

**DECISION of the FEI TRIBUNAL**

**dated 4 January 2021**

**in the matter of**

**Mr Tsutomu Inoue**

**(FEI Case number: FEI 2020/HD03-TSUTOMU INOUE)**

**FEI Tribunal Hearing Panel:**

**Mr Cesar Torrente one-member panel**

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**FEI Tribunal Reference:** C20-0058

**Person Responsible/ID/NF:** Tsutomu INOUE /10059837/JPN

**Event/ID:** CPEDI3\* - Gotemba (JPN), 2019\_CI\_0870\_PED\_S\_01

**Date of Event:** 17-19 October 2019

**Prohibited Substance:** Prednisone

**Bar Code Nos.:** 3146687

## **I. Factual background**

- 1.** Mr. Tsutomu INOUE (FEI ID 10059837) the Person Responsible ("**the PR**"), is an International-Level Athlete participating in the discipline of Para Dressage and registered with the Japan Equestrian Federation.
- 2.** The Fédération Equestre Internationale ("**the FEI**" together with the PR, "**the Parties**"), is the sole IOC recognised international federation for equestrian sports. The FEI is the governing body of the FEI equestrian disciplines (Dressage, Jumping, Eventing, Driving, Endurance, Vaulting, Reining, Para-Equestrian).
- 3.** The PR participated at an International Event: the CPEDI3\* - Gotemba, Japan held from 17 to 19 October 2019 (the "**Event**"). The PR is a member of the Equestrian Federation of Japan (the "**JPN NF**"), which is a member of the FEI and therefore is bound by FEI's Equine Anti-Doping Rules for Human Athletes (the "**ADRHA**"; based on the World Anti-Doping Code) which specifies the circumstances and conducts which constitute anti-doping rule violations.
- 4.** Urine samples (respectively A and B) were collected from the PR on 17 October 2019, for in-competition testing under the ADRHA. The Urine samples were sent to the WADA approved Laboratory in Cologne, Germany (the "**Laboratory**") for analysis. The PR's sample had the reference number 3146687.
- 5.** The Laboratory analysed the PR's sample and reported an adverse analytical finding of Prednisone and Prednisolone in the PR's A sample.
- 6.** Prednisone and Prednisolone are a glucocorticoids and are listed in Class S9 Glucocorticoids under the 2019 WADA Prohibited List. Prednisone and Prednisolone are prohibited in competition only when administered by oral, intravenous, intramuscular or rectal routes. The positive finding of Prednisone and Prednisolone in the PR's Sample gives rise to an Anti-Doping Rule Violation under Article 2.1 of the ADRHA.
- 7.** Upon receipt of the Adverse Analytical finding from the Laboratory, the FEI carried out a review as stipulated in Article 7.2.2 of the ADRHA and determined that: (a) the PR was not granted a Therapeutic Use Exemption (the "**TUE**") for the use of Prednisone or Prednisolone neither by FEI nor by his National Anti-Doping Agency; (b) there was no departure from the International Standard for Testing and Investigation or International Standard for Laboratories that detected the Adverse Analytical Finding.

## **II. Initial Proceedings**

- 8.** On 4 March 2020, the FEI Legal Department officially notified the PR, the JPN NF, the National Anti-Doping Agency of Japan (the "**JPN NADO**") and the World Anti-Doping Result Management Team of a violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Prednisone and Prednisolone in the PR's Sample collected at the Event and the potential consequences (the "**Notification Letter**").
- 9.** The Notification Letter included notice that the PR was not provisionally suspended since the substance found in the PR's sample was a Specified Substance.
- 10.** The PR was also informed in the Notification Letter of his right to request an analysis of the B sample. However, the PR waived his right to request a B Sample analysis since he admitted to routine use of Prednisone and Prednisolone (due to his medical condition) in various correspondences with the FEI Legal Department.
- 11.** Following the notification letter, the PR submitted a TUE request for the use of Prednisone and Prednisolone to the Therapeutic Use Exemption Committee (the "**TUE Committee**") on 1 April 2020.
- 12.** The TUE Committee certified the approval for a prospective TUE for the use of Prednisone and Prednisolone with the following dates: 10 April 2020 until 9 April 2024. However, the PR did not submit a retroactive TUE to cover the date of the positive finding despite being informed of such a possibility by the ITA on 16 April 2020 and by the FEI on the 29 June 2020.
- 13.** Following the completion of the notification stage of the Adverse Analytical Finding the FEI resumed proceedings in the matter of the violation of Article 2.1 (The Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample) of the ADRHA based on the Laboratory's Adverse Analytical Finding of Prednisone and Prednisolone in the PR's Sample.

## **III. Further Proceedings**

- 14.** By email dated 16 November 2020, the FEI submitted its request to the FEI Tribunal for the appointment of a hearing panel for the approval and adjudication of a Settlement Agreement in accordance with Article 7.10.1 of the ADRHA.

- 15.** On 26 November 2020, the FEI Tribunal informed the Parties of the appointment of a one-person hearing panel to adjudicate and approve this case. The Parties were asked to provide any objections to the constitution of the hearing panel by 1 December 2020.
- 16.** On 27 November 2020, the PR informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
- 17.** On 29 November 2020, the FEI informed the FEI Tribunal that it did not have any objections to the constitution of the hearing panel.
- 18.** Neither party requested an oral hearing.

#### **IV. Considering**

##### **A. Articles of the Statutes/Regulations which are, *inter alia*, applicable:**

Statutes 24<sup>th</sup> edition, effective 19 November 2019 ("**Statutes**"), Arts. 1.5, 38 and 39.

General Regulations, 24<sup>th</sup> edition, 1 January 2020, Arts. 118, 143.1, 159, 164, 165 and 167 ("**GRs**").

Internal Regulations of the FEI Tribunal, 3<sup>rd</sup> Edition, 2 March 2018 ("**IRs**").

FEI Anti-Doping Rules For Human Athletes, Based upon the 2015 WADA Code, effective 1 January 2015 ("**ADRHA**").

The World Anti-Doping Code - International Standard – Prohibited List – January 2019 ("WADA Prohibited List").

##### **B. Person Responsible:** Mr Tsutomu Inoue.

##### **C. Justification for sanction:**

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

**ADRHA Scope:** "These Anti-Doping Rules shall apply to the FEI, each National Federation of the FEI and each Participant in the activities of the FEI or any of its National Federations by virtue of the Participant's

membership, accreditation, or participation in the FEI, its National Federations, or their activities or Events". (...)

Within the overall pool of Athletes set out above who are bound by and required to comply with these Anti-Doping Rules, the following Athletes shall be considered to be International-Level Athletes for purposes of these Anti-Doping Rules, and therefore the specific provisions in these Anti-Doping Rules applicable to International-Level Athletes (as regards Testing but also as regards TUEs, whereabouts information, results management, and appeals) shall apply to such Athletes who:

(a) are registered with the FEI; and/or

(b) participate in an International Event".

**ADRHA Article 2.1.1:** "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 rule violation under Article 2.1.1".

**ADRHA Article 7.10.1:** "At any time during the results management process the Athlete or other Person against whom an anti-doping rule violation is asserted may admit that violation at any time, waive a hearing and agree with the FEI on the Consequences that are mandated by these Anti-Doping Rules or (where some discretion as to Consequences exists under these Anti-Doping Rules) that have been offered by the FEI. The agreement shall be submitted to the FEI Tribunal for approval and, where approved by the FEI Tribunal, the final agreement shall state the full reasons for any period of Ineligibility agreed, including (if applicable), a justification for why the flexibility in Sanction was applied. Such agreement shall be considered as a decision for the case and will be reported to the parties with a right to appeal under Article 13.2.3 as provided in Article 14.2 and published as provided in Article 14.3.2".

## **V. The Parties' Submissions**

### **A. The Submissions of the PR:**

- 19.** Through the various exhibits (containing emails and doctor's certificates) the PR has explained the reason for the adverse analytical finding of Prednisone and Prednisolone. The latter being due to his medical condition which requires him to take Prednisolone on a daily basis since 1987, as prescribed by his doctor.

- 20.** Additionally, we are informed that Prednisone and Prednisolone can reversibly metabolise to one another in human body i.e., Prednisolone can metabolise to Prednisone and vice versa.<sup>1</sup> Therefore, if an athlete took the medication Prednisolone then Prednisone is also expected to be detected in the athlete's sample in addition to Prednisolone.
- 21.** The PR also submitted a letter to the FEI legal department on 12 September 2020 providing more detail regarding the particulars of his condition which can be summarised as follows:
- The PR was prescribed by a doctor with Prednisolone around 33 years ago to treat his medical condition and there is no alternative medication which could replace it;
  - The PR subsequently suffered from other additional diseases which were troubling him with daily changes and increases/decreases in medication for the treatment of these diseases;
  - Due to his lack of anti-doping education, he did not know it was necessary for him to apply for a TUE for Prednisolone before competing internationally;
  - His former doctor, who provided a lot of support to the PR and understood the PR's situation especially his dream of participating at the Paralympic Games, died in 2017. It is alleged that his current doctor has no knowledge about the relevant anti-doping rules and did not provide him any advice regarding use of his medications and participation in sports competitions;
  - The PR allegedly showed his medicine history book and explained the medications he was taking at the time of the doping control process on 17 October 2019, further to which he believed that if there were any problems with it, he would have been contacted before the proceedings are opened against him;
  - The PR admitted the Anti-Doping Rule Violation (although stressed it was unintentional and never to improve his skills or ability to ride by taking Prednisolone);
  - The PR apologised for the error and inconvenience caused and accepts the sanction for breaking such anti-doping rules.

## **B. Written Response of the FEI:**

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<sup>1</sup> <https://go.drugbank.com/drugs/DB00860>

- 22.** Having considered the information submitted by the PR, the FEI is satisfied that the PR established on a balance on probabilities, how Prednisone and Prednisolone entered his system, namely through a medication which was prescribed to him by his doctor to treat his medical condition.
- 23.** Furthermore, in evaluating the PR's fault or negligence, the FEI considered the following factors:
- The PR has been using Prednisolone on a daily basis (with possible certain adjustments when undergoing treatment for other additional diseases) as prescribed by his doctor for around 33 years;
  - The PR has been granted a prospective TUE by the TUE Committee which confirms that the PR indeed suffers from a medical condition that needs to be treated with Prednisolone (and there is no other equivalent medication which could replace Prednisolone and which is not on the WADA Prohibited List);
  - The PR's Fault or Negligence in this case relates not to using Prednisolone as such but rather to not applying for/obtaining a TUE for Prednisolone before competing in the International Competitions as required by the ADRHA;
  - All the evidence gathered in this case point out to the fact that had the PR applied for a TUE before October 2019, he would have obtained it and there would be no proceedings effectuated;
  - The PR has not received anti-doping education, especially relating to the PR's obligation to prevent anti-doping violations and he did not understand the TUE system;
  - Throughout his sporting career, the PR only participated in international events held in Gotemba, Japan and therefore does not have wider international experience and exposure.
- 24.** Having considered the aforementioned factors and the totality of circumstances of the case in question, the FEI concludes in their response that the PR has on a balance of probabilities established that he bears No Significant Fault or Negligence<sup>2</sup> for his first anti-doping rule violation and the applicable Ineligibility Period shall be based on Article 10.5.1.1 of the ADRHA (Reduction of the period of Ineligibility based on No Significant

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<sup>2</sup> 'No Significant Fault or Negligence: The Athlete or other Person 's establishing that his or her fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or Negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.'

Fault or Negligence for Specified Substances).

- 25.** Pursuant to Article 10.5.1.1 there is a wide range of applicable sanction varying from a warning to two years of Ineligibility, depending on the PR's degree of Fault and in order to evaluate the proportionate sanction in the present matter, the FEI provided the legal analysis of the *Cilic* CAS award<sup>3</sup>.
- 26.** In short, the CAS Panel in the *Cilic* matter decided that:

\*\*\* Quote\*\*\*

*The decisive criterion based on which the period of ineligibility shall be determined within the applicable range of sanctions is fault. There are three degrees of fault which can be applied to the possible sanction range of 0 – 24 months: (a) significant degree of or considerable fault, with a sanction range from 16 to 24 months, and a "standard" significant fault leading to a suspension of 20 months; (b) normal degree of fault, with a sanction range from 8 to 16 months, and a "standard" normal degree of fault leading to a suspension of 12 months; (c) light degree of fault, with a sanction range from 0 to 8 months, and a "standard" light degree of fault leading to a suspension of 4 months. In order to determine into which category of fault a particular case might fall, it is helpful to consider both the objective and the subjective level of fault. The objective element describes what standard of care could have been expected from a reasonable person in the athlete's situation. The subjective element describes what could have been expected from that particular athlete, in light of his personal capacities. The objective element should be foremost in determining into which of the three relevant categories a particular case falls. The subjective element can then be used to move a particular athlete up or down within that category. In exceptional cases, it may be that the subjective elements are so significant that they move a particular athlete not only to the extremity of a particular category, but also into a different category altogether. That would be the exception to the rule, however.'*

\*\*\*End Quote\*\*\*

- 27.** The FEI outlined that in the present matter, the PR's Fault or Negligence relates not to using Prednisolone as such but rather to not applying for/obtaining a TUE for Prednisolone before competing in the International Competitions as required by the ADRHA. All evidence gathered in this case point to the fact that had the PR applied for a TUE before October 2019, he would have obtained it and there would be no case actioned.

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<sup>3</sup> CAS 2013/A/3327 *Marin Cilic v. ITF* & CAS 2013/A/3335 *ITF v. Marin Cilic*, award of 11 April 2014 (operative part of 25 October 2013)



- 28.** Furthermore, as it has been established by the TUE Committee by granting a prospective TUE, the use of Prednisolone is a valid form of treatment for the PR's medical condition and the PR did not obtain any additional enhancement of performance beyond what might be anticipated by a return to the PR's normal state of health following the treatment (hence the risk to the level-playing field of competitions was not exposed). Consequently, the FEI deem the PR's degree of Fault in the present matter as "light" following the objective analysis from the *Cilic* award and the applicable Ineligibility period situates somewhere in between zero (0) and eight (8) months of Ineligibility period.
- 29.** Furthermore, the FEI submitted that having regard to the subjective elements of the present matter (including a lack of anti-doping education of the PR, the alleged declaration of the use of Prednisolone among other medications taken by the PR at the time of the doping control process, the admission to the anti-doping rule violation in the proceedings in front of the FEI Legal Department and the co-operative and honest spirit in discovering all the circumstances of the present matter) enables the FEI to consider that the proper sanction situates in the lower range of the applicable sanction.
- 30.** The FEI also proposed that the present matter has some similarities with the *Barrios* case<sup>4</sup> where the athlete obtained a prospective TUE for a Prohibited Substance in question but was rejected a retroactive TUE. Mr Barrios was quite high-level athlete with many years of experience. The difference between *Barrios* and the present matter is that in *Barrios* the Athlete was allegedly aware of anti-doping rules and checked the medication before using it but due to various circumstances was misled in believing that it does not contain any prohibited substance hence he did not apply for a TUE. Mr Barrios was ultimately sanctioned only with a reprimand.
- 31.** Finally, the FEI submitted that having regard to the totality of the circumstances and particulars outlined regarding this anti-doping violation case, the PR has on the balance of probabilities established that he bears No Significant Fault or Negligence for his first anti-doping rule violation. The PR's level of Fault or Negligence shall be considered as "light" and therefore rests in the lower range of the applicable sanction. Accordingly, the FEI are satisfied that a sanction of **two (2) months** Ineligibility period will be proportionate for such an anti-doping rule violation.

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<sup>4</sup> FEI Tribunal Decision in the matter of Pablo Barrios (VEN) dated 23 October 2015

- 32.** In addition, the Parties agree that a fine of **one thousand Swiss Francs (1000 CHF)** be imposed on the Athlete in accordance with the Article 10.10 of the ADRHA.
- 33.** Finally, the PR must either, follow and complete an anti-doping education course such as FEI Human Anti-Doping Course, WADA's ALPHA or equivalent, or an education course provided by the Japan Anti-Doping Agency and/or by the Japan Equestrian Federation. These education conditions need to be fulfilled within one (1) year from the final decision of the FEI Tribunal. Once such course is completed the certificate shall be sent to the FEI and the Japan Equestrian Federation.

## **VI. The Decision**

### **34. The Agreement between the Parties:**

\*\*\*Quote\*\*\*

### **3. NOW, THEREFORE, THE PARTIES HAVE AGREED (SUBJECT ONLY TO THE APPROVAL OF THE FEI TRIBUNAL) TO THE FOLLOWING TERMS FOR DISPOSAL OF THE ANTI-DOPING PROCEEDINGS:**

- 3.1 In the matter of the Adverse Analytical Finding related to the Samples, which were collected from the PR at the CPEDI3\* in Gotemba, Japan held from 17 to 19 October 2019, the PR and the FEI agree in accordance with the Article 7.10.1 of the ADRHA on the following:
- (a) The Athlete admits the violation of Article 2.1 of the ADRHA (Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample);
  - (b) The Athlete established on a balance of probabilities how the Prohibited Substances (Prednisone and Prednisolone) entered his system;
  - (c) The Athlete bears No Significant Fault or Negligence (in accordance with Article 10.5.1.1 of the ADRHA) for the rule violation and the applicable period of Ineligibility shall be two (2) months, commencing as of the date of the final FEI Tribunal decision;
  - (d) All results achieved by the Athlete at the Event CPEDI3\* - Gotemba (JPN), 2019\_CI\_0870\_PED\_S shall be disqualified with all resulting consequences, including forfeiture of any related medals, points and prizes pursuant to Articles 9.1 and 10.1.2 of the ADRHA,
  - (e) The Athlete shall pay a fine of one thousand Swiss Francs (1000 CHF) in accordance with Article 10.10 of the ADRHA;

- (f) Each party will bear its own legal and other costs incurred in connection with these proceedings;
- (g) The Athlete is to fulfil the Education Requirement within a one (1) year from the decision of the FEI Tribunal;
- (h) No other Sanctions will apply in this case;
- (i) This violation of the ADRHA Rules shall be considered a prior violation for the purpose of Multiple Violations in accordance with Article 10.7 of the ADRHA;

This agreement is made in accordance with Article 7.10.1 of the ADRHA and is subject to the approval of the FEI Tribunal. The Agreement will be included in a Final Decision of the FEI Tribunal. Consequently, it will be communicated to the Parties with a right of appeal in accordance with Article 13.2 of the ADRHA.

The parties acknowledge and agree that, pursuant to Article 14.3 of the ADRHA, the Decision will be made public by the FEI. 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.

\*\*\* End Quote\*\*\*

## **VII. Jurisdiction**

### **35.**

- (a) The FEI Tribunal has jurisdiction over this matter pursuant to Article 38 of the Statutes, Article 159 of the GRs, the ADRHA, as well as Article 18 of the IRs.
- (b) The PR is a member of the Equestrian Federation of Japan, and as such is bound by the ADRHA.
- (c) Article 7.10.1 of the ADRHA provides for agreements to be reached between parties.
- (d) As a result, the Tribunal has jurisdiction to approve and issue this Decision.

## **VIII. Approval of Agreement**

- 36.** Having reviewed the Case Summary, the Full Reasoning for the Agreement and the terms of the Agreement, the Tribunal takes note that the FEI

accepts – on a balance of probability – that the PR bears No Significant Fault or Negligence for his first anti-doping rule violation.

- 37.** Furthermore, the Tribunal also takes note that the level of Fault or Negligence shall be considered as “light” and therefore situates in the lower range of the applicable sanction and the FEI are satisfied that a sanction of a two (2) months period of ineligibility is a proportionate sanction.
- 38.** The Tribunal wishes to emphasise that it did neither evaluate whether the PR has met the burden of proof regarding the level of Fault or Negligence for this anti-doping rule violation. Furthermore, the Tribunal highlights that the present agreement does not constitute jurisprudence, and as such when reviewing it did not consider previous case law. The Tribunal emphasises that the decision in this case depends on the particular circumstances disclosed as set out above.
- 39.** To conclude, the Tribunal finds that the Agreement between the Parties could be considered as within the consequences that are mandated by the ADRHA Rules.
- 40.** Therefore, and in accordance with the mutual consent of the Parties, the Tribunal hereby directs the Parties to fully comply with all the terms of the Agreement, and to revise the results, including team results if applicable, of the Event accordingly. Further, this Decision shall terminate the present case 2020/HD03 TSUTOMU INOUE.

## **IX. Decision**

1. The Tribunal rules that the Agreement reached between the FEI and the PR, Mr Tsutomu Inoue concerning the case 2020/HD03 Tsutomu Inoue is hereby ratified by the Tribunal with the consent of the Parties, and its terms set out in Article VI above are incorporated into this Decision.
2. This Decision is subject to appeal in accordance with Article 13.2 of the ADRHA Rules. An appeal against this Decision may be brought by lodging an appeal with the Court of Arbitration for Sport (CAS) within twenty-one (21) days of receipt hereof.
3. This Decision shall be notified to the PR, to the President of the NF of the PR, and to the FEI.
4. This Decision shall be published in accordance with Article 14.3 of the ADRHA Rules.

**FOR THE FEI TRIBUNAL**

A handwritten signature in blue ink, appearing to read "Torrente", with a large, stylized flourish above the name.

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**Mr Cesar Torrente, One-Member Panel**