JUDICIAL CONTROL AUTHORITY
FOR RACING
TE MANA WHAKAHAERE Ā-TURE MŌ TE PUREI

Appeal D G Burrows v RIU - Decision of Appeals Tribunal dated 28 May 2018 - Chair, Mr A Harper

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE AN APPEALS TRIBUNAL OF

THE JUDICIAL CONTROL AUTHORITY

FOR RACING UNDER THE RACING ACT 2003

IN THE MATTER of the New Zealand Rules of Harness Racing

BETWEEN DONALD GORDON BURROWS

Appellant

AND RACING INTEGRITY UNIT

Respondent

Appeals Tribunal: Mr Alan Harper, Chairman

Mr Garry Thompson

Present: Mr Donald Burrows – Appellant

Mrs Peggy Burrows – Lay Advocate for the Appellant

Mrs Kylie Williams – Racing Investigator

Mr Shane Renault – Registrar

Heard at Christchurch on 25 May 2018.

Decision given on 25 May 2018.

Written decision issued on 28 May 2018.

DECISION OF APPEALS TRIBUNAL OF JUDICIAL CONTROL AUTHORITY

DATED THIS 28 DAY OF MAY 2018

1. INTRODUCTION

1.1 The Appellant Mr Burrows was charged with two offences by the Respondent Racing Integrity Unit ("RIU"). They were information numbers A7222 and A7223.

1.2 The charges were laid under Rule 1004 (1A), (3), (4).

1.3 The charges alleged Mr Burrows being the registered trainer of the Standardbred "Lightworkofit" presented the horse to race firstly on 2 February 2018 and secondly on 23 February 2018 with a prohibited substance - Kavain (Kava) in its system on both occasions. The Rule reads:

(1A) A horse shall be presented for a race free of prohibited substances.

(3) When a horse is presented to race in contravention of sub-rule (1A) or (2) the trainer of the horse commits a breach of these Rules.

(4) A breach of sub-rule (1A), (2), or (3) is committed regardless of the circumstances in which the … prohibited substance came to be present in or on the horse.

1.4 The penalty for a breach of Rule 1004 is set out in 1004 (7) which provides as follows:

(1) Every person who commits a breach of sub-rule (2) or (3) shall be liable to:

(a) A fine not exceeding $20,000.00; and/or

(b) Be disqualified or suspended from holding or obtaining a licence for any specific period not exceeding five years.

1.5 At the hearing before the Judicial Committee, Mr Burrows pleaded guilty to both charges. After hearing submissions the Judicial Committee imposed a fine of $9,000.00 in respect of the two charges. In addition the Judicial Committee ordered the disqualification of "Lightworkofit" from those two races.

1.6 The hearing by the Judicial Committee took place on 4 May 2018 and the Reserved Penalty decision was dated 15 May 2018.

1.7 The Appellant Mr Burrows appeals the penalty finding of the Judicial Committee.

2. THE APPEAL

2.1 The provisions for appeals is set out in Rules 1202-1207 of the Rules. Rule 1206 directs the Appeals Tribunal to Schedule 5 of the Rules. Clauses 47 – 53 prescribe the procedure and in particular Clause 44 which directs the appeal to be heard by way of a re-hearing, unless the Tribunal directs otherwise.

2.2 It is necessary for the Appeals Tribunal to form its own decision on the matters placed before it.

3. THE POSITION OF THE APPELLANT

3.1 By letter dated 16 May 2018, Mrs Burrows, on behalf of the Appellant, set out in considerable detail the basis of this appeal.

3.2 To summarise Mrs Burrows submits:

(a) The penalty should have only have been imposed in respect of one charge rather than two as had the RIU advised of the irregularity following the race on 2 February 2018, then "Lightworkofit" would not have started on 23 February 2018.

(b) The failure by RIU to advise of the irregularity suggested a significant bias and the presumption of guilt.

(c) The Appellant has spent the whole of his working life in the Harness Racing Industry and has not appeared before a Judicial Committee before.

(d) The offending is at the lowest end of the scale.

(e) The level of fine is unduly unjust and harsh given the Appellant's current income circumstances.

(f) The Judicial Committee made a flawed assumption on the Appellant and Mrs Burrows' personal financial circumstances given they own a property.

(g) A fine of greater than $5,000.00 would cause extreme hardship.

(h) A full and public apology was promptly made via social media accepting full responsibility for the actions.

(i) The Appellant pleaded guilty at the earliest opportunity and was fully cooperative with the investigation.

(j) A number of parties who are prominent within the industry were supportive of Mr Burrows.

4. THE POSITION OF RIU

4.1 Mrs Williams largely repeated what appears to have been placed before the Judicial Committee in respect to penalty.

4.2 These submissions placed some weight in rejecting the allegation that the Respondent should have been advised of the irregularity prior to "Lightworkofit" racing on 23 February 2018.

4.3 Mrs Williams repeated RIU was not in a position to raise any issue with the Appellant until the investigations had been completed and the necessary certifications received from the appropriate drug testing authorities.

4.4 The position of the RIU was also that the penalty imposed by the Judicial Committee was reasonable particularly given the maximum penalty which was available in terms of the Rule.

5. DISCUSSION

5.1 This appeal is in respect of penalty only. In assessing the penalty there are two factors being:

(a) The appropriate starting point; and then

(b) The extent to which there should be any discount or uplift.

5.2 The Judicial Committee on page 6 of its decision detailed the four principles of sentencing which are relevant.

5.3 The Judicial Committee adopted the penalty guide for Judicial Committee's starting point for a first breach of $8,000.00.

5.4 The Judicial Committee then gave consideration to the fact there were in fact two breaches. They applied an uplift of $4,000.00 adopting the views set out in RIU v CD and AD Edmonds, (2016). They observed a similar approach of an uplift of fifty percent of the starting point when there are multiple breaches.

5.5 The Judicial Committee therefore adopted a starting point of $12,000.00 in respect of these two breaches.

5.6 The reasoning of the Judicial Committee in this regard cannot be faulted.

5.7 The Judicial Committee then went on to consider whether there should be any discount or uplift from that starting point of $12,000.00. They observed there were no aggravating factors in this case and we agree with that assessment.

5.8 They then considered mitigating factors and in paragraph 24 on page 11 observed:

"Mitigating factors to which we have had regard are Mr Burrows frank admission of the breach, his cooperation with the Racing Integrity Unit during the inquiry and his previous unblemished record over forty plus years in the Harness Racing Industry. These are significant".

5.9 A number of the matters raised on behalf of the Appellant and which are referred to in paragraph 3.2 of this decision are captured by those words.

5.10 The Appellant sent to the Appeals Tribunal a number of character references. Clearly character references had been referred to the Judicial Committee but not produced as evidence. The Judicial Committee therefore gave little weight to those character references. We did indicate to the Appellant it was not appropriate for new evidence to be submitted to the Appeals Tribunal unless we ordered otherwise. However given the words of the Judicial Committee regarding the Appellant, we are satisfied the Judicial committee had full regard to the character of Mr Burrows and the presentation of the actual character references did not add to the Appellant's position.

5.11 Considerable weight was given by Mrs Burrows on behalf of the Appellant to the position adopted by the Judicial Committee in paragraph 26 of their decision which in her submission did not give sufficient weight to the personal circumstances of the Appellant. The Judicial Committee took this position after an admission by Mr and Mrs Burrows to the ownership of a 15 acre farm in North Canterbury. The Judicial committee also noted the acceptance of a fine of $5,000.00.

5.12 However the personal financial position of a licence holder cannot be the only factor to consider in determining penalty. To do so would create a situation where an impecunious licence holder was able to conduct themselves in whatever manner they wished to without any sanctions being available from the Rules.

5.13 The personal financial circumstances can be one factor in determining penalty and having regard to the overall sentencing principles which we have referred to.

5.14 The Judicial Committee adopted a discount of 25% from the overall starting point of $12,000.00 to impose a penalty of $9,000.00.

5.15 We carefully considered whether or not the further submissions by the Appellant as to his personal circumstances would warrant a departure from the decision of the Judicial Committee. In other words would further consideration of those personal circumstances warrant a greater discount than 25%. Overall we take the view that 25% discount is significant and the penalty imposed of $9,000.00 in respect of the two breaches is well within the range which was available to the Judicial Committee.

5.16 The onus is on the Appellant to show the penalty imposed by the Judicial Committee was manifestly excessive. In our view, the Appellant has not discharged that onus.

6. DECISION

6.1 Accordingly the Appeal is dismissed. The stay of penalty which was granted in our Minute dated 17 May 2018 is lifted.

7. COSTS

7.1 Mrs Williams on behalf of RIU did not seek costs.

7.2 The Judicial Control Authority has incurred costs in assembling this Appeals Tribunal in securing a venue for the hearing of the Appeal.

7.3 The most recent decision relating to costs was Schofield v RIU a decision of an Appeals Tribunal dated 16 May 2018. That was an unsuccessful Appeal as to penalty and the Appeals Tribunal awarded costs against the unsuccessful Appellant in the sum of $1,000.00.

7.4 We therefore order the Appellant to pay $1,000.00 towards the costs of the Judicial Control Authority.

DATED this 28 May 2018

Alan Harper

Chairman

Penalty: