



FEI World Equestrian Games™ 2018

Decision of the Appeal Committee

Date: 14 September 2018

Details	
Appeal Committee Members:	Ken Lalo, President Elizabeth Van Schelle Pierre Ouellet
Competition:	FEI World Equestrian Games 2018 Team/Individual Endurance Competition held on 12 September 2018
Discipline:	Endurance
Appeal Submitted By - Name: - Title: - NF/NOC:	Mr Venancio Garcia Ovies Secretary General Real Federacion Hipica Espanola NF Spain
Appeal Received By - Name: - Title: - NF/NOC:	Ms Sabrina Ibanez FEI Secretary General With copies to the FEI legal department and FEI Discipline Manager
Time Appeal Submitted:	Email dated 13 September 2018 at 4:42
Appeal filed within time limit (<i>within 1 (one) hour of the decision of the Ground Jury</i>):	Yes <input type="checkbox"/> XX see details below regarding admissibility No <input type="checkbox"/>
Appeal Signed:	Yes <input type="checkbox"/> XX email not signed but confirmed before the AC No <input type="checkbox"/>
Deposit Paid (<i>equivalent of CHF 150¹</i>):	Yes <input type="checkbox"/> XX No <input type="checkbox"/>
Name of Horse & FEI ID:	Principal issue relating to horses/riders of the Spanish team competing at the event as well as horses/ riders of other teams
Name of Athlete & FEI ID:	See above
Details of Supporting Evidence Submitted (if any):	See below

¹ Approximately US\$150

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Names of Witnesses (if any):	See below
Details of Hearing with the Parties Concerned - Time: - Location: - Attended by:	See below 13 September 2018 Starting at 12:35 up an until app. 13:45 FEI tent at the Tryon WEG 2018 See below
Applicable FEI Rules:	See below
Appeal Upheld:	Yes <input type="checkbox"/>
	No <input type="checkbox"/> XX

A. Details of the Appeal (Background):

1. Certain teams were apparently misdirected at the beginning of the Endurance Competition held on 12 September as part of the FEI World Equestrian Games 2018 and constituting the team and individual world championship in Endurance (the "**Competition**"). Thus, certain riders rode a different course during the first loop. The misdirected riders followed on their first loop a different track and covered a somewhat shorter distance.
2. When this error was discovered, a decision was taken by President of Ground Jury (in consultation with the Ground Jury), representative of the Organizing Committee, the Foreign Vet Delegate, the President of Vet Commission and a Technical Delegate (the "**First Decision**") confirming that the following will apply to the Competition:

"When combinations arrive at the Vet Gate following loop 1, a vet check will take place. The race will be re-started as a 120km race 45 minutes after the last Horse has been inspected at the vet gate. Only horses that have passed the vet check will be eligible to start. Only horses that had started at the original start are eligible to participate."

3. The revised competition thus started somewhat later and was to be held over 120 km going through four Vet gates in which the horses as according to the rules had to pass successfully the veterinary examination and be cleared for continuation (the "**Revised Competition**"). The fourth and final gate was designated as the end of the Revised Competition, with the winner being the horse / rider combination crossing first the finish line at the fourth gate and presenting the horse successfully within the stipulated presenting time and complying with all protocols and veterinary

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requirements ; namely that the horse *"is still fit to continue, to be ridden after a normal rest period for another full phase"*.

4. At around 17:30 Mr Rui Amante, the Technical Delegate, announced at the Vet Gate, on behalf of the President of the Ground Jury, that the Revised Competition had been cancelled due to the dangerously high combination of heat and humidity and the on-course conditions following heavy rain during the Revised Competition and as it was apparently unsafe to continue with the ride. The competitors and their entourage including the riders on the course were made aware of the announcement.
5. This announcement portrayed a unanimous decision taken by the President of the Ground Jury (Jean Pierre Allegret), the Technical Delegate (Mr Rui Amante) and the President of the Veterinary Commission (Thomas Timmons), in consultation with the Organising Committee, in accordance with FEI General Regulations, Article 109.12 (the **"Second Decision"**).
6. The FEI issued a *"Confirmation of Official Decision to Cancel Endurance Competition at the FEI World Equestrian Games 2018"* in which it was stated, inter alia, that *"[t]he consequence of the decision is that no medals will be awarded for the FEI Endurance Competition at the FEI World Equestrian Games 2018."*
7. An appeal regarding the Second Decision was filed by Mr Venancio Garcia Ovies, Secretary General, Real Federacion Hipica Espanola, being the NF for Spain, requesting the FEI to *"reconsider its decision of not awarding medals to this championship"* and requesting that the successful riders at the Competition be recognized (the **"Appeal"**).
8. An appeal committee to hear and decide the case was constituted, comprised of Mr Ken Lalo, President, Ms Elizabeth Van Schelle and Mr Pierre Ouellet, Members (the **"AC"**), in conformity with Article 160 of the FEI General Regulation, 23rd Edition, 1 January 2009, with updates effective 1 January 2018 (the **"General Regulations"**).

B. Appeal Committee Decision:

9. Jurisdiction

The Jurisdiction of the AC is based on Article 160 of the General Regulation, which states in its pertinent part:

"Article 160 -Appeal Committee - Duties"

1. The President and at least two (2) members of the Appeal Committee must be available throughout the Event as defined in Appendix A ("Period of an Event") which corresponds to its period of jurisdiction. Whenever a Protest lodged with the Ground Jury is pending, the Appeal Committee must



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be available and has jurisdiction until one hour after the relevant Decision of the Ground Jury has been notified according to Article 159.6.

2. The Appeal Committee has the authority to Decide the following matters:

- 2.1. Appeals against Decisions of the Ground Jury, except as specified in Article 159.7.
- 2.2. Protests addressed to the Appeal Committee or referred to it by the Ground Jury;
- 2.3. All cases which are beyond the competence of the Ground Jury;

6. Decisions of the Appeal Committee on Appeals against Decisions of the Ground Jury are always final and binding."

10. The Spanish NF described their filing as an "appeal" (see Article 165 of the General Regulations) regarding the Second Decision, thus filed pursuant to Article 160.2.1 of the General Regulations.
11. If the Second Decision is not viewed as a decision of the Ground Jury due to the mere "consultation" of the Ground Jury President with the Ground Jury members, the jurisdiction of the Ground Jury still exists as a protest filed directly with the Appeal Committee pursuant to Article 160.2.2 of the General Regulations or as a case which is beyond the competence of the Ground Jury pursuant to Article 160.2.3 of the General Regulations.
12. Protests are detailed in Article 163 of the General Regulations, which states in its pertinent part:

"Article 163 - Protests and Disciplinary Cases
1. Protests may be lodged against any person or body involved in any capacity in an International Event or otherwise subject to the jurisdiction of the FEI including for failure to observe the Statutes, GRs or Sport Rules or violation of the common principles of behaviour, fairness, or accepted standards of sportsmanship, whether occurring during or in connection with an International Event or at any other time.
2. Protests may only be lodged by the FEI, Presidents of NFs, Officials, Chefs d'Equipe or, if there is no Chef d'Equipe, by a Person Responsible or a Team Veterinarian responsible for Horses taking part in the Event. Protests for abuse of Horses may be lodged by any person or body.
3. Unless otherwise specified, Protests must be lodged before the end of the period of jurisdiction of the body that has the competence to hear the relevant Protest. This is true even if the person or body lodging the Protest is not present at the Event. The relevant body does not have jurisdiction to hear the Protest prior to any required deposit being paid.
4. Protests in the following matters can only be lodged with the Ground Jury:
4.1. Protests concerning the eligibility of an Athlete or Horse for a specific Event or concerning the conditions of the arena. Such Protests must be filed not later than thirty (30) minutes before the start of the relevant Competition;
4.2. Protests concerning an obstacle, or the plan or length of the course for a Jumping Competition or the obstacle Phase of a Driving Competition. Such Protests must be filed no later than fifteen (15) minutes before the start of the Competition;
4.3. Protests concerning the cross-country obstacles or courses in Eventing or marathon course or obstacles in Driving, or the course in Endurance. Such Protests must be filed no later than 18:00 on the day before the relevant Competition;
4.4. Protests concerning irregularities or incidents during a Competition, or the results of a Competition. Such Protests must be filed no later than thirty (30) minutes after the announcement of the results of the relevant Competition.
4.5 Protests challenging the procedures followed in the application or implementation of any FEI rule. Such Protests must be filed no later than thirty (30) minutes after the notification of the application or implementation of such rule.
4.6 Lodging a Protest before the Ground Jury within the relevant time limit in matters listed in the previous paragraphs is a prerequisite to a right of Appeal to the Appeal Committee.
5. Protests for matters not listed in Article 163.4 must be lodged with the Appeal Committee or with the Ground Jury if there is no Appeal Committee.

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7. All Protests must be in writing, signed by an authorised person within the meaning of Article 163.2 and be accompanied, as the case may be, by any supporting evidence, including names of witnesses.
8. Protests to the Ground Jury and to the Appeal Committee shall be presented within the applicable time limit to the President of the Ground Jury or to the President of the Appeal Committee, as the case may be, together with the necessary deposit. Protests to the FEI Tribunal shall be sent within the applicable time limit to the FEI Tribunal together with proof of payment of the necessary deposit."

13. Here the Appeal was lodged by the Secretary General of the NF for Spain, relates to matters occurring during or in connection with an International Event and it is questionable whether they may be considered as falling under Articles 163.4.4 or 163.4.5 of the General Regulations, thus necessitating their filing with the Ground Jury, or whether they may be considered as falling under Article 163.5 of the General Regulations, thus properly submitted to the AC.

14. Regardless of the exact classification of the Appeal as an appeal or a protest, the AC concludes that it has jurisdiction over this matter.

15. Admissibility

The Appeal was submitted during the night between 12 and 13 September. This is later than "one hour after the" Second Decision has been notified and well after the end of the Competition (whether the time of its cancellation or its originally designated ending time).

However, the period of jurisdiction of the AC under Article 160.1 of the General Regulation lasts for the "Period of the Event", which under Appendix A to the General Regulations is defined as:

"Period of an Event: commences one hour before the beginning of the first Horse Inspection and terminates half an hour after the announcement of the final results in the relevant Discipline, unless the Sport Rules for the respective Discipline provide otherwise."

Due to the fact that here the "final results" were not announced, that it is unclear as to when all competitors received official notice that no medals will be awarded, that the Appeal relates only to the award of medals originally scheduled for 12:30 on 13 September and in view of the special circumstances surrounding the Competition and in an effort to deal with the merits of the Appeal, the AC would provide the Spanish NF the benefit of the doubt and consider the Appeal as having been filed within the period of jurisdiction of the AC pursuant to Article 160. The Appeal is thus admissible.

16. Applicable Law

The Competition is held under the FEI rules and regulations and they apply to this Appeal. In particular the General Regulation and the FEI Endurance Rules, updated 9th Edition, effective 1 January 2018 (the "Endurance Rules") are relevant.



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The Merits

17. Below is a summary of the relevant facts and allegations based on the parties' submissions. While the AC considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this decision only to the submissions and evidence it considers necessary to explain its reasoning.
18. The position of the Spanish NF as detailed by Mr Venancio Garcia Ovies, Secretary General, Real Federacion Hipica Espanola, and by Daniel Fenaux, Endurance Team Trainer for the Spanish Team and acting as Deputy Chef d'Equipe, can be briefly described as follows:
- The absence of a legal provision requiring that medals will not be awarded to the leaders of the Revised Competition. The Spanish NF did concede that there was also no specific rule requiring medals to be awarded to leaders in an aborted or cancelled event.
 - The fact that the major part of the race was completed by the leaders of the Revised Competition. The first loop of the original Competition plus three loops of the Revised Competition were completed by a number of riders and therefore some 80- 90 km of the Revised Competition were completed (after completion of another 40 km or so from the original Competition).
 - Sporting considerations of fairness to competitors, recognition of achievements and performance and recognition of the superb performance of the riders in extreme and most difficult conditions, mandate recognizing and awarding the leaders. A number of riders (including two Spanish ones who arrived first and second to the third gate) presented their horses at the third gate with low enough pulse and in an excellent condition. This especially so in this important event with the substantial efforts and monies invested and in recognition of horses, riders, owners, grooms and others in the entourage.
 - At the second Vet gate there is clear evidence that the Spanish riders came in first, second, fourth and fifth positions (a French rider in third place) and that the Spanish team was then in the first place.
 - There is a precedent to such award of medals at the Longines FEI World Endurance Championships 2012 held at Euston Park (GBR). Following a powerful thunderstorm after 52 individuals and the top 4 teams had already finished the event it was decided to reduce the distance to allow combinations that have not reached the final gate to end the race and be classified according to timings on the shortened distance.
 - No one will be injured or negatively affected if they Appeal is granted.



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19. The Spanish NF conceded at the start of the hearing that the Second Decision in as far as it relates to the stopping of the Revised Competition can be understood and accepted. It was clarified that the Spanish NF does not necessarily agree with the Second Decision but can understand it, while objecting only to the decision not to award medals.
20. The Spanish NF claimed that the Second Decision was not taken properly and in accordance with the rules as it was not a Ground Jury decision. Mr Daniel Fenaux testified that immediately prior to the announcement of the Second Decision the President of the Ground Jury told him that *"it is not my decision"*. The Spanish NF could not indicate whose decision it was. Mr Daniel Fenaux also testified that he spoke himself with two members of the Ground Jury: one did not know about the decision to cancel the Revised Competition and the second said that he heard about it only after the Chefs d'Equipe got knowledge.
21. The Spanish NF agreed that there was no bad faith involved in the issuance of the Second Decision.
22. Mr Thomas Timmons, the President of the Vet Commission at the Competition testified as follows:
- The Revised Competition started later in the day so conditions were not easy;
 - The climate conditions and the forecast for the period to follow were such that it was assessed as severely dangerous and risky to continue the Revised Competition;
 - It was evident from checking the metabolic condition of the horses that the horses had major issues and it was evaluated as risky to continue the competition;
 - There were fears of some horses requiring evacuation while it became difficult if not impossible for ambulances to gain access and drive on the trail;
 - Only about 10 horses arrived at the third Vet gate;
 - These conditions were discussed during the afternoon in a second meeting of the day;
 - It was unanimously decided by the President of the Ground Jury (Mr Jean Pierre Allegret), the Technical Delegate (Mr Rui Amante), by Mr Thomas Timmons, as the President of the Veterinary Commission and the Foreign Vet, Mr O'brien to cancel the Revised Competition;
 - It appears that the President of the Ground Jury confirmed the decision only after confirming the matters with the Ground Jury members;
 - The Second Decision was clearly understood by all involved, clear and unanimous;



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- Other alternatives were reviewed but there was clear need to stop the Revised Competition;
 - There was no specific discussion or decision regarding award of prizes at the time of the decision to cancel the Revised Competition.
- 23.** Mr Gaspard Dufour, FEI IT Director, testified that:
- The only official clear record of standings are the standings at the second Vet gate of the Revised Competition;
 - There is no valid record of standings at the third Vet gate; it was not verified that all riders followed the required route based on the GPS, some did not even go through the vet check, to recreate data based for example on the GPS (which is meant for safety/ location and entertainment) is not scientifically solid;
 - There was confusion following the announcement of the Second Decision and the record at the third Vet gate is not clean and will need to be recreated which is not a solid base to support any decision.
- 24.** Article 109.12 of the General Regulations states that:
- "Subject to the unanimous agreement of the President of the Ground Jury, Technical Delegate and President of the Veterinary Committee in consultation with the Organiser, a Competition (either before or during) can be postponed and/or cancelled, not only due to force majeure, catastrophic occurrences, extreme weather conditions but also for non-compliance with FEI Rules and in specific situations where the welfare or safety of the Horses, Athletes, Officials or the public is compromised."*
- 25.** In addition, Article 804 of the Endurance Rules states in its pertinent parts:
- "804.3 Abandonment of Event: when catastrophic occurrences or circumstances arise at or during an Event, as set out generally in Article 804.3.4, an Event may be abandoned whereby:*
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- 804.3.2 After commencement of the Event: A decision of the President of the Ground Jury in consultation with the Ground Jury, a representative of the OC, the Foreign Veterinary Delegate, the President of the Veterinary Commission, and the Technical Delegate.*
- 804.3.3 OC Responsibility: OCs are encouraged in all Event planning to anticipate the possibility of the need to abandon an Event and evacuate the venue.*
- 804.3.4 Catastrophic Occurrences or Circumstances: those which arise on short notice and are determined to dangerously risk Athlete and/or Horse safety, and which cannot be avoided through Course Modification, Rescheduling or Delay of the Event. Examples and advice for determining such shall be provided in the Endurance Notes for Guidance."*

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26. In the present case and based on the testimony of Mr Timmons it is clear that the Second Decision was not taken lightly but that everyone involved agreed that there were real supported concerns regarding safety and welfare and that the Second Decision was the only possible one in order to avoid serious horse welfare issues.
27. It appears that the Organiser was also consulted in regard to both the First Decision and the Second Decision. It was not clear that all Ground Jury members were formally consulted by the President of the Ground Jury. However, the decision itself, subject to consultation with the members, is that of the President of the Ground Jury himself along with the other officials stated in Article 804 Endurance Rules. On the other hand the Second Decision was also approved by the Foreign Veterinary Delegate (Kieran O' Brien).
28. Whether the Second Decision meets the conditions of Article 804 of the Endurance Rules or not, it is clear that the Second Decision is in full conformity with Article 109.12 of the General Regulations which in any case governs as the higher rule of law governing these specific circumstances.
29. It is clear that the Second Decision was not decided in bad faith and was not arbitrary or capricious or intended to harm any of the riders including the leaders of the Revised Competition. This was not even as much as argued.
30. Article 109.12 of the General Regulation uses the word "cancel" which is exactly the operative part of the Second Decision regarding the Revised Competition. The plain meaning of "cancellation" of a competition is that the competition did not take place and thus had no winners. It would be odd to declare winners for an event which was cancelled.
31. The Longines FEI World Endurance Championships 2012 held at Euston Park (GBR) cannot serve as a precedent. Besides, at that event all medal winners (individuals and teams) completed the original course.
32. Certain Articles in the Endurance Rules clearly indicate that to win a medal the competition must be completed (see below, emphasis added):
- "800.4 The combination that **finishes the course** in the shortest time will be classified as the winner of the Competition **after successfully completing all final Veterinary Inspections** and medication control as well as other protocols in place for the safety of the Horse and Athlete under these Rules, the FEI General Regulations or the FEI Veterinary Regulations or any other FEI Rules and Regulations."*



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*813.1 Individuals: In an endurance Competition, the winner is the combination with the shortest elapsed riding time **who successfully passes or complies with all protocols and requirements, including but not limited to the final Veterinary examination.** The schedule of the Competition must clearly define the method of classification.*

813.2 Teams: the winning team is the team with the best time after adding the final classification of the three highest placed combinations in the team. In the case of a tie, the winning team will be the one whose third combination has the best time. In the event there are fewer than 3 members of a team who are classified, such teams are not eligible for team placing."

33. Of course, the competition may be modified and then it is only the modified distance which must be completed.
34. There is no clear rule requiring the award of medals.
35. When the cancellation was announced, no horse/rider combination finished the course, only some three-quarters of the course were completed by few riders, there is only clear supported and solid record of the classification at the second vet gate and in the circumstances of this event it is questionable what is the sporting value of results and clearly the decision not to award medals cannot be stated to be legally wrong or contrary to reason.
36. This said the AC recognises the superb horsemanship and skills and the sporting achievements of competitors who did well on the course in most difficult of conditions. These are horse /rider combinations that excelled despite very difficult weather and terrain conditions. Still, this in itself, does not necessitate the award of medals.
37. The Spanish NF was well represented and presented its case in a fair and reasonable manner. In view of the unusual circumstances surrounding the Competition and appreciating such representation, the AC requests that the deposit paid with the Appeal be returned to the Spanish NF.
38. For all those reasons the Appeal is denied and the Second Decision is upheld, including the decision not to award medals and classifications for the Revised Competition which was cancelled by the Second Decision.

C. Details of Notification of Decision to the Parties

39. Notified by AC members to Mr Venancio Garcia Ovies, Secretary General of the Spanish Federation on 14 September 2018 at app. 12:00 noon.



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Signed for and on behalf of the Appeal Committee

Signature:

Name:

Title:

Ken Lalo, Appeal Committee

Date & Time:

14 September 2018 11:45

Signature:

Name:

Title:

Pierre Ouellet, Appeal Committee

Date & Time:

14 September 2018 11:45