



## **DECISION of the FEI TRIBUNAL**

**dated 17 March 2011**

**Positive Medication Case No.:** 2010/02

**Athlete / NF:** Jose Henrique Fernandes Pereira / POR     **FEI ID:** 10043026

**Event:** CDI Arruda Dos Vinhos (POR)

**Sampling Date:** In-competition test, 12 December 2009

**Prohibited Substances:** Cannabinoids

### **1. COMPOSITION OF PANEL**

Mr Ken E. Lalo  
Mr Patrick A. Boelens  
Mr Pierre Ketterer

### **2. SUMMARY OF THE FACTS**

**2.1 Memorandum of case:** By Legal Department.

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

**2.3 Oral hearing:** None: by correspondence.

### **3. DESCRIPTION OF THE CASE FROM THE LEGAL VIEWPOINT**

**3.1 Articles of the Statutes/ Regulations which are applicable or have been infringed:**

Statutes 22<sup>nd</sup> edition, effective 15 April 2007, updated 19 November 2009 ("**Statutes**"), Arts. 34 and 37.

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

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

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

World Anti-Doping Code 2009.

**3.2 Athlete:** Mr. José Henrique Fernandes Pereira

**3.3 Justification for sanction:**

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

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

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

**4. DECISION**

**4.1 Factual Background**

1. Mr. José Henrique Fernandes Pereira (the "**Athlete**") participated at the CDI in Arruda Dos Vinhos, POR (the "**Event**"), from 11 to 13 December 2009.
2. On 12 December 2009, the Athlete was selected for in-competition testing. Analysis of the urine sample no. 394775 taken from the Athlete at the Event was performed at the Laboratório de Análises de Dopagem ("**LAD**") in Portugal, a WADA accredited laboratory. The analysis revealed the presence of Cannabinoids (Certificate of Analysis dated 9 February 2010).
3. The Prohibited Substances detected are Cannabinoids. Cannabinoids are metabolites of Cannabis and are listed in the category of S8 Prohibited Substances on the 2009 Prohibited List.

While the presence of Cannabinoids in the Athlete's sample constitutes an *Anti-Doping* rule violation, Cannabinoids are classified as "Specified Substances" on the Prohibited List and are therefore treated differently than other Prohibited Substance categories.

#### **4.2 The B-Sample Analysis**

4. Following an error of communication, on 18 February 2010, the LAD proceeded to the analysis of the B-Sample. Whereas the Athlete had not been officially notified of the positive test result by the FEI at the time of the B-Sample analysis, the Federacao Equestre Portuguesa ("POR NF") had informed the Athlete of the details of the B-Sample analysis, and the Athlete attended the respective analysis. The analysis of urine B-Sample no. 394775 confirmed the presence of Cannabinoids (Certificate of Analysis dated 19 February 2010).

#### **4.3 The Proceedings**

5. The presence of the Prohibited Substances following the laboratory analyses, the possible rule violation and the potential consequences, were officially notified to the Athlete by the FEI Legal Department on 11 March 2010.
6. In his submission of 26 March 2010, the Athlete explained that he had been invited to a friend's birthday party in Viana do Castelo, Portugal in early December 2009 and participated in smoking a cannabis cigarette that was passed around and smoked by others. The Athlete mentioned that he was tempted to join by an environment of others that smoked on that occasion, although he does not have the habit of using any kind of drugs. The Athlete indicated that the decision to smoke cannabis during his friend's birthday celebration was "*an isolated act, adopted in a friendship environment*". The Athlete explained that he does not have the intent to repeat smoking cannabis, and that he did not know that it could lead to problems for him in sports competitions. The Athlete therefore argued that simple negligence led to the positive test result, and that there had been no deliberate conduct with the aim of improving sporting performance. Lastly, the Athlete argued that Cannabinoids do not have performance enhancing effects.
7. The FEI responded to the Athlete's submission on 12 May 2010. The FEI argued that the Athlete had not established, as required under FEI ADRHA Article 10.4, any sufficient ground for a reduction of the otherwise applicable sanction, and that he had not supported the source of the Prohibited Substances insofar as he had not indicated any precise details of his alleged consumption of cannabis. The FEI rejected the Athlete's contention that cannabis does not have any performance enhancing effect, relying on FEI ADRHA Article 4.3, which

provides that whether or not a substance is prohibited is final and shall not be subject to any challenge by Athletes based on the argument that the substance did not have the potential to enhance performance. With regard to the question of the intention to enhance performance, the FEI highlighted that the Athlete had not submitted, as required under FEI ADRHA Rules Article 10.4, any corroborating evidence for the absence of intent to enhance performance. Finally, the FEI took the view that the Athlete, being 25 years old at the time of the incident and being an international competitor, had acted negligently when he yielded to temptation during the birthday celebration.

8. In his responsive submission of 18 June 2010, the Athlete provided further details of the background of his cannabis consumption, and also provided witness statements by two of his friends, confirming that the Athlete had consumed the cannabis at the party on 30 November 2009, and that they had been surprised seeing the Athlete consuming the drugs since he did not use them normally. Together with the submission, the Athlete also submitted a written statement by his employer, the Horse-riding and Bullfighting Cultural Association. According to that statement, the Athlete has served the Association since 2007, and is both looking after the horses of the Association's clients, as well as acting as teaching supervisor of about 50 pupils, ages six to thirty years-old. With regard to the proof for the absence of intent to enhance performance, the Athlete referred to the statements by his friends, and further emphasized that the consumption had taken place in a non-sport related environment, and in connection with recreation. In reference to the FEI Tribunal decision in the case of Daniel Pinto, Case 2007/03, the Athlete further argued that derivatives of cannabis products are not as a rule substances which may improve sporting performance. Lastly, the Athlete argued that in light of the fact that he had not consumed any Cannabis before the party in question, he did not have any experience with the substance, and therefore, his behavior could only be qualified as slightly negligence.

#### **4.4 Jurisdiction**

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

#### **4.5 The Decision**

10. The FEI 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 LAD are accurate. The FEI Tribunal is satisfied that the A-Sample test results show the presence of the Prohibited Substances in a quantity which exceeds the threshold level, i.e.

15 ng/ml. The B-Sample analysis results confirmed the presence of the Prohibited Substances. The Athlete did not contest the accuracy of the testing methods or the test results and positive findings. The FEI has thus sufficiently proven the objective elements of a doping offence pursuant to FEI ADRHA Rules Article 2.1.1, in accordance with FEI ADRHA Rules Article 3.

11. Pursuant to FEI ADRHA Rules Article 10.2, the mandatory period for a first breach of the FEI ADRHA Rules is a period of two years' ineligibility. However, depending on the circumstances of the specific case, a reduction or even elimination of this period of ineligibility is possible under the conditions of FEI ADRHA Rules Articles 10.4 and 10.5.
12. FEI ADRHA Rules Article 10.4 is applicable to this case, since Cannabinoids are classified as Specified Substances. In this context, the FEI Tribunal would like to correct the statement by the Athlete that Specified Substances are generally less apt to improve sporting performance. To start with, the FEI ADRHA Rules are clear in stating that the classification by WADA as a Prohibited Substance is final and not contestable. Further, the Athlete is basing his argument on a case that had been decided under the 2007 WADA Code and the FEI ADRHA applicable in 2007. In the meantime, the concept of Specified Substances was revised by WADA, and the provision cited by the Athlete of the 2007 Prohibited List is not applicable to the 2009 Prohibited List and this case. In addition, Comment to Article 10.4 WADA Code applicable at the time of the Event unequivocally states that Specified Substances are not necessarily considered as *"less serious agents than other Prohibited Substances"*. According to the Comment, there is simply *"a greater likelihood that Specified Substances, as opposed to other Prohibited Substances, could be susceptible to a credible non-doping explanation"*. The Comment further clearly stipulates that as a further requisite of FEI ADRHA Rules Article 10.4, the absence of intent to enhance sport performance must be established to the comfortable satisfaction of the hearing panel. Therefore, an Athlete who does not meet the criteria under FEI ADRHA Article 10.4, would still receive a two-year period of Ineligibility.
13. Following the supplemental submission by the Athlete, in particular the witness statements of the two friends of the Athlete, the Tribunal considers that the Athlete was able to establish how the Prohibited Substances entered his body. The Tribunal must therefore determine whether the Athlete has established that the use of the Specified Substance Cannabinoids *"was not intended to enhance sport performance"*.
14. The FEI Tribunal considers that the Athlete established through his explanations and the supporting evidence that the use of the Specified Substance was not intended to enhance his sport

performance. The FEI Tribunal determines however that the Athlete was, at the very least, grossly negligent, primarily for not knowing that Cannabinoids are Prohibited Substances, and secondly, in competing at the Event some 12 days after having consumed the Prohibited Substances for no therapeutic reason.

15. In deciding the sanctions the FEI Tribunal considers, on the one hand, the doping violation, the type of substance, the Athlete's professional status and the level of the Event and, on the other hand and in mitigation, the fact the Athlete has established the absence of intent to enhance sport performance to its comfortable satisfaction, as well as the Athlete's prior clean record.
16. The range of penalties available for first time offenders such as the Athlete with a connection to a proven violation relating to the presence of a Specified Substance during the competition is, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years' of Ineligibility.

#### **4.6 Disqualification**

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

#### **4.7 Sanctions**

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

- 1) The Athlete shall be suspended for a period of **three (3) months** to be effective immediately and without further notice from the date of the notification.
- 2) The Athlete is fined **CHF 2,000.-**.
- 3) The Athlete shall contribute **CHF 1,500.-** towards the legal costs of the legal procedure.

**5. DECISION TO BE FORWARDED TO:**

**5.1 The person sanctioned:** Yes

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

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

**5.4 Any other:** WADA

**FOR THE PANEL**

A handwritten signature in blue ink, appearing to read "Ken Lalo", is centered on the page.

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**THE CHAIRMAN** Ken Lalo