

**Non Raceday Inquiry RIU v C Kennett and J Kennett - Penalty Decision dated 7 November 2018 - Chair, Prof G Hall**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF**

**THE JCA AT OAMARU**

**UNDER THE RACING ACT 2003**

**AND IN THE MATTER** of the New Zealand Rules of Harness Racing

**BETWEEN RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND MR CRAIG KENNETT**

Licensed Trainer

**MR JOSH KENNETT**

Open Horseman/ Licensed Trainer

**Respondents**

**Information:** A10192

**Judicial Committee:** Prof G Hall, Chairman

Mr G Clapp, Member

**Appearing:** Mr S Wallis, Stipendiary Steward, for the Informant

The Respondents in person

**Date of hearing:** 23 September 2018

**Date of decision:** 7 November 2018

**PENALTY DECISION OF JUDICIAL COMMITTEE**

[1] In our decision of 15 October last we found the respondents to have breached r 863 of the NZ Harness Racing Rules in that being the co-trainers of the horse WESTAR BELLA they started that horse in race 9 at the Kurow HRC meeting on 19 August when in an unfit condition to compete due to the horse having an infected and inflamed wither.

[2] We called for and have now received written submissions from the parties. The informant's submission was by way of a memorandum; the respondents' submissions were by way of separate emails.

**Informant's submissions**

[3] Mr Wallis commenced the RIU's submission by observing that starting a horse in an unfit condition to compete was a rule that was rarely used. Looking at the database of penalties, the RIU could only identify one case where a trainer had been charged under this rule.

[4] That case is *HRNZ v Burgess* 2009. Mr Burgess was fined \$400 after starting a horse in an unfit condition to compete.

[5] The Stewards believed that cases under r 305 where trainers have been charged with failing to advise Stewards of an injury to a horse that may affect its performance were relevant.

[6] These are:

*RIU v Purdon* 2012 - Fined \$600 for failing to advise a hip injury (horse started) (Group 1)

*RIU v Trathen* 2013 - Fined \$450 for failing to advise a hip injury (horse scratched)

*RIU v Doody* 2015 - Fined \$400 for failing to advise fetlock injury (horse started)

[7] Whilst under a different rule, these cases were said to all relate to a trainer either racing a horse or attempting to race a horse with an injury to the horse.

[8] The RIU noted that there is no starting point in the JCA penalty guide for a breach of r 863. Based on these decisions, the Stewards recommended the adoption of a starting point of a fine of \$500.

[9] Aggravating factors identified were:

"The wither wound began from a cover rub to the horse approximately 8 days prior to the race in question. Mr Craig Kennett admitted in the race day transcript that the wound had got worse on the day of the races. He elected not to seek veterinary advice regarding the wound at any stage prior to the race.

Dr Gillespie in his evidence stated that this was a welfare issue and if he had been made aware of the horse's condition he would not have allowed WESTAR BELLA to race. Dr Gillespie's expert evidence is compelling. The horse should not have started in this race. Accordingly, any person who invested on this horse was unfairly disadvantaged from the outset.

The horse gave ground from the 1200 metres and was retired from the race."

[10] Mr Craig Kennett has been a licensed trainer on his own accord for 21 years. He was first licensed in 1990 and held his licence until 2007. Mr Kennett then renewed his licence from 2011 until 2013. In 2016, Mr Kennett went into a training partnership with his son Mr Josh Kennett. That partnership is now in its fourth season of training. Mr Kennett has started 617 horses as a trainer. The training partnership has started 298 horses. They have not previously breached this rule.

### **Respondents submissions**

[11] Mr C Kennett commenced his penalty submission by stating in the harness industry a person was guilty as soon as the RIU charge a person, which he alleged was "corruption". He believed the RIU case was based "on a ... vet's testimony whom I have had a major argument with in the past. I knew he would get me one day being a race course vet."

[12] Mr Kennett then stated he was "leaving the corrupt industry and at this point in time I will not be making any submissions on anything because I do not acknowledge anyone's authority over me other than the actual law in NZ, the police and any other NZ law enforcement agencies that my tax goes towards funding to protect the citizens of New Zealand.... I am honest and no criminal. Not the racing industry, which is just an expensive sport controlled by people who are not one bit legally qualified to run it as a higher entity than it really is, which is an amateur sports body. HRNZ and the RIU and the JCA do not pay us wages. It is an amateur sport run by amateurs with no professional qualifications to hold their positions, that makes up its own rules to just squeeze money out of everyone as a means of taxation...."

[13] Mr Kennett stated that he and his son "love our horses and do not harm them. They wouldn't win us races either if we treated them as the RIU and their crony vets like Gillespie imply we do."

[14] Mr Kennett also believed he was being harassed by HRNZ because he posted on a closed owners' Facebook page. He had questioned why the RIU did not test all winners. He also questioned why some time in the past Josh Kennett and himself had been required to put VALMAGNE in the names of caretaker trainers at Cambridge even though he was there as the official trainer with the horse and was doing everything with him. This was not in the rules. It was simply harassment.

[15] Mr Kennett referred to his "indiscretions with the Rules regarding drivers being urine tested". He said he had paid the price for these, being fined \$400 twice, along with 9-month and 10-month suspensions.

[16] Mr Kennett concluded his email by stating, "I get my back up when I am treated unfairly by anyone and I especially get my back up with this lot who have massive egos and who have pushed me out of the game."

[17] We have considered all of Mr C Kennett's penalty submission. Those parts of his email that are a personal attack on a member of the RIU we do not repeat in this decision.

[18] Mr J Kennett's email is brief. He recounts his disillusionment with the harness racing industry and the fact that he has listed his horses for sale online. He also states that he intends to send his licence in the mail to HRNZ.

### **Decision**

[19] We find the decision in *HRNZ v Burgess* 2009 to be helpful. Mr Burgess was the licensed trainer of SHIRLEY'S BOY and he admitted a breach of r 863. Mr Escott, the Chief Stipendiary Steward at the time, gave evidence that after the race Mr Burgess had asked for veterinarian assistance for SHIRLEY'S BOY. It was then found that the horse had been injured on its way to the course. In the opinion of the veterinarian SHIRLEY'S BOY was not in a fit condition to have competed in the race. The race day Judicial Committee fined Mr Burgess the sum of \$400.

[20] Penalties for breaches of a related rule, r 305 (failure to report condition which may affect the running of a horse in a race), we note have ranged between \$400 and \$450, with the exception of a higher penalty where it was a Group 1 race.

[21] The Stewards have submitted a fine of \$500 is appropriate in this case. This is \$100 more than the fine in *Burgess*, but in that case the breach was admitted. That case would have been more helpful if the nature of the injury that had been suffered by the horse was disclosed.

[22] We are satisfied that there is a reasonable possibility that WESTAR BELLA suffered tye-up in addition to her having the issue with her wither. Dr Gillespie has accepted that this may have been the case in his evidence at the hearing. In those circumstances, we do not put the poor performance of WESTAR BELLA down solely to the fact she raced with a sore and an infected wither, although this would clearly have inconvenienced the horse and affected her performance.

[23] We also accept that the respondents genuinely but mistakenly believed the horse was in a fit condition to race and that Mr J Kennett had applied purple spray to the area prior to the horse racing. This evidences a degree of concern for the horse but does not explain why it was not thought appropriate to draw the sore wither to the attention of the RIU or a veterinarian prior to the start of the race.

[24] We have considered Mr C Kennett's concerns with the manner in which the industry is administered. We do not believe that these should have any impact on the penalty we impose in this case. Likewise, we note his allegation of bias on the part of Dr Gillespie, arising out of an earlier matter over which they had divergent opinions. We could detect no element of pre-determination or animosity in the evidence of Dr Gillespie. His concern, we believe, was principally one of animal welfare.

[25] We take a starting point of a fine of \$500. The starting point in *Burgess* is not disclosed but is likely to be near this figure. The penalty that Mr Escott submitted was appropriate in that case was between \$300 and \$400. The Committee chose a penalty at the top of this range because the breach was regarded as "relatively serious". The Committee also observed that Mr Burgess had admitted the breach and had an unblemished record.

[26] The respondents are unable to obtain a discount for an admission as they chose, as is their right, to defend the charge, but they too have unblemished records. In Mr C Kennett's case after a lengthy involvement in the industry. We believe this merits a discount of \$100 from our starting point.

[27] Thus we conclude that a fine at the level of that in *Burgess* is appropriate. The respondents are fined the sum of \$400.

[28] As the matter was heard on race day there is no award of costs.

[29] Dated at Dunedin this 7th day of November 2018.

Geoff Hall, Chairman

**Penalty:**