

**DECISION of the FEI TRIBUNAL
dated 6 April 2020**

In the matter of

Mr. João Manuel Vieira de Moura (“Mr. Vieira” or “the Appellant”)

Represented by Ms. Patrícia Saraiva de Aguiar of Abreu Advogados, Lisbon.

vs.

FÉDÉRATION EQUESTRE INTERNATIONALE (“FEI”)

together “the Parties”

I. COMPOSITION OF PANEL

Ms. Harveen Thauli, one member panel

II. SUMMARY OF THE FACTS

1. Case File: The Tribunal duly took into consideration all the Parties’ written submissions and communications received up to date.

2. Hearing: none.

III. DESCRIPTION OF THE CASE FROM A LEGAL VIEWPOINT

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

Statutes 24th edition, effective 20 November 2018 (“**Statutes**”).

General Regulations, 24th edition, 1 January 2020 (“**GRs**”).

FEI Competency-Based Evaluation System (“**CES**”) section on InsideFEI.

Internal Regulations of the FEI Tribunal, 3rd Edition, 2 March 2018 (“**IRs**”).

2. The relevant Legal Provisions

GRs Article 155.1 – Status and Liability of Officials: “The qualification and requirements to be satisfied to act as an FEI Official at the respective levels are set out in the relevant Sports Rules and related education systems.”

GRs Article 162.1: “An Appeal may be lodged by any person or body with a legitimate interest against any Decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible (see Article 162.2 below):

(a) With the FEI Tribunal against Decisions of the Ground Jury or any other person or body.

(b) With the CAS against Decisions by the FEI Tribunal. The person or body lodging such Appeal shall inform the FEI Legal Department.”

GRs Article 162.5: “Appeals to the FEI Tribunal against other FEI Decisions (i.e. other than an Appeal against a Decision arising from a Protest) must be dispatched to the FEI Tribunal (fei.tribunal@fei.org) and signed by the appellant or his/her authorised agent and accompanied by supporting evidence in writing or by the presence of one or more witnesses at a designated hearing and must reach the FEI Tribunal within twenty one (21) days of the date on which the notification of the earlier Decision was sent.”

GRs Article 162.6: “A deposit to the FEI of the equivalent of CHF 500 must be paid in order for the Appeal to be admissible.”

IRs Article 18.1:

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

Competency-based Evaluation System section on InsideFEI:

“The aim of the FEI Competency-based Evaluation System is to ensure that FEI Officials fulfil all the requirements of their job description and are

up-to-date with the current FEI Rules and Regulations, regardless of their age.

The intention of this evaluation system is to include all the different competencies required and assess them in the most objective manner; by discipline, by level, by function and by role, and on a regular basis.

The different competencies to be assessed at each level are:

- Knowledge of FEI Rules and Regulations
- Soft skills in order to interact effectively and harmoniously
- English language proficiency
- Physical fitness level required for the job

The objective is to test according to the level, with standardised and FEI approved assessments, carefully crafted by experts. The assessments will either be done online via the FEI Campus website and/or in-person. (...)

The FEI CES assessment system works on a 3-year cycle. All FEI Officials will be required to take the online assessment in years 1 and 2, and attend an in-person maintenance course (including an assessment) in year 3. This new cycle effectively replaces the current refresher system and abolishes the age limit. (...)

To start the process in 2020, the FEI have divided all Officials in two separate groups depending on their actual refresher status:

- Group A: Officials currently up-to-date with their refresher cycle will be invited to take the online assessment on FEI Campus from 16 December 2019 to 15 December 2020. Officials in Group A can continue to officiate in their current status until 31 March 2020. However, should they wish to officiate after 31 March 2020, they will need to have successfully completed the CES online assessment prior to officiating.
- Group B: Officials who have not done a refresher course since 31 December 2016, will have to take part in an in-person maintenance course before 15 December 2020 and can continue to officiate in their current status until that date. Officials in this group wishing to officiate after 15 December 2020 will need to have successfully completed the in-person maintenance CES and assessment prior to officiating. During the in-person maintenance course, officials of group B will be asked to take the CES online assessment. (...)

The online assessment will feature a series of 50 questions related to Rules and Regulations of a given discipline as well as veterinary and legal topics. A passing grade of 80% is required to succeed and each participant will be entitled to 2 attempts. Each attempt will have a time limit of one hour (1:00) and cannot be interrupted or paused once started. Results will be given at the end of the evaluation.

Before taking the online assessment, each participant will have the opportunity to train with a mock exam and get used to the testing environment. The mock exam will consist of a series of 10 random questions taken from the same pool of questions as the final assessment. There is no time limit for the mock exam and it can be taken as many times as wished to prepare for the online assessment.

There are two scenarios/outcomes:

- If the Official successfully (80% or more) completes the first or second attempt, they are immediately notified and entitled to officiate for another year.
- If the Official fails the two attempts they will then be invited to attend an in-person maintenance course (see description below) with assessment. Please note that in this case, the Official will not be able to officiate until they have attended and successfully completed the in-person maintenance course with assessment.

In-person maintenance courses and assessments will take place throughout 2020 for Officials that have been requested to attend either due to their refresher status (Group B) or because they have failed the online assessment twice.

The assessment which forms part of the in-person maintenance course is the same format as the online assessment featuring a series of 50 questions related to Rules and Regulations of a given discipline as well as veterinary and legal topics. A passing grade of 80% is required to succeed and the Official will have only 1 attempt with a time limit of one hour (1:00) which cannot be interrupted or paused once started. At the end of the online assessment, the result must be shared with the course director.

- Officials who have reached the required passing grade will be entitled to officiate for another year.
- Officials who did not reach the required passing grade will have to take an oral assessment with the course director during the in-person maintenance course:

- If the Official succeeds the oral assessment, he will be able to officiate for another year.
- If the Official fails the oral assessment, he will be transferred down to the next lower level.”

IV. DECISION

Below is a summary of the relevant facts, allegations and arguments based on the Parties’ written submissions. Although the Tribunal has fully considered all the facts, allegations, legal arguments and evidence in the present proceedings, the Tribunal only refers to the submissions and evidence it considers necessary to explain its reasoning in this decision.

1. Factual Background

Competency-Based Evaluation System

- 1.1. In 2016, the FEI created a Working Group after having received feedback from FEI “Officials” during sessions (Career Pathway, Education and Appointment & Remuneration) at the FEI Sports Forum earlier that year. Chaired by the then FEI 2nd Vice President, Mark Samuel (CAN), the new Working Group was tasked with developing proposals to improve and harmonise the management, education, and career progression of Officials across all disciplines.
- 1.2. The Working Group presented fifteen recommendations to improve the education, opportunities and experiences of Officials as well as the systems to manage them.
- 1.3. Recommendation 3 of the Working Group specifically referred to introducing a competency-based evaluation system (the **CES**) with the goal of replacing the age limits for Officials. During 2018 and 2019, the FEI Education Department developed the CES. Its aim was to ensure that Officials fulfilled their job requirements and were up-to-date with the current FEI Rules and Regulations in force. Before introducing the CES, Officials were only required to attend “refresher seminars” to maintain their status as Officials. The FEI Board approved the CES in June 2019.
- 1.4. One of the key components of the new CES is a competency based evaluation assessment system (the **CES Assessment System**), which works on a 3 year cycle. The basic premise of the system is that Officials are required to take an online assessment (the **CES Online Assessment**) in years 1 and 2, and attend an in-person maintenance

course in year 3 (the **CES In-Person Maintenance Course**).

- 1.5. The CES Online Assessment is comprised of 50 questions related to the FEI Rules and Regulations of the relevant discipline as well as veterinary and legal topics. A passing grade of 80% is required to succeed and the allotted time to complete the CES Online Assessment is one (1) hour. Officials have the opportunity to test themselves for the CES Online Assessment by taking a mock exam. The mock exam consists of a series of 10 random questions taken from the same pool of questions as the CES Online Assessment. There is no time limit for the mock exam and Officials may take it as often as they wish to prepare for the CES Online Assessment.
- 1.6. To facilitate a smooth roll out of the new system in 2020, Officials were divided into Groups A and B.

Group A	Group B
<p>Officials currently up-to-date with their refresher cycle could take the CES Online Assessment on the FEI Campus from 16 December 2019 to 15 December 2020.</p> <p>Officials in Group A could continue to officiate in their current status until 31 March 2020. However, should they wish to officiate after 31 March 2020, they would have to complete the CES Online Assessment successfully.</p> <p>If Officials in Group A took the CES Online Assessment (other than at a CES In Person Maintenance Course), they had two opportunities to pass it. If they failed both attempts, they would have to attend a CES In-Person Maintenance Course and</p>	<p>Officials who had not completed a refresher course since 31 December 2016 would have to participate in a CES In-Person Maintenance Course before 15 December 2020. Officials could continue to officiate in their current status until that date.</p> <p>Officials who wished to officiate after 15 December 2020 would have to complete the CES In-Person Maintenance Course successfully before officiating again. During the CES In-Person Maintenance Course, Officials would have to complete the CES Online Assessment successfully.</p>

pass the CES Online Assessment before being permitted to officiate again.	
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- 1.7. The above information and the 3 year cycle are clearly presented on the Officials page of the FEI website.¹ The following table sets out the 3 year cycle:

You have attended your last refresher seminar	2020	2021	2022	2023
in 2016	in-person course	online	online	in-person
in 2017/2018	online	in-person course	online	online
in 2019	online	online	in-person	online

- 1.8. Going forward, when Officials attend a CES In-Person Maintenance Course and also passes the CES Online Assessment there, their 3 year cycle starts again. CES In-Person Maintenance Courses are open to both Group A and Group B Officials to attend.
- Group B Officials who attend a CES In-Person Maintenance Course must take CES Online Assessment on site at the course.
 - Group A Officials who attend a CES In-Person Maintenance Course may choose to take the CES Online Assessment on site but are not obligated to do so.
- 1.9. Any Official, whether in Group A or B, who takes the CES Online Assessment on site at a CES In-Person Maintenance Course and does not obtain the required 80%, must then have an oral assessment with the course director during that CES In-Person Maintenance Course. If the Official fails the oral assessment, he/she will be transferred down to the next lower level.
- 1.10. The difference between taking a CES Online Assessment outside the context of a CES In-Person Maintenance Course and taking the CES Online Assessment at a CES In-Person Maintenance Course is, again,

¹ <https://inside.fei.org/fei/your-role/officials/ces>

clearly explained on the Officials page of the FEI website as follows:

The assessment which forms part of the in-person maintenance course is the same format as the online assessment featuring a series of 50 questions related to Rules and Regulations of a given discipline as well as veterinary and legal topics. A passing grade of 80% is required to succeed and the Official will have only 1 attempt with a time limit of one hour (1:00) which cannot be interrupted or paused once started. At the end of the online assessment, the result must be shared with the course director.

Officials who have reached the required passing grade will be entitled to officiate for another year.

Officials who did not reach the required passing grade will have to take an oral assessment with the course director during the in-person maintenance course:

- If the Official succeeds the oral assessment, he will be able to officiate for another year.

- If the Official fails the oral assessment, he will be transferred down to the next lower level."

The Appellant

- 1.11. The Appellant is registered with the FEI (FEI ID 10050502) as an Official. He was a Level 4 Jumping Judge from 2013 up until 17 January 2020. He is also registered as a Level 2 Jumping Steward.
- 1.12. On 16 December 2019, the Appellant received an email informing him he belonged to Group A because he had attended a refresher course in Amsterdam in 2019. This meant he was not required to attend a CES In-Person Maintenance Course until 2022.
- 1.13. However, if the Appellant wanted to officiate after 31 March 2020, he would have to pass the CES Online Assessment before then. He could have completed the CES Online Assessment at any time before 31 March by logging onto the FEI Campus.
- 1.14. The Appellant decided to attend a refresher course for FEI Judges in Prague (the **Prague Refresher**), which doubled as the general assembly for the International Jumping Officials Club (**IJOC**). The Prague Refresher was a CES In-Person Maintenance Course held from 17 to 18 January 2020. The Appellant chose to do the CES Online

Assessment at the Prague Refresher.

- 1.15. On 17 January 2020, the Appellant did not pass either the CES Online Assessment he took at the Prague Refresher or the follow-up oral assessment later that day. He was informed on site he would be transferred down to a Level 3 Jumping Judge.
- 1.16. On 18 January 2020, the Appellant received an email (discussed below) confirming he did not pass the CES Online Assessment.

2. Procedural Background

- 2.1. On 3 February 2020 and on 14 February 2020, the FEI Director of Education and Officials, Frank Spadinger and the FEI Secretary General, respectively confirmed to the Appellant that he had been transferred down to a Level 3 Jumping Judge.
- 2.2. On 24 February 2020, the Appellant lodged an appeal (the **Appeal**).
- 2.3. On 27 February 2020, the FEI Tribunal Chair nominated a one member panel in accordance with Article 19.1 of the IRs.
- 2.4. On 13 March 2020, the FEI submitted its "Answer" to the Appeal.
- 2.5. On 20 March 2020, the panel informed the Parties that a decision based on their written submissions would be issued as soon as practicable.

3. The Appellant's Submissions

- 3.1. The Appellant submitted:
 - a. On 11 October 2019, the Appellant was informed he was in Group A. He was also told he had to take the CES Online Assessment between 16 December 2019 and 31 March 2020.
 - b. On 16 December 2019, the Appellant received another email informing him that the CES Online Assessment was now accessible. He was told he had "*a maximum of two (2) attempts with a 15 days waiting period between attempts.*" He was further informed he could practise the mock exam as much as he wanted before taking the CES Online Assessment.
 - c. The Appellant understood he could take his CES Online Assessment up until 31 March 2020.

- d. At the Prague Refresher, the Appellant claimed he was surprised by an unexpected in-person exam of the CES.
- e. At the start of the CES Online Assessment, the Appellant tried to access the mock exam, but Stephan Ellenbruch, the Course Director told him the mock exam was blocked because the Officials were now taking the CES Online Assessment. The Appellant stated: *"Therefore, with the completely acknowledge of the FEI, the Claimant was not able to open the exams and train for the assessment he was impelled to perform in that date."* The Appellant did not obtain the required 80% to pass the CES Online Assessment.
- f. On 18 January 2020, the Appellant received an email stating: *"We regret to inform you that you have not reached the required passing grade for the exam in the CES Online Assessment – Jumping – Judges. This was attempt n°1. Please note that you can take a new attempt by accessing the course."* The FEI's Secretary General explained to him that this email was automatically generated and sent to him by mistake. The Appellant did not agree with the FEI's explanation.
- g. The Appellant continued to believe he could take the CES Online Assessment 15 days later even after he was informed he would have to take an oral exam at the end of that day. He alleged he was only warned about the oral exam 15 minutes before it happened. The Appellant was not prepared for the oral exam because it covered the same subjects as the CES Online Assessment, which he had failed.
- h. After the Appellant failed the oral exam, he was advised he would not have any second online attempt to pass the CES Online Assessment and he would be transferred down to a Level 3 Jumping Judge.
- i. The Appellant noted the CES Online Assessment for Group A anticipated that *"if the Official fails the two attempts they will then be invited to attend an in-person maintenance course ...with assessment."* Therefore, he argued he would have had two attempts to pass the CES Online Assessment but if he failed both attempts, he would have a third opportunity to pass the CES Online Assessment at an In-Person Maintenance Course. The Appellant believed his "rights" were reduced because he had only two attempts, one online and the other oral, which took place on the same day without any

preparation on his part.

- j. The Appellant also alleged a violation of the CES rules because he claimed he had his oral exam with an ad hoc jury instead of the Course Director.
 - k. The Appellant alleged another violation of the rules because the Prague Refresher was a refreshing seminar and exams are not administered at these seminars. He also stated the program of the Prague Refresher did not mention any exams.
 - l. The Appellant stated nobody explained to him that he had changed his CES to that applicable to Group B, which did not permit a second online attempt.
 - m. The Appellant further claimed that blocking the mock exam contradicted the information in the email of 11 October 2019. He alleged this was also a violation of the Principle of Equality pursuant to Article 2 of the FEI Statutes.
 - n. The Appellant stated that according to Article 147.3 of the GRs: *“Unless the Sport Rules of the relevant Discipline provide otherwise, only an Official International Judge, provided he/she can speak one (1) of the two (2) official languages fluently may be appointed as President of the Ground Jury for FEI World Cup Finals, FEI Championships for Seniors, Regional and Olympic Games.”* The Appellant claimed he was not fluent in English and read English better than he spoke it. He then stated that on 11 February 2020, he obtained a passing grade of 74% on an English proficiency exam. The Appellant believed that Article 147.3 meant he did not have to be fluent in English if he was fluent in French and stated nobody explained the CES to him in French. He also suggested that someone who spoke French should have been the Course Director.
 - o. Lastly, the Appellant argued the oral exam had to be carried out by the Course Director, which he claimed did not happen. He was evaluated by an ad hoc jury.
- 3.2. The Appellant requested the Tribunal to allow his Appeal and:
- a. consider voiding the In-Person Assessment that the Appellant took at the Prague Refresher; and

- b. revoke the decision of transferring the Appellant down to a Level 3 Jumping Judge.

4. The FEI's Submissions

- 4.1. The FEI responded to each of Appellant's allegations:

Information in Advance of the Prague Refresher

- a. The FEI submitted that any "surprise", on the Appellant's part, with an unexpected in-person exam was the result of his own failure to read the Prague Refresher material in advance and/or familiarise himself with information on the CES on the FEI's website.
- b. The FEI confirmed that on 24 November 2019, almost 6 weeks before the Prague Refresher, the IJOC Secretary General emailed the attendees and provided them with a document with detailed information. The document was also uploaded on the IJOC website. The FEI provided an extract from the document, which indicated that Officials in Group B had to take the CES Online Assessment during the Prague Refresher whereas it was optional for Officials in Group A.
- c. The FEI further submitted the Appellant's claim that "*the program of the IJOC Seminar in Prague does not mention any kind of exam either*" was simply incorrect. The programme of the Prague Refresher, which the Appellant attached to his own submissions on this Appeal, clearly indicated that there would be a "FEI Competency-Based Online Assessment".
- d. The FEI stated that of the approximately 100 FEI Officials in attendance at the Prague Refresher, 70 of them, including the Appellant, signed up to take the CES Online Assessment. It was notable that of the 70 Officials who took the assessment, the Appellant was the only one who did not obtain the required mark of 80%. The FEI submitted that if there was mass confusion and surprise, as alleged by the Appellant, more FEI Officials would have failed the assessment.

Informed on Site – Optional for Group A

- e. The FEI advised that at the beginning of the Refresher, the IJOC President, Willem Luiten circulated a sign-in list for the attendees, and each attendee was asked to confirm whether they intended to

take the CES Online Assessment the next day by signing beside their name. The FEI provided an extract of the sign-in sheet that clearly indicated the Appellant signed beside his name.

- f. The FEI submitted a video file with relevant clips from Friday, 17 January 2020 when the Officials were informed about the CES Online Assessment that would take place the next day. At the beginning of the clip, the Course Director, Stephan Ellenbruch, clearly addressed the attendees. He began by asking: *"Okay, first question, who is taking the test tomorrow? Show of hands."* In the video clip, at approximately 00:14, the Appellant raised his hand in response to Mr. Ellenbruch's question. The FEI submitted this video footage directly contradicted the Appellant's assertion: *"So the Claimant could not be but surprised when, at the mentioned IJOC seminar held in Prague, was informed that he would take the assessment on that exact day, January 18."*

- g. The Course Directors then asked the attendees: *"Who has prepared nothing at home?"* The Appellant is seen taking down his hand. The FEI submitted that this could only be interpreted as him indicating he had prepared for the CES Online Assessment (or did not want to admit publicly he had not prepared).

- h. In the next clip on the video file, at approximately 00:22, the FEI Director of Education and Officials also addressed the attendees on Friday, 17 January. He stated:

*For me personally and to **make tomorrow your CES assessment a success**, I would like to go in some practical details. We had a lot of communication, publications prior this course here in Prague and to make it crystal clear and I will do that tomorrow and on Monday again. Education also means repetition. We have put the officials in two groups. We have the Group A and we have the Group B. Group A are the ones and this is now, will also change by 2021 – we are in the transition period. We have included not the last 3 years for the transition period, we have included the years 19, 18 and 17. If you have been to a refresher seminar without assessment in the last 3 years you are in group A. All other officials that have been before 17, 16 and older or never (we have those as well).....and those we have put in Group B and these officials we give 2020 the opportunity to do an in person maintenance course with assessment and, if they don't, they will be not allowed*

to officiate anymore to clean up the list either of the people that are not interested or either do not want to be evaluated.

(.....)

Now coming to Group A, **nobody in Group A is forced to do the assessment here in Prague.** If you want, **and I would recommend if you have done the mock exam enough to really take the assessment** because then it will prolong your cycle, you will start your cycle new. Because we have now introduced a cycle, a 3 year cycle. **If you do the assessment here in Prague** you will not have to go to an in person assessment in 21 and 22. You can still go to an in person course because if you go in 21 again to an in person course, to the next general assembly, you then restart the cycle again. But maybe next year it happens that you might be ill and cannot attend the assembly so you are on the safe side. That's why we recommend you to take the assessment if you are prepared. That's if you are prepared." (Emphasis is added.)

The FEI submitted that if the Appellant was paying attention to the FEI Education Director's explanation, he would have (or should have) taken note of the following clear points:

1. there would be a CES Assessment the following day;
 2. Group A Officials were not required to take the CES Online Assessment; and
 3. Group A Officials should only take it if they had prepared in advance by practising the mock exam.
- i. In response to a question from a participant, the FEI Education Director provided the following additional information, at approximately 04:42:

Thank you for this question and there I want to come back to Willem. He has passed the attendance list and there is indicated who is taking the assessment and who is not taking the assessment. There it is very important that you update this tonight and even if you talk to anyone who has not updated it tomorrow morning. I am... and this is the advantage of me being here with you. I can change you and I can put you on the assessment tomorrow. Yes, that is possible.

The FEI submitted it was clear from the FEI's Education Director's

statement that if an Official wanted to update the attendance list to change his status to “No”, it was possible to do so until the next morning before taking the CES Online Assessment.

- j. The FEI submitted the Appellant’s claim that he *“was not explained that he was changing his evaluation from the online assessment applicable to Group A to the in-person assessment applicable to Group B”* was disingenuous given the clear explanations in the video clip.
- k. The FEI further submitted the Appellant’s assertion he *“felt impelled by the Jury to perform the assessment in that occasion”* was not plausible given the FEI Education Director clearly stated that: *“...nobody in Group A is forced to do the assessment here in Prague.”*
- l. The FEI highlighted the Appellant admitted he had done *“no previous preparation”* and queried why he decided to take the CES Online Assessment when the FEI Education Director recommended to the Group A Officials that they should only do so *“if you have done the mock exam.”*
- m. The FEI responded to the Appellant’s claim that he is *“not fluent in English”*. The Appellant obtained a score of 74% on his English proficiency exam, which put him at a level “B2” according to the Common Framework of Reference for Languages – Self Assessment Grid. Someone with a B2 level is considered an “Independent User”.

In terms of listening comprehension, a typical B2 user can *“understand extended speech and lectures and follow even complex lines or argument provided the topic is reasonably familiar.... can understand most TV news and current affairs programmes...can understand the majority of films in standard dialect”*. Based on that, the FEI stated Appellant should have been able to understand the instructions and explanations provided by the Course Director and the FEI Education Director.

In terms of written comprehension, a person with a B2 level can *“.....read articles and reports concerned with contemporary problems in which the writers adopt particular attitudes or viewpoints.... can understand contemporary literary prose.”* The FEI, therefore, submitted that if the Appellant had read the information of the CES System on the FEI website he should have

been able to understand it, based on his level of English as verified by his score in the English proficiency test.

- n. The Appellant stated he did not have to be fluent in English provided he was fluent in French and cited Article 147.3 of the GRs in support of his claim. The FEI indicated that this Article does not apply to all Officials. Furthermore, the Appellant had never actually been appointed as President of the Ground Jury for any of the events listed in this Article, so the FEI stated it was unclear why he relied on this Article.
- o. The Appellant found it “*curious*” that nobody explained the CES system to him in French. As published on the FEI website, English language proficiency is required for the CES. The FEI noted the Appellant could have approached the FEI Education Director, who is proficient in French, for an explanation in French but he chose not to do so. However, the FEI provided a document showing the Appellant previously attended seven (7) refresher seminars, which were all given in English by the same Course Director, Mr. Ellenbruch.

No Irregularity with the Mock Exams

- p. The mock exams were accessible to all Officials from 16 December 2019 up until the Officials logged onto their FEI Campus accounts to take the CES Online Assessment. The FEI highlighted the Appellant had already admitted he did not test himself with the mock exam before attending the Prague Refresher.
- q. The FEI explained that the Appellant tried to access the mock exam after he had already logged onto and started the CES Online Assessment. This is confirmed by Mr. Ellenbruch. The mock exam was rightly blocked because if it had not been, it would have been possible for the Appellant to use the mock exam to check answers to the actual CES Online Assessment. As stated, the mock exam is taken from the same pool of questions as the CES Online Assessment.
- r. The FEI submitted it was surprising that the Appellant claimed the blocking of the mock exam was “*another violation of the rules*” when he had already admitted in an email of 28 January 2020 to the FEI Director of Education and Officials that: “*I recognize that it was a misunderstanding for my side.*” The FEI added it was somewhat

disingenuous of the Appellant to accuse the FEI of committing a “*violation of the Principle of Equality, established in Article 2 of the FEI Statutes*” in circumstances where he admitted that the issue of access to the mock exam was a misunderstanding on his part.

Oral Assessment Followed Correct Procedures

- s. The FEI submitted the Appellant’s statement that he “*was only warned about the oral exam 15 minutes before it happened*” was simply incorrect. After the Appellant failed the CES Online Assessment, Mr. Ellenbruch informed the Appellant at approximately 13:30 that he would have to do an oral assessment, which would take place at the end of the presentations later that afternoon. Furthermore, had the Appellant familiarised himself with the CES, he would have known he would have to pass an oral assessment if he failed the CES Online Assessment.
- t. The FEI further disagreed with the Appellant’s claim that for the oral assessment, “*...there was no course director but only an ad hoc Jury.*” Mr. Ellenbruch carried out the oral assessment with the Appellant. He asked two other FEI jumping course directors to sit in on the oral assessment with him.

IT Glitch – Auto-Generated Email of 18 January 2020

- u. The FEI did not deny the Appellant received an auto-generated email informing him that he had not reached the passing grade and he could try again by accessing the course. The FEI advised this email was only intended to be sent when Officials taking the CES Online Assessment outside of the context of a CES In-Person Maintenance Course did not obtain the passing grade. The email was sent because of a bug in the computer system.
 - v. The FEI submitted this auto-generated email did not change the fact that the Appellant did not pass the CES Online Assessment. By the time the Appellant received this email, he had already been provided with clear instructions on the CES Online Assessment at the Prague Refresher and had been warned not to take it if he was not prepared.
- 4.2. Based on its submissions, the FEI respectfully requested the Tribunal to:
- a. dismiss the Appeal in its entirety;
 - b. confirm the decision to transfer the Appellant down to a Level 3

Jumping Judge; and

- c. determine the Appellant will bear the costs of the Appeal and make a contribution of CHF4,000 towards the FEI's legal costs.
- 4.3. The FEI requested a contribution towards the FEI's legal costs because of the Appellant's misleading claims and statements including, but not limited to, alleging:
- a. he was not informed about the CES Online Assessment at the Prague Refresher (when he clearly was);
 - b. that he was forced to do the assessment (when he was clearly told it was optional);
 - c. that the Course Director did not do the oral assessment (when he clearly did)

The FEI was required to spend a considerable amount of time and effort re-watching the video footage, obtaining the original sign-in list from the IJOC, obtaining a witness statement from the Course Director. Furthermore, the situation the Appellant finds himself in was entirely avoidable. If he was not prepared to take the CES Online Assessment during the Prague Refresher, he simply should not have taken it and he would have maintained his status as a Level 4 Judge. He would have had until 31 March 2020 to pass the CES Online Assessment if he wanted to officiate at Level 4 past that date.

- 4.4. The FEI noted that the Appellant's transfer down to Level 3 is not permanent. The Appellant has the opportunity to be promoted to Level 4 by meeting the relevant requirements, which will involve passing a new CES Online Assessment.

5. Jurisdiction and Admissibility of the Appeal

- 5.1. In accordance with Article 18.1 of the IRs, the Tribunal has jurisdiction to hear and determine appeals lodged in accordance with Article 162 of the GRs.
- 5.2. The Tribunal takes note that the Appellant lodged his Appeal in accordance with Article 162 of the GRs. Article 162 of the GRs provides an appeal may be lodged against any decision made by any person or body authorised under the Statutes, GRs or Sport Rules, provided it is admissible. The Appellant lodged an Appeal against the decision made on 3 February 2020 within the 21 days required, namely on 24 February 2020. The Appellant also provided a deposit as required

under Article 162.6 of the GRs.

- 5.3. The FEI did not object to the admissibility of the Appeal. Therefore, the Tribunal finds the Appeal is admissible.

6. Decision

- 6.1. Having taken into account all applicable rules and regulations as well as the submissions and evidence provided by the Parties, the Tribunal has to decide whether to allow the Appeal. This involves weighing the Appellant's submissions and evidence against that of the FEI's.
- 6.2. The Tribunal acknowledges the CES is a new evaluation system that came into force on 1 January 2020. The CES works on a 3 year cycle applicable to all Officials. Officials are required to take CES Online Assessment in years 1 and 2, and attend an In-Person Maintenance Course in year 3. The FEI provided Officials with advance warning of this new evaluation system and uploaded detailed information about the CES on the FEI website. The CES is fully described in sections 1.1. to 1.10.
- 6.3. The Tribunal notes the Appellant has been a Level 4 Jumping Judge from 2013 to 17 January 2020 when he was transferred down to Level 3. He is also a Level 2 Jumping Stewart. He has judged internationally for more than 21 years. He has participated as an Official in important jumping competitions, spanning three continents and 27 countries. He scored a level "B2" on his English proficiency exam, which indicates he can understand extended speech and lectures. Therefore, the Tribunal believes the Appellant is a sophisticated professional.
- 6.4. As a result, the Tribunal was perplexed with the Appellant's reasons for why he thought he had to take the CES Online Assessment at the Prague Refresher. Many of his allegations were unsubstantiated. In some cases, his allegations were contrary to the written material provided in advance of the Prague Refresher and posted on the websites of the FEI and IJOC as well as the information he received in-person at the Prague Refresher. Given the Tribunal's comments about the Appellant in section 6.3, the Tribunal finds it difficult to believe the Appellant misunderstood the instructions that the CES Online Assessment was optional for Group A Officials at the Prague Refresher.
- 6.5. The FEI, on the other hand, presented convincing submissions substantiated by evidence such as:
 - an email from the IJOC Secretary General to the attendees at the Prague Refresher;

- an extract from an IJOC document showing the difference between Group A and B;
 - an extract from the programme of the Prague Refresher;
 - the sign-in sheet;
 - a transcript of the video taken at the Prague Refresher;
 - a screenshot from the video footage, showing the Appellant with a raised hand;
 - a screenshot of the CES information page indicating that Officials are assessed on their English language proficiency;
 - the Appellant's refresher seminar history;
 - a screenshot of the CES, In-Person Maintenance Course section of the FEI website; and
 - Mr. Ellenbruch's witness statement.
- 6.6. The FEI refuted all the allegations raised by the Appellant. The FEI's responses are summarised at length in section 4.1. Therefore, it is not necessary to repeat them all here. However, some examples include, but are not limited to, the following:
- a. The Appellant was informed in advance of the Prague Refresher that Officials in Group A could take the CES Online Assessment. The extract from the IJOC documents did not indicate it was mandatory for Group A.
 - b. The programme of the Prague Refresher, which the Appellant attached to his own submissions on this Appeal, clearly indicated that there would be a "FEI Competency-Based Online Assessment". It is noteworthy that of the 70 Officials who took the CES Online Assessment, the Appellant was the only one who was "surprised" about the assessment.
 - c. The Appellant voluntarily decided to take the CES Online Assessment. He raised his hand to confirm his intention to take it and also signed the sign-in sheet. The FEI Director of Education and Officials clearly stated: "*...nobody in Group A is forced to do the assessment here in Prague.*"
 - d. The mock exam was rightly blocked from the moment the Appellant started the CES Online Assessment. The Appellant admitted in an email of 28 January 2020 that the issue of access to the mock exam was a misunderstanding on his part.

- e. The oral assessment followed the correct procedures. Contrary to the Appellant's statements, the oral assessment occurred at the end of the presentations on 18 January and was carried out by the Course Director.
- 6.7. As a result, the Tribunal finds the CES Online Assessment that the Appellant took at the Prague Refresher is valid and his failing grade stands. The decision to transfer him down to a Level 3 Jumping Judge is, therefore, maintained.
- 6.8. The Tribunal finds the FEI's request for costs is reasonable given the FEI spent time and effort re-watching the video footage and obtaining documents to refute the Appellant's claims and statements. The Tribunal agrees this situation was avoidable.
- 6.9. As a result, the Tribunal decides as follows:
 1. the Appeal is admissible;
 2. the Appeal is dismissed;
 3. the Decision to transfer the Appellant down to a Level 3 Jumping Judge is maintained;
 4. all other requests are dismissed;
 5. the Appellant's deposit will not be returned to him; and
 6. the Appellant is ordered to contribute to the costs of **four thousand Swiss Francs (CHF 4,000)**.
- 6.10. According to Article 165 of the GRs, this decision is effective from the date of oral or written notification to the affected party or parties.
- 6.11. According to Articles 162.1(b) and 162.7 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.

DECISION TO BE FORWARDED TO:

- a. The Parties: Yes**
- b. Any other: No**

FOR THE PANEL



Ms. Harveen Thauli, one member panel