PUBLIC

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES
FTC DOCKET NO. 9434

ADMINISTRATIVE LAW JUDGE: DANIA L. AYOUBI

IN THE MATTER OF:

JIM IREE LEWIS **APPELLANT**

THE AUTHORITY'S SUPPORTING LEGAL BRIEF FOR PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

Comes now the Horseracing Integrity and Safety Authority, Inc. (the "**Authority**") pursuant to the briefing schedule of the Administrative Law Judge, dated July 19, 2024, and submits the following Supporting Legal Brief.

CERTIFICATE OF SERVICE

Pursuant to 16 CFR 1.146(a) and 16 CFR 4.4(b), a copy of this Supporting Legal Brief is being served on August 7, 2024, via Administrative E-File System and by emailing a copy to:

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Introduction

On June 11, 2024, Arbitrator Hugh E. Hackney (the "**Arbitrator**") issued a decision (the "**Final Decision**") finding that Jim Iree Lewis ("**Appellant**") violated Rule 3212 of the Anti-Doping and Medication Control ("**ADMC**") Program. The Final Decision imposed civil sanctions, including, a two-year period of Ineligibility, a $15,000 fine, and payment of $5,000 in adjudication costs.

On July 8, 2024, Appellant filed an Application for Review of the Final Decision. In that Application, Appellant only challenges the financial penalties imposed by the Arbitrator and asks that they be reduced. This proceeding, accordingly, concerns only whether Appellant can establish that the financial penalties imposed on him are arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with law. This review proceeds based on the existing factual record. Based on the record, it is evident that Appellant has presented no evidence to reduce his degree of Fault, let alone any evidence establishing that the Arbitrator's decision was arbitrary, capricious, an abuse of discretion, prejudicial, or otherwise not in accordance with the law.

The $15,000 fine was properly imposed in accordance with ADMC Program Rules (the "**Rules**"), specifically Rule 3323. Under Rule 7420(b), the Arbitral Body "shall split the costs of the proceeding before an arbitrator . . . equally amongst the parties." However, in practice, the Authority has been paying all of the costs of the proceedings before the Arbitral Body, with each Arbitrator apportioning costs to the Responsible Person in his or her decision based primarily upon Fault. The $5,000 amount imposed upon Appellant here is a small fraction of the full costs of the proceeding below. These financial penalties are rationally connected to the evidence presented, and, therefore, the financial penalties should be affirmed.

I. Introduction

On June 11, 2024, after a hearing on the merits before the Arbitral Body, the Final Decision

was issued by the Arbitrator.[1] On July 8, 2024, Appellant filed his Application for Review challenging the financial penalties imposed in the Final Decision. As an initial matter, Appellant is challenging the Final Decision on grounds of procedural deficiencies, claiming he was unable to submit certain evidence in the proceeding below.

Appellant is also challenging the Arbitrator's finding that he did not meet his burden of showing No Significant Fault or Negligence (Rule 3225) in two ways. First, that he was denied the opportunity to obtain evidence when HIWU denied requests to collect and analyze a hair Sample from Hughie's Holiday, which was allegedly granted in another case involving Clenbuterol. Second, that he was denied the opportunity to obtain testimony contrary to HIWU's expert's testimony because her research does not address recent developments in synthetic Clenbuterol.

II. Applicable ADMC Program Rules

The Authority was created pursuant to the federal Horseracing Integrity and Safety Act of 2020, as amended (the "**Act**"),[2] to implement a national, uniform set of integrity and safety rules that are applied consistently to every Thoroughbred racing participant in the United States.[3] It is not disputed that Appellant is both a Covered Person and a Responsible Person, or that Hughie's Holiday is a Covered Horse under the ADMC Program.

The Final Decision below concerned an Anti-Doping Rule Violation ("**ADRV**") for Presence of a Banned Substance in violation of Rule 3212. Rule 3212 imposes a duty on a Responsible Person "to ensure that no Banned Substance is present in the body of his or her Covered Horse(s)" and makes them "strictly liable for any Banned Substance or its Metabolites or Markers found to be present in a Sample collected from his or her Covered Horse." Appellant only challenges the financial penalties assessed by the Arbitrator, which is reviewed under 16 CFR §1.146(b)(3) and should be upheld unless Appellant can establish that they were "arbitrary, capricious, an abuse of

[1] During the proceedings below, Appellant was represented by counsel from the Authority's Pro Bono Program. See Final Decision, at para. 2.40, HAB Tab 22, p. 939. This counsel is not representing Appellant in this appeal.
[2] 15 U.S.C. 3051-3060.
[3] ADMC Program Rule 3010(a).

discretion, prejudicial, or otherwise not in accordance with law."

Rule 3223(b) establishes that the fine for Rule 3212 ADRV is an amount up to $25,000, or 25% of the purse, whichever is greater.[4] Determination of the fine amount is at the discretion of the Arbitrator and is generally connected to the Covered Person's degree of Fault for their ADRV. As a matter of the Arbitrator's discretion, other facts may be considered separate from Fault that could affect the fine imposed. Under ADMC Program Rule 7420(b), Appellant could be responsible for half of the costs of the proceeding below, but the Arbitrator here only ordered the payment of $5,000 in adjudication costs.

III. The Final Decision

Sufficient proof of a Rule 3212 ADRV is established by the Presence of a Banned Substance in a Post-Race A Sample and when, as here, a B Sample is analyzed and confirms the Presence of the Banned Substance in the Sample. Appellant did not at any time contest the laboratory findings that Clenbuterol was present in both the A and B Sample. Accordingly, the Arbitrator found that HIWU had met its burden and found that Appellant had committed an ADRV under Rule 3212.

The Arbitrator evaluated the evidence provided in the filings and the testimony and determined that Appellant failed to meet his burden and establish the source of the Clenbuterol in Hughie's Holiday's Post-Race Sample. The Arbitrator found that the evidence did not support any of Appellant's "speculations" as to how the Prohibited Substance was introduced into Hughie's Holiday's system.[5] Speculation as to the source of a Prohibited Substance is not evidence.[6] The Arbitrator gave significant weight to Clenbuterol studies conducted regarding how long Clenbuterol is detected in blood and found that the "most compelling evidence" was the testimony of HIWU's expert witness, Dr. Heather Knych.[7]

The Arbitrator found that Appellant failed to meet his burden of establishing the source of

[4] The applicable purse was $13,640.
[5] Final Decision, at para. 8.21, HAB Tab 22, p. 958.
[6] *WADA v. Damar Robinson & JADCO*, CAS 2014/A/3820 at para. 80.
[7] Final Decision, at para. 8.21, HAB Tab 22, p. 958

Clenbuterol and, as a result, imposed Consequences of a two-year period of Ineligibility, $15,000 fine, and payment of $5,000 in adjudication costs, based on the facts presented.

IV. The Standard of Review

In this appeal, Appellant seeks only to reduce the financial penalties, totaling $20,000, imposed upon him by the Arbitrator. Pursuant to 15 U.S.C. § 3058(b)(3), a civil sanction is subject to *de novo* review. However, the review is limited to a determination of whether "the final civil sanction of the Authority was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."[8] Despite the fact that an independent review of the record is conducted,[9] a decision or sanction will not be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law where (i) the decision abides by the applicable rules,[10] and (ii) the sanction is rationally connected to the facts.[11] Similarly, to find an abuse of discretion, the record must reveal a clear error of judgment.[12] This standard of review has been confirmed in recent FTC appeals from HISA civil sanctions, *In Re Jeffrey Poole*[13] and *In Re Luis Jorge Perez*.[14]

V. The Financial Penalties Are Not Arbitrary, Capricious, an Abuse of Discretion, or Otherwise Not in Accordance with the Law

The Consequences imposed in the Final Decision comply with the applicable Rules. Rule 3223(b) enumerates that a Rule 3212 violation carries a fine of up to $25,000. The phrase "up to" authorizes the Arbitrator to employ his discretion to determine the amount of the fine.[15] Here, Appellant was found liable for an ADRV pursuant to Rule 3212 and provided no evidence at all to mitigate the Consequences for his violation. The Arbitrator imposed a fine of $15,000. The fine imposed by the Arbitrator is within the range prescribed by the Rule, and, given the evidence

[8] 15 U.S.C. § 3058(b)(2)(A)(iii).
[9] *Agyeman v. INS*, 296 F.3d 871, 876 (9th Cir. 2002).
[10] *Guier v. Teton County Hosp. Dist.*, 2011 WY 31, 248 P.3d 623 (Wyo. 2011).
[11] *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983); *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971).
[12] *Nat'l Wildlife Fed'n v. Nat'l Marine Fisheries Serv.*, 422 F.3d 782, 798 (9th Cir. 2005).
[13] Docket No. 9417, November 13, 2023.
[14] Docket No. 9420, February 7, 2024.
[15] Compare with the period of Ineligibility language of "2 years," which can be reduced via application of other Rules.

presented, the Arbitrator could easily have imposed a higher fine.

As to the adjudication costs, given the fact that Appellant could have been responsible for half of the costs of the proceeding below under Rule 7420(b), the Arbitrator's imposition of the payment of $5,000 is clearly supported by the evidence and was a significant reduction in the amount that Appellant could have been required to pay.

It should also be noted that, pursuant to Rule 3232(b), Appellant could have requested an installment plan for payment of the amounts from HIWU[16] or the Arbitrator, and that "payment schedule may extend beyond any period of Ineligibility imposed upon the Covered Person."

VI. Appellant's Degree of Fault

Appellant contends that the financial penalties imposed should be reduced because he bears No Significant Fault or Negligence for his ADRV pursuant to Rule 3225. Rule 3225 is not directly applicable to this appeal, as defined in the ADMC Program.[17] Rule 3225 states that a Covered Person who establishes that they bear No Significant Fault or Negligence may be entitled to a reduction in the **period of Ineligibility** prescribed by Rule 3223(b), "fixed between 3 months and 2 years, depending on the Covered Person's degree of Fault." Fines are at the discretion of the Arbitrator separate from any consideration of whether the Covered Person can establish the source of the Banned Substance.[18] Fines are based on, but not limited to, the degree of Fault the Covered Person has with regard to the ADRV. In applying their discretion in determining a fine, an Arbitrator may consider and apply other equitable circumstances.

Fault is defined as "any breach of duty or lack of care appropriate to a particular situation." It is incontrovertible and uncontested evidence that a Banned Substance was present in the Sampled collected from Hughie's Holiday and therefore violated Rule 3212.[19] The "starting point" for

[16] HIWU would be willing to agree to an extended installment plan for Appellant.
[17] *See* ADMC Program Rule 1020 – Definitions – "No Significant Fault or Negligence."
[18] *Perez*, Docket No. 9420, February 7, 2024, at para. 7.25.
[19] *See* ADMC Program Rule 3212(b)(2) (establishing that sufficient evidence of a Presence ADRV is established when A Sample analysis detects the presence of a Banned Substance and the B Sample is analyzed and confirms the presence of that Banned Substance); Certificate of Analysis from Industrial Laboratories, dated July 25, 2023, HAB Tab 1, p.11 (finding Clenbuterol in Hughie's Holiday's A Sample); *and* Certificate of Analysis from PETRL, dated September 18,

determination of a fine for this violation should be the maximum fine under the Rule. Appellant's degree of Fault may be reduced – which may result in a lower fine being imposed – by demonstrating factors such as his "experience and special considerations such as impairment, the degree of risk that should have been perceived by [him], and the level of care and investigation exercised by [him] in relation to what should have been the perceived level of risk." Therefore, Appellant's request must first be evaluated with regard to whether he presented any evidence that would lessen his degree of Fault.

Appellant raised several defenses at hearing, most of which do not actually speak to Appellant's degree of Fault. Specifically, those related to his attendance at an information session about new HIWU rules, his knowledge that Clenbuterol was on the Prohibited List, the period of time between when the Sample was collected and his Provisional Suspension, and his lack of disciplinary history for horse safety regulations and are not relevant to his degree of Fault.[20] Only two issues address Appellant's degree of Fault.

A. Dirty Water Bucket in Test Barn

Appellant asserted that a test barn water bucket he used when cooling out Hughie's Holiday on July 8, 2023, was dirty and that it could have been a source of Clenbuterol.[21] Appellant noticed the water was dirty and cleaned the bucket prior to using it.[22] A dirty bucket contaminated with trace amounts of Clenbuterol that would have been sufficient to cause the AAF at issue would have come from the Covered Horse that used the bucket before Hughie's Holiday, and would have certainly resulted in an AAF for Clenbuterol in that Covered Horse.[23] No other Clenbuterol AAFs occurred on that day.[24] The Arbitrator correctly found that no evidence supported that the water bucket caused the ADRV.[25]

2023, HAB Tab 1, p. 23 (finding Clenbuterol in Hughie's Holiday's B Sample).
[20] *See* Final Decision, at para. 8.16, HAB Tab 22, p. 957.
[21] Final Decision, at para. 8.16, HAB Tab 22, p. 957.
[22] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:57:27.
[23] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 0:56:12.
[24] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 0:53:42.
[25] Final Decision, at para. 8.21. HAB, Tab 22, p. 958; *see WADA v. Damar Robinson & JADCO*, CAS 2014/A/3820 at

B. HIWU's Denial of a Hair Sample Analysis

Appellant also asks for a reduction of the financial penalties because he claims that he was denied the opportunity to obtain "contrary" evidence. Appellant claims that the Arbitrator made an error of judgment by failing to find that the denial of hair Sample collection and analysis "to ascertain the timing of the horse's exposure to clenbuterol" would have been sufficient to prove that he had no Fault for the violation of Rule 3212.

Appellant's position on this matter is not supported by facts or science. Appellant ignores that an AAF for Clenbuterol in a blood Sample is overwhelming evidence of an administration of Clenbuterol to the Covered Horse seven or eight days before the blood Sample was drawn.[26] HIWU's expert witness, Dr. Heather Knych, gave the opinion that the level of Clenbuterol detected in Hughie's Holiday's blood Sample was consistent with an administration of Clenbuterol seven or eight days before the blood Sample was drawn. Appellant offered no evidence at hearing to contest Dr. Knych's testimony. Additional testing is further investigation that may occur at HIWU's discretion,[27] and no evidence that Appellant brought to HIWU at the time of the request or raised at hearing would warrant the authorization of such testing.

Appellant's only offered support of his position was an industry publication's article related to another trainer who HIWU notified about an AAF for Clenbuterol.[28] Based on the facts of that case, HIWU authorized additional testing of the original hair Sample collected, and subsequent hair Sample analysis caused HIWU to withdraw the matter (the "**Englehart Case**"). Appellant's position is that because hair testing worked for somebody else and showed that the other person likely was not the Responsible Person when Clenbuterol was administered, it would have done the same for

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para. 80 (finding that speculation of the source of a Banned Substance is not evidence).

[26] *See Detection, pharmacokinetics and cardiac effects following administration of clenbuterol to exercised horses*, Equine Medical Journal, *Knych, Mitchell, Steinmetz and McKemie*, June 6, 2013 (showing that Clenbuterol is typically not detectable in the blood seven days after administration), HAB Tab 12, p. 307 - 312.

[27] *See* ADMC Program Rule 5720 (directing HIWU to investigate possible violations of the ADMC Program Rules and to ensure investigations are conduced fairly, objectively, and impartially).

[28] "HIWU Drops Clenbuterol Case Against Jeffrey Englehart After Hair Test", *Paulick Report*, February 23, 2024, HAB Tab 18, p. 905 – 912.

him. However, there was no Clenbuterol detected in the blood Sample in the Englehart Case.[29] Such a finding would have indicated that Clenbuterol was administered within eight days which, assuming the Trainer was the Responsible Person for the Covered Horse for more than about a week, would make attempting to ascertain a three- to five-month window of administration completely unnecessary.

Hair Sample tests only provide a general idea of when Clenbuterol was administered to a horse.[30] Horses grow hair at a rate of approximately 1 inch every 3 to 5 weeks.[31] Hair Sample are analyzed using two different methods. The first method is a "general" analysis where a four-inch Sample is taken from the Covered Horse. An AAF would indicate that the substance was administered to the Covered Horse within the last three to five months. The second type is a "segmental" analysis, where the entire length of hair is split into one-inch segments that are individually tested.[32] Each inch represents three- to five-weeks of hair growth. Clenbuterol being detected in the first one-inch segment taken closest to the hair follicle would indicate that Clenbuterol was in the horse's system in the past three to five weeks since the Sample was taken. Clenbuterol being detected in the second one-inch segment would indicate that Clenbuterol was in the horse's system in the past six to ten weeks since the Sample was taken. The third segment would show the last nine to fifteen weeks with the fourth segment showing the last twelve to twenty months.

The facts and science do not support Appellant's position that a hair test would have – or even *could* have – provided any reliable evidence, nor does the fact the HIWU did not conduct one here speak to Appellant's degree of Fault. Appellant did not provide any evidence challenging Dr. Knych's conclusion that Clenbuterol had been administered to Hughie's Holiday in the seven or eight days prior to the Sample being drawn. Notwithstanding Dr. Knych's conclusion being

[29] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:07:22.
[30] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:08:20.
[31] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:15:30.
[32] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:07:26.

sufficient to prove a hair test would have no effect in countering the blood Sample results, the Englehart Case is distinguishable in several ways.

In the Englehart Case, Clenbuterol was not detected in the blood Sample,[33]indicating that the Covered Horse was not recently administered Clenbuterol.[34] The AAF resulted from general analysis of a hair Sample,[35] indicating administration within the last three-five months. Here, two different laboratories detected Clenbuterol in the blood Sample, indicating that Clenbuterol was likely administered in the eight days before the Sample was drawn.[36]

In the Englehart Case, the trainer had been the Responsible Person for a short time.[37] That fact combined with the fact that Clenbuterol was not detected in the blood Sample, there would have been a legitimate question whether the trainer was the Responsible Person at the time of administration.[38] Here, Appellant was the Responsible Person for 48 days before the blood Sample was drawn. The blood Sample results indicated that administration likely occurred about eight days before the blood Sample was drawn.[39] Moreover, detection of a Clenbuterol administration 48 days later in a blood Sample is "virtually impossible."[40]

In the Englehart case, the same hair Sample that resulted in the AAF from general hair analysis was analyzed a second time using the segmental method.[41] Therefore, both hair Samples being tested were collected on the same day. Notwithstanding that a blood Sample AAF cannot be countered by a hair Sample result,[42] Appellant did not request a hair Sample until over 180 days after the ADMC Program went into effect.[43] One-hundred eighty days of growth represents as many as nine inches

[33] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:21:10.
[34] *Knych, Mitchell, Steinmetz and McKemie*, supra, HAB Tab 12, p. 307 - 312.
[35] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:21:10.
[36] Final Decision, at para. 8.21, HAB Tab 22, p. 957.
[37] *Paulick Report*, HAB Tab 18, p. [PIN CITE].
[38] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:08:03.
[39] Final Decision, at para. 8.21, HAB Tab 22, p. 957.
[40] Final Decision, at para. 8.21, HAB Tab 22, p. 957.
[41] Final Decision, at para. 8.21, HAB Tab 22, p. 957.
[42] *See* ADMC Program Rule 6313(e) ("Any negative Analytical Testing results obtained from hair, hoof, saliva or other biological materials shall not be used to counter Adverse Analytical Findings or Atypical Findings from urine, blood (including whole blood, plasm or serum), or hair"); Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:22:00.
[43] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:15:08.

of hair to be tested by segmental analysis in order to get to the date before the ADMC Program started.[44] Had HIWU authorized the hair collection which Appellant claims would have provided evidence warranting a lower sanction, the 9th segment tested would have represented an administration range between ***27 and 45 weeks***.[45] However, even if the hair Sample was negative for **any** administration of Clenbuterol during that time, the result *still* would not disprove the blood Sample results indicating that the Clenbuterol present in the blood Sample **was** administered within the last eight days.

The evidence supports the Arbitrator's findings that Appellant's arguments related to HIWU "denying" him a hair Sample were not substantiated. The Arbitrator did not abuse his discretion or make a clear error of judgment in making that finding. Appellant provided no evidence that would demonstrate that his degree of Fault should be lessened.

C. Compound Clenbuterol

Appellant also claims that Dr. Knych's testimony was incomplete because it did not include "recent synthetic developments of compound Clenbuterol, which can remain in a horse's system for significantly longer periods of time." Dr. Knych's expert opinion, which was based on a scientific study that she herself was involved with as a researcher, was that Hughie's Holiday had been administered Clenbuterol within seven to eight days of the blood Sample being drawn.[46] Dr. Knych also testified that for Clenbuterol administered before May 22, 2023 – the effective date of the ADMC Program – to be still present and detectable in the blood Sample at issue here, approximately 48 days later, was "virtually impossible."[47] The Arbitrator properly found her testimony to be relevant and credible.

Appellant presented no evidence at the hearing regarding "synthetic Clenbuterol." Appellant had the opportunity to cross examine Dr. Knych regarding the subject and asked no questions related

[44] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:13:33.
[45] Audio Recording 1 of April 18, 2024 JAMS Hearing, HAB Tab 20, at 1:14:15.
[46] Final Decision, at para. 21, HAB Tab 22, p. 958.
[47] Audio Recording 2 of April 18, 2024 JAMS Hearing, HAB Tab 21, at 0:18:57.

to it. He never even raised the topic. Other than his unsupported position raised in the Application for Review, Appellant provided no evidence addressing recent developments of synthetic Clenbuterol. In addition, this issue would only be relevant if Appellant had established that his Covered Horse actually received one of these products. Therefore, the scope of Dr. Knych's testimony cannot provide a basis to challenge the Final Decision in any way.

The Arbitrator properly considered the evidence available to him in all regards. His finding that none of Appellant's arguments were supported by evidence is clearly based on the evidence below. Appellant did not present anything substantial for the Arbitrator to consider that would in any way lessen his degree of Fault.

VII. Other Considerations

The Arbitrator found that Appellant's evidence and testimony failed to support any of his speculations regarding how Clenbuterol entered the Covered Horse's system.[48] It would have fully been within the Arbitrator's discretion to impose the maximum fine available of $25,000 in this case, as Appellant was not able to provide any evidence that would lower his degree of Fault. Instead, the Arbitrator exercised his discretion and imposed a fine of $15,000 based on other facts and circumstances unrelated to Fault.

At hearing, Appellant testified that his training of Covered Horses was not financially lucrative, that his attorneys were representing him on a pro bono basis, and he would no longer be able to continue training racehorses if a maximum fine was imposed.[49] The Arbitrator found that Appellant had cooperated with HIWU's investigation related to the AAF, and that Appellant had never had a prior violation of any rules or codes related to his training of racehorses.[50] Every indication is that the Arbitrator took Appellant's past, present and future financial circumstances into account when determining the $15,000 fine and the $5,000 in adjudication costs.

[48] Final Decision, at para. 8.21, HAB Tab 22, p. 958.
[49] Final Decision, at para. 8.15, HAB Tab 22, p. 956.
[50] Final Decision, at para. 8.16, HAB Tab 22, P. 956 - 957.

The Arbitrator imposed the reduced financial penalties "based on all of the facts presented."[51] Therefore, these penalties are not, arbitrary, capricious, an abuse of discretion, or otherwise not in conformance with the law. In addition, the record does not indicate any error in judgment on behalf of the Arbitrator in applying his discretion.

CONCLUSION

The Final Decision appropriately considered and applied the facts of Appellant's case to ultimately impose $20,000 in financial penalties. No evidence presented speaks to a lessening of Appellant's degree of Fault. Instead, the Arbitrator exercised his discretion in Appellant's favor by finding that the facts and circumstances warranted reduced financial penalties, which are in keeping with the statutory framework, are rationally connected to the evidence, and were made with adequate consideration of the circumstances. These financial penalties should be maintained.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 7th DAY OF AUGUST 2024

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[51] Final Decision, at Award para. 4, HAB Tab 22, p. 958.