspended and granted her the opportunity to be heard at a Preliminary Hearing before the Tribunal.
- 2.2 The Notification Letter further included notice, in accordance with Article 7.4 of the EAD Rules, that the Horse was provisionally suspended for a period of two (2) months, from the date of Notification, *i.e.*, 18 April 2017, until 17 June 2017. The above Provisional Suspension of the Horse has not been challenged, and the Horse has served the entire period of Provisional Suspension.

3. The B-Sample analysis

- 3.1 Together with the Notification Letter of 18 April 2017, the PR of the Horse was also informed that she was entitled (i) to the performance of a B-Sample confirmatory analysis on the positive sample; (ii) to attend or be represented at the B-Sample analysis; and/or (iii) to request that the B-Sample be analysed in a different laboratory than the A-Sample.
- 3.2 On 22 May 2017, the FEI informed the PR of the results of the B-Sample analysis carried out at the Laboratoire des Courses Hippiques, in Verrières le Buisson, France ("**LCH**"). The B-Sample analysis confirmed the results of the A-Sample analysis, *i.e.*, the presence of Paracetamol.

4. Written submissions by and on behalf of the PR

- 4.1 On 30 June 2017, 26 October 2017, and on 12 December 2017, the PR submitted in essence that:
 - a) She was a professional showjumper, competed in South Africa since the age of 10, and first competed internationally in 2011. Among others she won the SA World Cup Qualifier series in 2013 with the Horse. Further, that she has been a member in good

standing with the equestrian community and authorities for the past sixteen (16) years, and has no previous record of ever using a Prohibited Substance. She took great pride in the wellbeing of all horses she competed and would never intentionally harm any horse.

- b) The Horse has been competing at the World Cup level for about 5 years, she had owned the Horse since it was 5 years old, and the Horse has always been her main and most successful mount. The Horse was stabled at a commercial yard, the Monor D'or, in Kyalami, Midrand, South Africa.
- c) The PR confirmed that next to being the Person Responsible she was also the owner of the Horse.
- d) The PR admitted that she was guilty of an Article 2.1 EAD Rule violation, *i.e.*, the presence of a Banned Substance in the Horse's body.
- e) The PR explained that she did not have any plausible explanation as to the origin of the Paracetamol, despite conducting a thorough investigation (as outlined in the following).
- f) In this respect, the PR stated that she had never treated any horse, including the Horse with Paracetamol or with a product containing Paracetamol. She had known of the use of Paracetamol in human medications, but had been under the impression that it was toxic to equines. Furthermore, the PR argued that since the Horse had been a consistent winner at the highest level in South Africa and had, on the occasion of several wins, been subject to post-competition sampling of urine and blood, it would have been stupid on her part to administer any Prohibited Substances to the Horse.
- g) The PR provided a medical record for the Horse and a statement by Dr. Kyle Lowery (BSc, BVSc, MRCVS), the Horse's veterinarian, declaring all Prohibited Substances used prior to the Event. The Horse was administered Meloxicam (Metacam) on 28 August 2016 prior to leaving for the Event. In this respect PR stated, that her veterinarian however had confirmed that it was administered with "published detection times in mind", and further that Meloxicam did not contain any Paracetamol. In addition, in a second statement Dr. Lowery confirmed that Paracetamol was neither stocked nor utilised at North Rand Animal Clinic for use in horses.
- h) Moreover, the PR submitted that the supplements used on the Horse included Kyrophos, which according to the PR was a well-known nutritional vitamin supplement, and Bronchial Elixir, which according to the PR was a well-known equine homeopathic solution from the manufacturer leovet Dr. Jacoby GmbH & Co. KG in Germany to relieve the Horse's symptoms of inflammation and aggravation of the oesophagus and nasal passages which it experienced from time to time. As well as the product RedCell,

which according to the PR was a well-known supplement to increase the Horse's energy levels and to prevent fatigue towards the end of a long event. The product Kyrophos was administered by intra-venous injection, and was according to the PR also administered by the FEI veterinarian on duty at the Event, on the day prior to the event, which injection she had declared during the Event. Concerning the product Bronchial Elixir, the PR provided an email by Dr. Andreas Piotrowski, Head of Laboratory/Development of Iovet, explaining that *"The product is safe, none of the ingredients is listed on the prohibited substances list. Therefore nothing could be detected by the analysis of blood or urine."* Finally, the PR provided two analysis results by V&M Analytical Toxicology Laboratory Services (Pty) Ltd, confirming that the product Krypos Metabolic-V (Test Report dated 20 June 2017) and the products Bronchial Elixir with Echinacea and Red Cell Vitamin mineral supplement (Test Report dated 22 May 2017) tested negative for Paracetamol.

- i) Moreover, the PR's groom, Mr. Lyton Mbisa, who has been the Horse's groom for the last 9 years, and who attended the Event confirmed not having used any Paracetamol-medicines at the time. According to the PR, her groom further suggested that the Paracetamol finding might have been the action of a resentful third party.
- j) In addition, Dr. Rissa Parker, the Horse's dietician, could not suggest that any of the feeds and nutrients used in the diet might have contained or been contaminated by Paracetamol. In her statement, Dr. Parker confirmed that she was consulted on the nutritional care of the Horse by the PR in June 2014, and recommended a combination of "Capstone Lifetime Balancer with Racetime" as a concentrate along with teff, lucerne eragrostis and some oil (canola oil) to increase body condition when necessary, and that she has continued giving nutritional advice using this combination of feeds since then.
- k) The PR further submitted, that because of the long delay between the Sample collection and the Notification Letter received by the FEI, *i.e.*, seven and a half (7½) months (as outlined further below), she was unable to subject the actual feeds and supplements used at the time of the Event to analysis, and could therefore not discount that a feed or supplement that she used at the time of the Event might have contained Paracetamol.
- l) She accepted the explanations that were advanced by the FEI for the recorded delays (as outlined further below), but argued that none of these delays were a result of any action or inaction of her part.
- m) The PR also alleged that the stabling at the Event was not monitored by FEI stewards for 24 hours, and submitted that night guards from a local security firm, who might not have had a full

understanding of the protocols applicable to FEI secure stabling, did the night shifts. In view of the PR this could have created opportunity for a third party as the possible source of the Paracetamol.

- n) Regarding instructions given and precautions taken by the PR to ensure compliance with the EADCMRs, the PR stated that she was very meticulous about the way her horses are managed, and that this applied in particular to the Horse, which was her top athlete. It involved having one dedicated groom attending to the Horse's care at events. She was hands-on and very involved in the management of her horses, and managed them very closely and vigilantly on a daily basis in conjunction with her groom. She used a nutritionist, and only fed reputable well known supplements to her horses. Further, she read the labels of all the supplements that she fed her horses to ensure that they did not contain prohibited substances, as well as confirmed in the event she was unsure, with her veterinarian, nutritionist, trainer and fellow show jumpers that the supplement was allowed during competition. She was declaring medications of horses and followed administration protocols, and she explained that if a horse was ill and required medication not suitable for competition she withdraw that horse from the competition and administered the suitable medication. For example she had done so during an FEI event in 2014 in South Africa. The PR stated that the wellbeing of her horses was her primary concern. With regard to the Horse during the Event, the PR stated that the Horse acted as usual and that there was nothing which would have indicated that the Horse was under the influence of any Prohibited Substances.
- o) Regarding steps implemented by the PR to avoid a repeated breach of rules and regulations, the PR stated that she was planning on installing security cameras at her horses' stables during future FEI events. Furthermore, that she had requested her groom to be extra vigilant in the future, and that she would herself be extra vigilant about what her horses ingested and that she would seek advice from her veterinarian first prior to adding any additional supplements if needed.
- p) The PR accepted the automatic disqualification of the results obtained in combination with the Horse at the Event in accordance with Article 9.1 of the EAD Rules, and requested that this disqualification be immediately applied, in accordance with Article 9.2 of the EAD Rules. The PR stated that she also competed in the lower non-FEI classes on the horse INFERNO D'EMMA – a young horse not registered with the FEI -, which results were unlikely to have affected the EAD Rule violation in respect of the Horse. She therefore requested not to disqualify her individual results obtained at the Event with this horse in terms of Article 10.1.2 of the EAD Rules.
- q) The PR requested the Tribunal to exercise its discretion and

approve a reduction in the period of Ineligibility down to a minimum of one half of the two-year period of Ineligibility foreseen in Article 10.2 of the EAD Rules, based on her prompt admission of the asserted EAD Rule violation, as provided in Article 10.6.3 of the EAD Rules. In this respect, she argued that she promptly made the necessary inquiries to confirm the presence of Paracetamol and the source of it, and that she was entitled to do so when faced with an Article 2.1 EAD Rules violation. Her actions in this regard should therefore not be considered as causing any undue delay in this timely admission of the EAD Rule violation. In a later submission, and taking into consideration a delay from the FEI in providing its submission, the PR suggested that a reduction of six (6) months would, in all circumstances of the present matter, result in a fair and just sanction.

- r) In this regard, the PR further argued that – contrary to the FEI’s submission (as outlined further below) – Article 10.6 of the EAD Rules allowed for the elimination, reduction or suspension of the applicable period of Ineligibility or other consequences for reasons other than fault, and that Article 10.2 of the EAD Rules recognised that Article 10.6 of the EAD Rules was to be applied independently of Articles 10.4 and 10.5 of the EAD Rules. Whereas both Articles 10.4 and 10.5 of the EAD Rules required, in addition to fault, compliance with the so-called threshold test, *i.e.*, the PR was required to establish how the Banned Substance entered the Horse’s system, Article 10.6 of the EAD Rules did not contain this threshold test. According to the PR, Article 10.6.3 of the EAD Rules provided that the Tribunal may in its discretion reduce the period of Ineligibility by no more than half, depending on the seriousness of the violation and the PR’s degree of fault. The PR accepted that this was a serious offence, but argued that this was not the only factor to be considered by the Tribunal when exercising its discretion in terms of Article 10.6.3 of the EAD Rules.
- s) The PR further requested that the period of Ineligibility start on the date of sample collection, *i.e.*, on 3 September 2016, for reasons that (i) she had waived her right to a hearing; (ii) the delays in the doping control process were not attributable to her; (iii) she had made a timely admission before competing again; and (iv) she was entitled to a credit for the period of her provisional suspension. In this regard, Article 10.10 of the EAD Rules permitted for an early commencement of the period of Ineligibility, and the PR relied on timely admission, specifically on Articles 10.10.1 to 10.10.5 of the EAD Rules.
- t) Referring to previous decisions of the Tribunal, the PR argued that she was a first time offender who lost her sponsor, and submitted that a fine of 2’000 CHF, and a contribution of 1’000 CHF to the FEI’s legal costs (including the costs of the B-Sample analysis) was appropriate.

- 4.2 On 15 January 2018, the PR requested that the case file be forwarded to the Tribunal for consideration and adjudication as a matter of urgency.

5. Written submissions by the FEI

- 5.1 On 6 June 2017, upon prior request by the PR, the FEI provided explanations for the delays in the case at hand, *i.e.*, between the Sample collection and the Notification Letter. The FEI explained in this regard that the first delay at the laboratory occurred due to local circumstances in South Africa, mainly in relation to the difficulties to transfer biological samples over the South African border, probably also due to the fact that blood samples may contain South African horse sickness (AHS). The second delay was due to the need for a specialist view on the very unusual substance. The FEI explained that there were few studies on Paracetamol in horses since it is a Banned Substance and never should be present in a competition horse. The Laboratory therefore had to conduct extra studies in relation to the matter and also to consult an external expert.
- 5.2 On 17 November 2017, and responding to the PR's submission of 30 June 2017, the FEI submitted in essence that:
- a) Article 3.1 of the EAD Rules made it the FEI's burden to establish all of the elements of the EAD Rule violation charged, to the comfortable satisfaction of the Tribunal. The elements of an Article 2.1 violation were straightforward. *"It is not necessary that intent, fault, negligence or knowing Use be demonstrated in order to establish an EAD Rule violation under Article 2.1"*. Instead it was a "strict liability" offence, established simply by proof that a Banned Substance was present in the Horse's sample. The results of the analysis of the A-Sample taken from the Horse at the Event confirmed the presence of Paracetamol, and constituted "sufficient proof" of the violation of Article 2.1 of the EAD Rules. The PR did not dispute the presence of the Prohibited Substance in the Horse's sample. Accordingly, the FEI has discharged its burden of establishing that the PR has violated Article 2.1 of the EAD Rules.
 - b) Where a Banned Substance was found in a horse's sample, a clear and unequivocal presumption arose under the EAD Rules that it was administered to the horse deliberately, in an illicit attempt to enhance its performance. As a result of this presumption of fault, Article 10.2 of the EAD Rules provided that a Person Responsible with no previous doping offences who violated Article 2.1 of the EAD Rules was subject to a period of Ineligibility of two (2) years, unless she was able to rebut the presumption of fault. And that to do this the rules specified that she must establish to the satisfaction of the Tribunal (it being her burden of proof, on a balance of probability) (i) How the Prohibited Substance entered the Horse's system; and (ii) that she bore No Fault or Negligence for that occurrence; or in the alternative (iii) that she bore No Significant Fault or Negligence for that

occurrence. If the PR failed to discharge this burden, the presumption of intentional administration and performance stood.

- c) The FEI submitted in this context that the PR had to provide clear and convincing evidence that proved how the Paracetamol had entered the Horse's system. The PR had according to her submission no plausible explanation on how the Paracetamol could have entered the body of the Horse. Hence she had not fulfilled the threshold requirement on how the substance entered the body of the Horse.
- d) In terms of the degree of Fault and Negligence by the PR for the rule violation, the FEI argued that the starting point of any evaluation of the degree of Fault and Negligence by the PR for the rule violation was the "*personal duty*" of the PR following from Article 2.1.1 of the EAD Rules, *i.e.*, her personal duty to ensure that "*no Banned Substance is present in the Horse's body*".
- e) In light of the CAS jurisprudence (outlined further below), the FEI respectfully submitted that making the PR prima facie responsible for the condition of the Horse while competing, subject to her ability to prove she bears No (Significant) Fault or Negligence for its doped condition, was a reasonable and justifiable stance.
- f) In this respect, CAS in the *Royal des Fontaines* case¹ had endorsed the rationale behind the FEI's policy of making the Athlete/rider the Person Responsible. The CAS Decision states as follows:

"No doubt the degree of care is high; but horses cannot care for themselves. As the Respondent (the FEI) put it in its skeleton argument

"The FEI believes that making the rider the responsible in this way is necessary to protect the welfare of the horse, and to ensure fair play. It strongly incentivises riders to ensure compliance with the rules, whether by caring for the horse personally or else by entrusting that task only to third parties who are up to the job. In the case of such delegation, it protects the welfare of the horse, and clean sport, by requiring the rider to stay appraised of and be vigilant with respect to the way the horse is being prepared for competition, including as to any treatments given to the horse"

The Sole Arbitrator respectfully agrees."

- g) In the *Glenmorgan* case² the Panel confirmed that the rider was best fit to control the Horse before a competition. The Panel further stated as follows:

"... Among them (any support personnel), the rider is best able to function as the "last check" on the physical condition of the horse

¹ CAS 2015/A/4190 Mohammed Shafi Al Rumaithi v. FEI, para 57.

² CAS 2014/A/3591 Sheikh Hazza Bin Sultan Bin Zayed Al Nahyan v. FEI, paras 203 and 209.

immediately prior to and during the race, regardless of whether he knows the horse or mounts it for the first time. An experienced rider can quite often identify with the naked eye an irregularity in the condition and behaviour of the animal both before mounting and during the competition."

- h) Further, that it was necessary to look at the definitions of fault, as defined in Appendix 1 of the EAD Rules, *i.e.*, Fault, No Fault or Negligence, and No Significant Fault or Negligence.
- i) In this respect the FEI highlighted that, in accordance with Article 1055 of the VRs, Banned Substances are never to be found in a competition horse, they were substances with no legitimate use and had a high potential for abuse. For No Fault or Negligence to apply, the PR has to establish that she did not know or suspect, and could not reasonably have known or suspected even with the exercise of utmost caution, that she had administered to the Horse, or the Horse's system otherwise contained, a Banned Substance.
- j) The FEI understood that the PR was a careful individual with no intention to dope her horses, with several procedures in place to avoid a positive test. The FEI also found it was very unfortunate that the PR did not find any plausible explanation to the rule violation. The rules were however constructed in a way that it was necessary that the PR provides a plausible explanation of how the substance entered the body of the Horse. Without such explanations it became impossible to evaluate the PR's degree of fault for the rule violation. Hence, from an FEI perspective - with the information provided at the time - no reduction under Articles 10.4 or 10.5 of the EAD Rules was possible, and the normal two (2) year sanction had to apply.
- k) Regarding Prompt and Timely Admission, in accordance with Articles 10.6.3 and 10.10.3 of the EAD Rules, the FEI was of the opinion that the timely and prompt admissions cannot be applied in cases where the PR had no idea how the violation happened. The prompt and timely admission provision contained an assessment of fault and factors which make up the seriousness of the violation. Referring to a publication³ the FEI argued that there was no general provision to discount the period of Ineligibility for an admission of responsibility if the specific provisions for timely and prompt admissions are not applicable. Since in this case the seriousness of the violation and the PR's degree of fault could not be evaluated, the timely admission could not be applied.
- l) The FEI further submitted that, should the Tribunal decide to accept that the PR did promptly admit the violation, the fact that Article 10.6.3 required a consideration of the two key factors of the "seriousness of the violation" and the PR's "degree of fault" could not be ignored. A corresponding provision to Article 10.6.3 of the 2015

³ A Guide to the World Anti-Doping Code – The Fight for the Spirit of Sport, 3rd edition, p. 433, Paul David, Eldon Chambers, New Zealand, Cambridge University Press.

EAD Rules can be found in the 2015 WADA Code and indeed it was upon this provision that Article 10.6.3 of the 2015 EAD Rules was based. It was therefore clear, that the intention of WADA that the ADO's (in the case at hand the FEI's) assessment of the seriousness of the offence was a key factor to be considered in any decision to reduce the period of Ineligibility.

- m) In this regard, it was the submission of the FEI that the offence in question – the Presence of a Banned Substance in a Horse's Sample – was a very serious offence and one which attracted the highest "base" level sanction under the EAD Rules, *i.e.*, two (2) years. The fact that the PR did not know how the substance entered the Horse's system, and that it was therefore impossible to evaluate the PR's degree of fault did not relieve the PR from responsibility. Further, that it was a core principle that the PR was responsible for ensuring that no Banned Substance was present in the Horse's body. It was very relevant when considering the seriousness of the offence to look at the personal responsibility of the PR and this had to be a factor to be taken into account when determining the seriousness of the offence. Finally, the FEI argued that given the FEI's position on the seriousness of the offence, if the Tribunal finds that the PR timely admitted the violation and therefore applied Article 10.6.3 of the EAD Rules, the FEI submitted that the consequent reduction of the period of Ineligibility had to be very minimal.
- n) As a result, the FEI respectfully submitted that the period of Ineligibility imposed on the PR should be two (2) years in accordance with Article 10.2 of the EAD Rules.
- o) In addition, the FEI argued that neither the FEI nor the laboratories have any doubt about the integrity of the sample, due to the delays previously outlined. The FEI did however acknowledge that the delays of the procedures were not attributable to the PR, and also considered the delays substantial, and was of the opinion that the period of Ineligibility should therefore start as early as of Sample collection, *i.e.*, 3 September 2016, in accordance with Article 10.10.2 of the EAD Rules.
- p) Pursuant to Article 9 of the EAD Rules, the result of the PR and Horse combination obtained in the Competition shall be disqualified with all resulting Consequences, including forfeiture of any related medals, points and prizes. This rule applied even if the period of Ineligibility was reduced or eliminated under Article 10 of the EAD Rules, *e.g.*, on the basis of No (or No Significant) Fault or Negligence. Furthermore, since this was a case with a Banned Substance, occurring during or in connection with an Event, and in order to safeguard the level playing field, the FEI may disqualify all of the Persons Responsible's individual results obtained in that Event, with any and all Horses with which the Persons Responsible competed, with all consequences, including forfeiture of all medals, points and prizes, in accordance with Article 10.1.2 of the EAD Rules. In cases of team competition, Article 11 of the EAD Rules also applied.

- q) As fairness did not dictate that no fine be levied in the cases at hand, the FEI duly requested that a fine be imposed on the PR, and that the PR was ordered to pay the legal costs that the FEI has incurred in pursuing this matter. The FEI requested that the Tribunal fined the PR in the amount of 3 000 CHF, and ordered the PR to pay the legal costs of 1 500 CHF that the FEI has incurred in these proceedings, as well as the cost of the B-Sample. In this regard the FEI informed that certain parts of fines contribute to education within anti-doping.

6. Jurisdiction

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

7. The Person Responsible

In accordance with Article 118.3 of the GRs, the PR is the Person Responsible in the case at hand, as she has competed with the Horse at the Event. The PR also accepted to be the Person Responsible in the case at hand.

8. The Decision

- 8.1 As set forth in Article 2.1 of the EAD Rules, sufficient proof of an EAD Rule violation is established by the presence of a Banned Substance in the Horse's A-Sample, which has been confirmed through analysis of the B-Sample. The Tribunal is satisfied that the laboratory reports relating to the A-Sample and B-Sample reflect that the analytical tests were performed in an acceptable manner and that the findings of the Laboratory, as well as of the LCH, are accurate. The Tribunal is satisfied that the test results evidence the presence of Paracetamol in the urine sample taken from the Horse at the Event. The PR accepted the accuracy of the test results and the positive finding. Paracetamol is a Banned Substance under the FEI Equine Prohibited Substances List and the presence of the substance in a Horse's body is prohibited at all times under Article 2.1 of the EAD Rules.
- 8.2 As a result, the FEI has thus established an Adverse Analytical Finding, and has thereby sufficiently proven the objective elements of an offence in accordance with Article 3 of the EAD Rules.
- 8.3 Pursuant to Article 10.2.1 of the EAD Rules the period of Ineligibility for an Article 2.1 violation, *i.e.*, the Presence of a Banned Substance in a Horse's sample, as in the case at hand, shall be two (2) years, subject to a potential reduction or suspension pursuant to Articles 10.4, 10.5 or 10.6 of the EAD Rules.

- 8.4 In cases brought under the EADCMRs, a strict liability principle applies as described in Article 2.1.1 of the EAD Rules. Once an EAD Rule violation has been established by the FEI, a PR has the burden of proving that she bears "No Fault or Negligence" for the rule violation as set forth in Article 10.4 of the EAD Rules, or "No Significant Fault or Negligence," as set forth in Article 10.5 of the EAD Rules.
- 8.5 In order for Articles 10.4 and 10.5 of the EAD Rules to be applicable, the PR must establish as a threshold requirement how the Prohibited Substance entered the Horse's system.
- 8.6 To start with, the Tribunal has taken note that the PR has no plausible explanation as to the origin of the Paracetamol in the Horse's system. As a result the Tribunal holds that the PR has not established – on a balance of probability, as required under Article 3.1 of the EAD Rules – how the Paracetamol has entered the Horse's system.
- 8.7 The Tribunal therefore finds that Articles 10.4 and 10.5 of the EAD Rules cannot be applied in the case at hand. In this regard the Tribunal notes that the PR does not claim the applicability of those Articles.
- 8.8 In a second step, the Tribunal has to decide whether an Elimination, Reduction, or Suspension of the Period of Ineligibility or other Consequences for Reasons Other than Fault, in accordance with Article 10.6 of the EAD Rules, and more specifically Article 10.6.3, applies in the present case.
- 8.9 Pursuant to Article 10.6.3 of the EAD Rules a PR subject to a two (2) year sanction under Article 10.2.1, by promptly admitting the asserted anti-doping rule violation after being confronted by the FEI, and also upon the approval and at the discretion of the FEI, may receive a reduction in the period of Ineligibility, depending on the seriousness of the violation and the Person Responsible's degree of fault.
- 8.10 In this regard the Tribunal has taken note of the Parties' claims and submissions with regard to Article 10.6.3 of the EAD Rules, *i.e.*, Prompt Admission. More specifically, the Tribunal has also taken note that the FEI has not approved any reduction of the period of Ineligibility.
- 8.11 The Tribunal however finds that it does not have jurisdiction to decide on a reduction of the period of Ineligibility pursuant to Article 10.6.3 of the EAD Rules. The Tribunal finds that the wording of Article 10.6.3 of the EAD Rules is clear, and does not allow for a different interpretation. Namely, that any potential reduction of the period of Ineligibility requires (i) the approval by the FEI; (ii) is at the discretion of the FEI; and (iii) given the wording includes "may", a reduction of the period of Ineligibility is not automatic following a prompt admission. The FEI has not approved nor has it exercised its discretion in favour of the PR.
- 8.12 As a result the Tribunal finds that no reduction of the otherwise applicable period of Ineligibility, *i.e.*, two (2) years pursuant to Article 10.2 of the EAD Rules, is possible.

- 8.13 The Tribunal takes further note of the delays – not attributable to the PR - in the present proceedings, and finds that pursuant to Article 10.10.2 of the EAD Rules, the period of Ineligibility shall start from the date of Sample collection, *i.e.*, 3 September 2016. Since the Tribunal already finds that the period of Ineligibility shall start with the date of Sample collection, the Tribunal does not have to decide with regard to Article 10.10.3 of the EAD Rules.
- 8.14 In this regard the Tribunal takes note that the PR has been provisionally suspended since 18 April 2017, and that the PR did not compete during the period of the Provisional Suspension.
- 8.15 Any other claims by the Parties shall be dismissed. While the Tribunal has taken them into account, the Tribunal found that they were not decisive to the outcome of this decision.

9. Disqualification

- 9.1 Since the EAD Rules have been violated, and for reasons of ensuring a level playing field, the Tribunal disqualifies the Horse and the PR combination from the Competition and the entire Event, and all medals, points and prize money won must be forfeited, in accordance with Articles 9 and 10.1.2 of the EAD Rules.
- 9.2 Furthermore, all results of the PR with any horse between the date of the Sample collection, *i.e.*, 3 September 2016, and the date of the start of the Provisional Suspension, *i.e.*, 18 April 2017, shall also be disqualified, and all medals, points and prize money won must be forfeited.
- 9.3 Finally, the Tribunal has also taken note that the PR competed at the Event in the lower non-FEI classes on the horse INFERNO D'EMMA, a young horse not registered with the FEI. The Tribunal agrees with the PR that the results obtained with this other horse were unlikely to have been affected by the EAD Rule violation in respect of the Horse. The Tribunal therefore does not disqualify the PR's individual results obtained at the Event with this horse, where these results have been obtained prior to the date of Sample collection in the present case, *i.e.*, 3 September 2016.

10. Sanctions

- 10.1 As a result of the foregoing, the period of Ineligibility imposed on the PR for the present rule violation shall be two (2) years, starting from the date of Sample collection, *i.e.*, 3 September 2016.
- 10.2 The Tribunal imposes the following sanctions on the PR in accordance with Article 169 of the GRs and Article 10 of the EAD Rules:

- 1) The PR shall be suspended for a period of **two (2) years**, starting with the date of Sample collection, *i.e.*, 3 September 2016. Therefore, the PR will be ineligible **through 2 September 2018**.
 - 2) The PR is fined **two thousand Swiss Francs (CHF 2'000,-)**.
 - 3) The PR shall contribute **one thousand five hundred Swiss Francs (CHF 1'500,-)** towards the costs of the judicial procedure, as well as the cost of the B-Sample analysis.
- 10.3 No Person Responsible who has been declared Ineligible may, during the period of Ineligibility, participate in any capacity in a Competition or activity that is authorised or organised by the FEI or any National Federation or be present at an Event (other than as a spectator) that is authorized or organized by the FEI or any National Federation, or participate in any capacity in Competitions authorized or organized by any international or national-level Event organisation (Article 10.11.1 of the EAD Rules).
 - 10.4 Where a Person Responsible who has been declared Ineligible violates against participation or attendance during Ineligibility, the results of any such participation shall be Disqualified and a new period of Ineligibility equal in length up to the original period of Ineligibility shall be added to the end of the original period of Ineligibility. In addition, further sanctions may be imposed if appropriate (Article 10.11.3 of the EAD Rules).
 - 10.5 According to Article 168 of the GRs, the present decision is effective from the day of written notification to the persons and bodies concerned.
 - 10.6 In accordance with Article 12 of the EAD Rules the Parties may appeal against this decision by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.

V. DECISION TO BE FORWARDED TO:

- a. The person sanctioned: Yes**
- b. The President of the NF of the person sanctioned: Yes**
- c. The President of the Organising Committee of the Event through his NF: Yes**
- d. Any other: No**

FOR THE PANEL

A handwritten signature in black ink, appearing to read 'Henrik Arle', is centered on the page. The signature is fluid and cursive, with a large initial 'H' and 'A'.

THE CHAIR, Mr. Henrik Arle