Arbitration CAS 2022/A/9024 Roberto Gottarelli v. Fédération Equestre Internationale (FEI), consent award of 20 September 2022

Panel: Mr Nicolas Cottier (Switzerland), Sole Arbitrator

Equestrian
Doping (stanozolol)
Ratification and incorporation of a settlement agreement in a consent award
Verification of the bona fide nature of the settlement agreement

1. **In accordance with Article R56 of the CAS Code as well as under Swiss law, an arbitration tribunal sitting in Switzerland may issue an award embodying the terms of the parties' settlement, if the contesting parties agree to such a termination of their dispute. The arbitral tribunal's endorsement of a settlement agreement and its incorporation into an award serves the purpose of vesting the settlement agreement with a res judicata effect, enabling and facilitating the enforcement of such settlement agreement.**

2. **Even if all the parties to a dispute have agreed to embody part of the settlement agreement in a consent award, the *bona fid*e nature of the settlement agreement must be verified to ensure that the parties are not manipulating the consent award mechanism as an instrument of fraud, and that settlement terms are not contrary to public policy principles or mandatory rules of the law applicable to the dispute.**

I. THE PARTIES

1. Mr Roberto Gottarelli (the "Appellant" or "Mr Gottarelli") is an Italian citizen who acted as an Additional Person Responsible ("APR") in accordance with Article 118.3 of the FEI General Regulations, in the context of a decision that he made about a horse. Mr Roberto Gottarelli is also a registered FEI Permitted Treating Veterinarian ("PTV"), and the registered National Head Veterinarian ("NHV") of San Marino.

2. The Fédération Equestre Internationale (the "Respondent" or "FEI") is the IOC-recognised international governing body for the equestrian sport disciplines of jumping, dressage and para-dressage, eventing, driving and para-driving, endurance and vaulting.

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. FACTS

4. On 3 October 2022 a sample was collected and an Adverse Analytical Finding ("AAF") was found on the FEI registered horse HALO, FEI ID:105ZA57 (the "Horse").

5. The analysis of the Horse's A sample revealed the presence of Stanozolol, which is an anabolic steroid used to improve performance by promoting muscular development and is classified as a Banned Substance under the FEI Equine Prohibited Substances List and prohibited at all times.

6. The positive finding of Stanozolol in the Horse's sample gives rise to an Anti-Doping Rule Violation under Presence of a prohibited substance in Art. 2.1 of the EADR. In addition, the Use of Stanozolol at any time constitutes an Anti-Doping Rule Violation under Use in Art. 2.2 of the EADR.

7. In the proceedings against the Person Responsible ("PR") of the Horse, Mr Giuseppe DE LUCA (FEI ID: 10046681), who had participated with the Horse in the FEI Event, CSI2* in Oliva in Spain, between 29 September and 4 October 2020 – (the "Event"), the FEI was made aware that, a week before the Event, the Appellant had used the product Sungate, containing Stanozolol.

8. As Mr Gottarelli is registered with the FEI and had used a Banned Substance on a FEI Horse, he was then considered as an APR for the Horse, and the FEI therefore opened disciplinary proceedings against him.

9. By notification letter dated 9 March 2021, the FEI informed Mr Gottarelli of the violation of Article 2.1 and 2.2, namely the Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample and the Use of a Banned Substance and/or its Metabolites or Markers, of the FEI Equine Anti-Doping Rules (the "EADRs"). This notification was based on the AAF and the Appellant's Use of a Banned Substance on the Horse.

10. In accordance with Article 7.4 of the EAD Rules, Mr Gottarelli was provisionally suspended, as of the date of notification, 9 March 2021.

11. A Final Hearing took place before the FEI Tribunal on 17 May 2022 and on 23 June 2022 a decision was issued by the FEI Tribunal, imposing a suspension of 2 years on Mr Gottarelli (the "Appealed Decision").

III. PROCEEDINGS BEFORE CAS

12. On 14 July 2022 Mr Gottarelli filed a Statement of Appeal with the CAS (the "Appeal"), with the following requests for relief:

"(1) to upheld the Appeal and set aside the decision of the FEI Tribunal dated 23 June 2022;

(2) to order the Respondent to reimburse the Appellant's legal fees and other expenses related to the present arbitration".

13. On 18 July 2022, the Appellant's legal counsel informed CAS that the Parties were exploring the possibility of a settlement and requested for the extension of the time limit to file the appeal brief.

14. The CAS Court Office confirmed that the time limit to file the appeal brief was extended until 4 August 2022.

15. On 2 August 2022, the Appellant asked for a new extension of the time limit. His request was granted by the CAS Court which extended the time limit for another 15 days, namely until 18 August 2022.

16. On 18 August 2022, the FEI submitted to CAS the settlement agreement executed between the Parties (the "Settlement Agreement") and asked that the terms and conditions of such Settlement Agreement be embodied in a CAS Consent Award. FEI, also on behalf of the Appellant, informed that the Parties agreed to jointly nominate Mr Nicolas Cottier as Sole Arbitrator.

17. On 22 August 2020, the CAS informed the Parties that Mr Nicolas Cottier, Attorney-at-Law in St-Prex, Switzerland, who had been jointly nominated by the Parties, had been appointed as Sole Arbitrator in the present matter.

IV. JURISDICTION

18. The jurisdiction of the CAS arises from Article 12.3 of the FEI Equine Anti-Doping and Controlled Medication Regulations (the "EAD Rules") and is not disputed by the Parties. Therefore, the Sole Arbitrator has jurisdiction to render this Consent Award.

V. ADMISSIBILITY

19. In accordance with Article 12.3 of the EAD Rules and Article R49 of the CAS Code, Mr Gottarelli's appeal was timeously filed. It complied with all the other requirements set forth by Article R48 of the CAS Code. Its admissibility is not disputed by the FEI. The Sole Arbitrator therefore confirms that this appeal is admissible.

VI. THE PARTIES' AGREEMENT

20. The Parties agreed that a Consent Award should be issued by the CAS, ratifying their Settlement Agreement, which reads as follows (emphasis in the original):

"[…]

*This Settlement Agreement (the "**Agreement**") between Mr Roberto Gottarelli and the FEI describes the terms upon which the parties are willing to settle the appeal currently pending before the Court of Arbitration for Sport ("**CAS**") in case number CAS 2022/A/9024 Roberto Gottarelli v FEI (the "**CAS Appeal**").*

1. WHEREAS:

*1.1 The Fédération Equestre Internationale (the "**FEI**") is the IOC-recognised international governing body for the equestrian sport disciplines of jumping, dressage and para-dressage, eventing, driving and para-driving, endurance and vaulting. As part of its governance responsibilities, the FEI issues various regulations to protect the integrity of the sport, including Equine Anti-Doping and Controlled Medication Regulations (the EADCM Regulations; based on the World Anti-Doping Code) that prohibit the administration of certain Prohibited Substances to competition horses at any time (so-called Banned Substances) and certain Prohibited Substances to competition horses in competition (so-called Controlled Medication Substances) (the "**Respondent**").*

*1.2 Mr. Roberto Gottarelli, is for the purpose of this case, the Additional Person Responsible (the "**APR**") in accordance with Article 118.3 of the FEI General Regulations, since he made a relevant decision about the Horse when he used a Banned Substance on a FEI Horse.*

*1.3 Mr. Roberto Gottarelli, FEI ID: 10051043, is also a registered FEI Permitted Treating Veterinarian ("**PTV**"), and the registered National Head Veterinarian ("**NHV**") of San Marino. As a PTV, a NHV and a member of Italian Equestrian Federation and San Marion Equestrian Federation (the "ITA NF and the SMR NF") both being members of the FEI, the Appellant was bound by the EADCM Regulations (the "**Appellant**").*

*1.4 The case arises from Sample Collection on 3 October 2022 and an Adverse Analytical Finding ("**AAF**") of the Horse HALO, FEI ID: 105ZA57, which is a FEI registered horse, hence the FEI rules and regulations applies to all such horses at all times.*

1.5 Analysis of the Horse's A sample revealed the presence of Stanozolol. Stanozolol is anabolic steroid used to improve performance by promoting muscular development and is classified as a Banned Substance under the FEI Equine Prohibited Substances List and prohibited at all times.

1.6 The positive finding of Stanozolol in the Horse's sample gives rise to an Anti-Doping Rule Violation under Presence of a prohibited substance in Art. 2.1 of the EADR. In addition, the Use of Stanozolol at any time constitutes an Anti-Doping Rule Violation under Use in Art. 2.2 of the EADR.

1.7 In the proceedings against the Person Responsible ("PR") of the Horse, Mr. Giuseppe DE LUCA (FEI ID: 10046681), who had participated with the Horse in the a (sic) FEI Event, (CSI2 in Oliva in Spain, between 29 September to 4 October 2020 – (the "**Event**"), the FEI was made aware that the Appellant had used the product Sungate containing Stanozolol on the Horse only a week before the Event.*

1.8 Given that the Appellant is registered with the FEI and have used a Banned Substance on a FEI Horse, he is considered the Additional Person Responsible for the Horse, and the FEI therefore opened disciplinary proceedings against him.

*1.9 By notification letter dated 9 March 2021, the FEI informed the Appellant of violations of Article 2.1 and 2.2 (The Presence of a Banned Substance and/or its Metabolites or Markers in a Horse's Sample and the Use of a Banned Substance and/or its Metabolites or Markers) of the FEI Equine Anti-Doping Rules (the "**EADRs**") based on the Laboratory's adverse analytical finding of Stanozolol in the Horse's Sample collected at the Event, and the Appellant's Use of a Banned Substance on the Horse.*

1.10 In accordance with Article 7.4 of the EAD Rules, the Appellant was provisionally suspended, as of the date of notification, 9 March 2021.

*1.11 A Final Hearing took place before the FEI Tribunal on 17 May 2022. On 23 June 2022 a decision was issued by the FEI Tribunal, imposing a suspension of 2 years on the Appellant (the "**Appealed Decision**").*

*1.12 On 14 July 2022 Mr Gottarelli filed a Statement of Appeal with the CAS (the "**Appeal**").*

1.13 Mr Gottarelli, together with his new legal counsel, seek to enter into a settlement agreement with the FEI before CAS.

1.14 In particular, Mr Gottarelli before CAS admits the intra-articular injection of Stanozolol and accepts the sanctions as per the FEI Tribunal decision, (apart from 1.14 below) namely:

a) a period of Ineligibility of two (2) years on the Appellant and that the Provisional Suspension served by the Appellant shall be credited against the imposed Ineligibility Period in accordance with Article 10.10.4 of the EADRs;

b) a fine in the amount of five thousand five hundred Swiss Francs (5,000 CHF); and

c) contribution two thousand Swiss Francs (CHF 2,000) for costs that the FEI has incurred in these proceedings.

1.15 Apart from two exceptions, namely:

1. That backdating of the suspension is applied for the case. The Ineligibility period is to be backdated to Sample Collection i.e. 3 October 2020, based on Delays not attributable to the Additional Person Responsible in accordance with Art 10.13.2 EADR, since the FEI notified him several months after the Sample Collection, as he had been notified/charged based on his statement given during the PR's proceedings.

2. That the decision of the FEI Tribunal is taken down from the FEI website once the suspension has been served, i.e. on 3 October 2022. The FEI agrees to remove the published FEI decision from the FEI website once the suspension has been served in accordance with Art. 14.3.3 EADR.

1.16 The Appellant's admission and acceptance of consequences allows for a settlement agreement before CAS.

1.17 The Parties agree to a sole arbitrator to be appointed for the case.

2. NOW, THEREFORE, THE PARTIES HAVE AGREED TO THE FOLLOWING TERMS FOR DISPOSAL OF THE CAS APPEAL:

2.1 The Parties agree as follows:

(a) The Appealed Decision shall be upheld, apart from the starting point of the Ineligibility Period. (Please see d) below.

(b) Mr Gottarelli admits violations of Article 2.1 and 2.2 of the EADR.

(c) Mr Gottarelli bears Fault and Negligence for the violation and, in accordance with Article 10.2 of the EADR, shall be sanctioned with a period of Ineligibility of 2 years.

(c) The Ineligibility period is to be backdated to the date of Sample Collection, based on Delays not attributable to the Additional Person Responsible in accordance with Art 10.13.2 EADR, commencing on 3 October 2020 and ending on 3 October 2022.

(e) This violation of the EAD Rules shall be considered a prior violation for the purpose of Article 10.9 (Multiple Violations) of the EADR.

(f) Mr Gottarelli agrees to pay the fine of CHF 5 000.

(g) Mr Gottarelli agrees to pay the legal cost before the FEI Tribunal of CHF 2 000.

(h) Any procedural costs of the CAS shall be borne by the Appellant.

(i) Each Party shall bear its own legal costs and expenses incurred in connection with the present proceedings.

*2.2 Immediately upon execution of this Agreement by both Parties, Mr Gottarelli shall send a letter the CAS Court Office, enclosing a signed copy (or, if signed in counterparts, copies) of this Agreement and seeking the ratification of the terms of paragraph 2.1 of this Agreement in a CAS Arbitral Award rendered by consent of the Parties in accordance with R56 of the CAS Code ("**Consent Award**").*

2.3 Without limitation to paragraph 2.2 above, the Parties shall do all things reasonably necessary in order to procure, as soon as reasonably practicable following the execution of this Agreement, that the substantive terms of their agreement, as set out at paragraph 2.1 above, shall be embodied in a Consent Award.

2.4 The terms set out in this Agreement have been agreed as a full and final settlement of all claims relating to the subject-matter of these proceedings.

2.5 Accordingly, any and all other claims for relief that any party might otherwise have made against another in relation to the subject-matter of these proceedings are released and discharged unconditionally, and they may not be pursued in any form hereafter.

2.6 Any dispute arising from or related to the present Settlement Agreement will be submitted exclusively to the Court of Arbitration for Sport in Lausanne, Switzerland, and resolved definitively in accordance with the Code of sports-related arbitration.

Signature Appellant

[…]

Signature Respondent

[…]*".*

VII. RATIFICATION OF THE PARTIES' AGREEMENT BY THE CAS

21. Article R56 of the CAS Code determines the following:

"[…] *Any settlement may be embodied in an arbitral award rendered by consent of the parties".*

22. Under Swiss law, an arbitration tribunal sitting in Switzerland has authority to issue an award embodying the terms of the parties' settlement, if the consenting parties agree to such a termination of their dispute. The Sole Arbitrator's ratification of the Parties' agreement and its incorporation into this Consent Award serves the purpose of vesting the agreement with a *res judicata* effect and of enabling the enforcement of their said agreement.

23. It is the task of the Sole Arbitrator to verify the *bona fide* nature of the agreement to ensure that the will of the Parties has not been manipulated to commit fraud and to confirm that the terms of the agreement are not contrary to public policy principles or to mandatory rules of the law applicable to the dispute.

24. After reviewing the terms of the Settlement Agreement and the evidence on file, the Sole Arbitrator is satisfied that the Parties' agreement constitutes a *bona fide* settlement of the dispute.

25. The Sole Arbitrator directs the Parties to fully comply with the terms of the Settlement Agreement.

26. The above conclusion makes it unnecessary for the Sole Arbitrator to consider any other requests submitted by any of the Parties.

27. Accordingly, all other and further motions or prayers for relief in both sets of proceedings are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The Parties' Settlement Agreement dated 17 and 18 August 2022 and submitted to the Court of arbitration for Sport on 18 August 2022 is hereby ratified with the consent of the Parties, and its terms are incorporated into this arbitral consent award as follows:

   2.1 The Parties agree as follows:

   (a) The Appealed Decision shall be upheld, apart from the starting point of the Ineligibility Period. (Please see d) below.

   (b) Mr Gottarelli admits violations of Article 2.1 and 2.2 of the EADR.

   (c) Mr Gottarelli bears Fault and Negligence for the violation and, in accordance with Article 10.2 of the EADR, shall be sanctioned with a period of Ineligibility of 2 years.

   (d) The Ineligibility period is to be backdated to the date of Sample Collection, based on Delays not attributable to the Additional Person Responsible in accordance with Art 10.13.2 EADR, commencing on 3 October 2020 and ending on 3 October 2022.

   (e) This violation of the EAD Rules shall be considered a prior violation for the purpose of Article 10.9 (Multiple Violations) of the EADR.

   (f) Mr Gottarelli agrees to pay the fine of CHF 5 000.

   (g) Mr Gottarelli agrees to pay the legal cost before the FEI Tribunal of CHF 2 000.

   (h) Any procedural costs of the CAS shall be borne by the Appellant.

   (i) Each Party shall bear its own legal costs and expenses incurred in connection with the present proceedings.

2. Each Party is hereby ordered to perform the obligations and duties as per the Settlement Agreement dated 17 and 18 August 2022.

3. The arbitral procedure *CAS 2022/A/9024 Roberto Gottarelli v. Fédération Equestre Internationale (FEI)* is terminated and deleted from the CAS roll.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.