

Appeal LA Burton and MJ Lange v RIU - Decision of Appeals Tribunal dated 12 January 2018 - Chair, Mr M McKechnie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

**BEFORE AN APPEALS TRIBUNAL OF
THE JUDICIAL CONTROL AUTHORITY
UNDER THE RACING ACT 2003**

IN THE MATTER of the New Zealand Thoroughbred

Rules of Racing

LYNN ANTHONY BURTON and MELISSA JANE LANGE

APPELLANTS

RACING INTEGRITY UNIT

RESPONDENT

Appeals Tribunal: Mr Murray McKechnie, Chairman & Mr Alan Harper

Present : Mr Lynn Burton and Ms Melissa Lange

Mr Oscar Westerlund, Racing Investigator for RIU

Philippa Kinsey, Registrar

DECISION OF APPEALS TRIBUNAL OF JUDICIAL CONTROL AUTHORITY

DATED THIS 12 DAY OF JANUARY 2018

1. BACKGROUND

1.1 On the 3rd November 2017 at Avondale Racecourse Mr Burton and Ms Lange appeared before a Non-Raceday Judicial Committee to answer a charge laid under Rule 656(3) of the NZTR Rules of Racing. The charges in respect of Mr Burton and Ms Lange were identical. It was alleged that the controlled drugs methamphetamine and amphetamine as defined in the Misuse of Drugs Act 1975 had been found in a sample given by Mr Burton and a sample given by Ms Lange on the 2nd day of November 2017 at Ruakaka Racecourse.

1.2 In November 2017 Mr Burton and Ms Lange were employed by the Donna Logan/Chris Gibbs racing stable at Ruakaka and they had been obliged to undergo random tests conducted by the RIU.

1.3 Both Mr Burton and Ms Lange pleaded guilty. Two (2) separate decisions were issued by the Non-Raceday Judicial Committee on the 30th day of November 2017. This Tribunal will issue a single decision which has application to both Mr Burton and Ms Lange. As shall be explained further the Tribunal considers that the circumstances of Mr Burton and Ms Lange who are partners in life is to all intents and purposes identical.

1.4 The Non-Raceday Judicial Committee issued two (2) careful and detailed decisions. In each case they imposed a disqualification for a period of ten (10) months and that disqualification was to take effect from the date of the decision namely the 30th day of November 2017.

1.5 The submissions made by Mr Westerlund for the RIU before the Non-Raceday Judicial Committee proposed that the period of disqualification should take place from the 3rd day of November 2017. That is the day following the conduct of the tests. It was accepted by the RIU and has been confirmed today that from the 3rd day of November 2017 Mr Burton and Ms Lange stood down from their employment in the Logan/Gibbs stable.

2. SUBMISSIONS IN SUPPORT OF APPEAL.

2.1 Written submissions have been received on behalf of Mr Burton and Ms Lange. In essence these submissions contend that the period of disqualification was longer than appropriate and that there was not sufficient recognition of Mr Burton and Ms Lange having told the Non-Raceday Judicial Committee that they were proposing to undertake a drug rehabilitation programme with the Salvation Army. That programme is called *The Bridge Programme*. It is known throughout the thoroughbred racing fraternity that the Salvation Army has in recent times involved itself in assisting persons in the industry that have issues with substance abuse or alcohol and Mr Burton and Ms Lange made it known to the Non-Raceday Judicial Committee that they were proposing to undertake such a programme.

2.2 The hearing today has taken place rather earlier than had been initially anticipated. This is because at the telephone conference on the 20th day of December 2017 Mr Burton and Ms Lange made it known that they were moving to Invercargill. That is where Ms Lange's family resides and she has support from the family. She and Mr Burton will initially live with her parents in Invercargill.

2.3 Reference is made in the decisions of the Non-Raceday Judicial Committee to Ms Lange having had a miscarriage sometime before the tests that took place on the 2nd day of November last.

2.4 Ms Lange told the Tribunal of her experience in the racing industry which included employment with well-known trainers in Southland before the move to Ruakaka.

3. THE SALVATION ARMY BRIDGE PROGRAMME

3.1 The Tribunal was told that Mr Burton and Ms Lange have had an initial meeting with Salvation Army personnel in Whangarei. The persons identified were Beth Henderson and Diana Young. The Tribunal was further told that there is a *Bridge Programme* in place in Invercargill and that arrangements are being made for Mr Burton and Ms Lange to take part in that programme.

3.2 In the decisions of the Non-Raceday Judicial Committee there is reference to the Salvation Army. At that time however the position simply was that the Non-Raceday Judicial Committee was told that such a programme might be undertaken. Now the Tribunal knows that steps have been taken in that direction.

3.3 It is contended for Mr Burton and Ms Lange that not sufficient weight was given to their agreeing to undertake the Salvation Army *Bridge Programme*. The Tribunal takes the view that if persons agree to undertake such a programme then it is important to ensure that they act as they have indicated and that there is some mechanism in place to ensure that the programme does in fact take place and that if it does not this is reported to the appropriate authorities.

4. LEGAL ISSUES

4.1 It is a recognised principle of legal reasoning that appeals from penalties imposed at first instance should only be granted if the Appeals Tribunal or Appeal Court is satisfied that some clearly identifiable error or mistake has occurred. It is not for this Appeals Tribunal to make minor adjustments to the decision at first instance.

4.2 Here the Tribunal considers that there are two (2) matters which require consideration. The first is that the Non-Raceday Judicial Committee was expressly requested by the RIU to impose whatever period of disqualification was thought to be appropriate from the 3rd day of November 2017. That submission was not accepted by the Non-Raceday Judicial committee. With respect to the Committee there is no explanation as to why the 3rd November 2017 was not taken as the start date. In both cases the Non-Raceday Judicial Committee ruled that the disqualification should commence from the 30th day of November 2017. In the Tribunal's view it was appropriate to commence the disqualification on the 3rd day of November 2017 the day after the random tests had taken place. Mr Westerlund has confirmed that from that date Mr Burton and Ms Lange took no part in the operation of the Logan/Gibbs stable. It follows from what has just been said that the period of disqualification will commence on the 3rd day of November 2017.

4.3 The second issue is whether the period of ten (10) months disqualification is appropriate. At the hearing(s) before the Non-Raceday Judicial Committee the RIU sought a period of ten (10) months disqualification. The Non-Raceday Judicial Committee adopted a starting point of twelve (12) months disqualification and reduced that period of twelve (12) months to ten (10) months on account of the prompt *guilty pleas* by both Mr Burton and Ms Lange and also by reference to the proposed *Bridge Programme* with the Salvation Army. The position now arrived at, as remarked above, is that the *Bridge Programme* with the Salvation Army is further advanced.

4.4 Rule 812 of the NZTR Rules of Racing provides that a Judicial Committee or an Appeals Tribunal in addition to imposing penalties under rules 801, 803 and/or 804 may require a person who has committed the breach to complete a counselling or rehabilitation course of a type specified. Further the Rule 812 by sub-paragraph (b) provides that the penalty may be stayed wholly or in part for such period and upon such terms and conditions as is thought fit provided that in the event of any failure to comply with the terms and conditions of the stay the Judicial Committee or Appeals Tribunal may order that the penalty or the remaining part of that penalty take effect. This rule has been applied in other instances. It was applied in the case of *RIU v W* [4 December 2015] where counselling was required for the licenced jockey in relation to anger management.

4.5 Rule 812 was not drawn to the attention of the Non-Raceday Judicial Committee who dealt with Mr Burton and Ms Lange on the 30th day of November last. As already noted the position of the Salvation Army was at that stage only spoken of as something that

might take place. This Tribunal is satisfied that Mr Burton and Ms Lange are committed to the Salvation Army *Bridge Programme*. Just how long that programme will take will depend upon an evaluation of what counselling or rehabilitation may be necessary and it is not possible to determine that at this early stage. It is worth noting here that Mr Burton and Ms Lange both told the Tribunal that while in the employment of Ms Logan and/or the Logan/Gibbs partnership they had been drug tested by the employer on a number of occasions and had given clear results in each case.

4.6 The Tribunal considers that proper recognition would be given to Mr Burton and Ms Lange for their undertaking the *Bridge Programme* if the period of disqualification of ten (10) months were further reduced. That reduction would however be in terms of Rule 812 and will only have application if Mr Burton and Ms Lange can satisfy the authorities that they have undertaken and completed such counselling and/or rehabilitation as the *Bridge Programme* requires.

4.7 The position now reached is that the ten (10) month period of disqualification will take effect from the 3rd day of November 2017. That takes the disqualification in each case to the 3rd day of September 2018. The Tribunal is prepared to further reduce that ten (10) month period of disqualification by three (3) months to the 3rd day of June 2018. That reduction to the 3rd day of June 2018 is conditional upon Mr Burton and Ms Lange, in each case individually, completing the Salvation Army *Bridge Programme*. The Salvation Army must furnish to NZTR and the RIU documentary advice before the 3rd day of June 2018 as to the completion or otherwise of the *Bridge Programme*. If the *Bridge Programme* is satisfactorily completed by the 3rd day of June 2018 and the necessary documentation is made available then the disqualification will end on that date. If the programme is not completed and if the documentation is not available by the 3rd day of June then the period of ten (10) months disqualification from the 3rd day of November 2017 will continue through to the 3rd day of September 2018. What this means in perhaps less technical language is that if the programme is completed the last three (3) months of disqualification will be stayed. If the programme does not get satisfactorily completed then the ten (10) months disqualification will run from the 3rd day of November 2017 to the 3rd day of September 2018.

5. COSTS

5.1 The Non-Raceday Judicial Committee made an order in each case that Mr Burton and Ms Lange respectively pay the sum of \$187.50 to the RIU in respect of the analysis undertaken by the ESR. Those orders will remain in place. As to the costs in respect of this hearing the Appellants have been in part successful. That in no small part is a result of the recognition by the RIU of the benefits that can be potentially obtained from the Salvation Army *Bridge Programme*. In those circumstances it would not be appropriate for costs to be awarded against either party or in favour of either party. The JCA has of course incurred some not insignificant costs in relation to the assembling of the Appeal Tribunal at Ellerslie Racecourse today and in arranging the venue. In the somewhat unique circumstances of this case however the Tribunal considers that no order for costs in favour of the JCA will be made against either party. In this case and it is most unusual, the JCA will meet all of its own costs in relation to this hearing.

DATED this 12th day of January 2018

Murray McKechnie

Chairman

Signed pursuant to Rule 1007(5)

Penalty: