

Non Raceday Inquiry RIU v D J Caskey - Written Reserved Decision dated 1 October 2018 - Chair, Mr P Williams

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of the New Zealand Thoroughbred Racing Rules

BETWEEN RACING INTEGRITY UNIT

Informant

AND DONALD JOSEPH CASKEY

Respondent

Judicial Committee: Mr Paul Williams (Chairman)

Mr Tony Bird (Member)

Parties: Mr Simon Irving - for the RIU

Mr Donald Caskey - as the Respondent

Also Present: Ms H McEwan – Mr Caskey's partner

Mr P Drought – owner of "Kaliper"

Date of Hearing: 29 September 2018

Date of Decision: 01 October 2018

Venue: New Plymouth Racecourse

WRITTEN RESERVED DECISION OF JUDICIAL COMMITTEE

BACKGROUND

1] Mr Caskey, a licensed Class A Trainer, has been charged with a breach of Rule 804(2) of the New Zealand Rules of Thoroughbred Racing in that:-

"on the 28th June 2018 at Waverley Racecourse, being the registered trainer and person in charge of the horse, presented "Kaliper" to the Waverley Racing Club's meeting for the purpose of engaging in and did engage in Race 1 – the Donaghys Maiden 1400 - failed to present the said horse free of the prohibited substance namely Cobalt, in breach of the NZTR Rule 804(2) and therefore subject to penalty pursuant to Rules 804(7) and 804(8)".

2] Rule 804(2) states: "*When a horse which has been brought to a Racecourse or similar racing facility for the purpose of engaging in a Race or trial to which the Third Appendix hereto applies is found by a Tribunal conducting an inquiry to have had administered to it or have had present in its metabolism a Prohibited Substance, as defined in Part A of Prohibited Substance Regulations, the Trainer and any other person who in the opinion of such Tribunal conducting such inquiry was in charge of such horse at any relevant time commits a breach of these Rules*".

3] The relevant Penalty provisions are contained in Rules 804(7) and 804(8).

4] Rule 804(7) states: "*A person who commits a breach of sub-Rule (2) or (3) or (4) or (5) or (6) of this Rule shall be liable to:*

(a) be disqualified for a period not exceeding five years; and/or

(b) be suspended from holding or obtaining a Licence for a period not exceeding 12 months. If a Licence is renewed during a term of suspension, then the suspension shall continue to apply to the renewed Licence; and/or

(c) a fine not exceeding \$25,000”.

5] Rule 804(8) states: “Any horse connected with a breach of sub-Rule (2) or (3) or (4) or (5) or (6) of this Rule shall be, in addition to any other penalty which may be imposed, disqualified from any Race or trial to which the Third Appendix hereto applies and/or be liable to a period of disqualification not exceeding five years”.

6] Within the documents provided to the Committee and Mr Caskey prior to the hearing was a copy of the signed authority from the General Manager of the Racing Integrity Unit, Mr M Godber, dated 28 August 2018 authorising the lodging of the Information (A7160) pursuant to Rule 903(2)(d).

7] At the start of the hearing, Mr Caskey confirmed he understood the Rule under which he had been charged and that he admitted the breach of the Rule.

SUMMARY OF FACTS BY THE INFORMANT AND FOLLOW UP DISCUSSIONS

8] “The Respondent Donald Joseph Caskey is 59 years old and is a licensed Class A trainer under the Rules of Thoroughbred Racing New Zealand (NZTR). Mr Caskey trained the (then) 3yo filly “Kaliper” which won Race 1 - the Donaghys Maiden 1400 - at the Waverley Racing Club’s meeting at Waverley Racecourse on the 28th June 2018. “Kaliper” earned gross stakes money of \$6250.

9] The horse was post-race swabbed (#114368) and on the 19th July the Eurofins ELS Laboratory, Lower Hutt issued an Analytical Report (copy provided to the Committee) detailing the sample positive to Cobalt at a level of 397 micrograms (ug)/L of urine and retested at 375ug/L. Under NZTR Prohibited Substance Regulations for the Rules of Racing, substances capable at any time acting directly or indirectly on the blood system are prohibited substances. Cobalt is capable of acting upon the blood system and under the amended rules, when present in urine above 100 ug/L is a prohibited substance in accordance with the rules.

10] On the 19th July Mr Caskey was interviewed at his property near New Plymouth and detailed some feed supplements and substances containing Cobalt that were part of “Kaliper’s” feed regime. He did not contest the swabbing process. Mr Caskey stated that he gave “Kaliper” supplements and an IV injection of products containing Cobalt. These included 40mls daily of Equi-Gold Iron Tonic Plus in the mornings, 3-4ml injection of Duoject B the day prior to raceday and 30mls Palmountains Equine Plus in the evening feeds.

11] A number of exhibits were taken from the property for Cobalt testing. A Certificate of Analysis provided by the AsureQuality Laboratory dated 15 August 2018 (Ref 18-196755, copy provided to the Committee) confirmed there were no anomalies in any of the products tested.

12] Two days later “Kaliper” was tested post-race at New Plymouth, returning a level of 18.2 ug/L. On this occasion the horse was not given the 40mls of iron tonic in his morning feed or the Duoject injection the day before.

13] RIU records detail that Mr Caskey’s trained horses have never previously been post-race Cobalt tested, having had only two other winners since 2015. Mr Caskey first held a trainers licence in 1993 (25 years) and his NZTR record details he has had approximately 206 starters for 18 wins. He has no previous charges for breaching the Prohibited Substance Rule or any other NZTR Rules”.

14] To questions from the Committee Mr Irving said the lower level of Cobalt (375ug/L) was deemed to be the level when issuing the charge against Mr Caskey. He added the RU had no concerns about the welfare of “Kaliper” with a reading at that level. He said the only supplement of those used by Mr Caskey that stated on the label that it contained Cobalt was the Equi-Gold Iron Tonic Plus although all the supplements used clearly stated they contained Vitamin B12 which contains Cobalt.

15] When asked about the impact of Cobalt, Mr Irving said he believed it remained in a horse’s system for approximately 4 hours. He said “Kaliper” was in, and won, Race 1 on the day which probably accounted in part for the high reading provided – see later comments from Dr Grierson on the level of the reading. He also said that it was generally accepted that not all horses were impacted identically when given Cobalt and some would excrete it more quickly or more slowly than others.

SUBMISSIONS BY THE RESPONDENT AND FOLLOW UP DISCUSSIONS

16] Mr Caskey read out a written statement to the Committee in which he confirmed he was admitting the breach of the Rule. He described himself as a “wannabe horse trainer” and provided detailed information about his interest and involvement in horse racing from his childhood days through to the present day. This included riding trackwork, a period as an Amateur Jockey and breaking in and pre-training horses for his father. He took out his first trainers license in the early 90’s and from then through to a couple of years ago was mixing training with assisting his daughter – a thoroughbred trainer- as well driving for Taranaki Horse Transport. In 2016 he was given 6 horses to train by Mr Drought and granted an “A” license. He is currently working 2 horses with 2 more soon to come into work. He also confirmed that “Kaliper” is no longer being trained by him.

17] Mr Caskey said he did not dispute the RIU's Summary of Facts other than that the figure of 30mls of Palamountains Equine Plus being given to "Kaliper" in the evening feed was in fact 80mls as part of a 21-day booster programme because the horse was in heavy work. He also admitted that on the morning of the race meeting at Waverley on 28 June he gave 40mls of Iron Tonic to "Kaliper" knowing it contained Cobalt as the contents were clearly stated on the label of the container.

18] Mr Caskey described his concern about the lack of information about Cobalt on the labelling of the supplements he used even though he had discovered that some of that information was on some of the associated packaging. He said he was surprised about the number of off the shelf products that contained Cobalt and it was only when he was at his vet's one day that he discovered that vitamin B12 contains Cobalt. He described the feeds he uses and said that while the bags state that the products include B1, B2, B6 and B12 there is no specific mention of Cobalt so how could he know it was included in the feed given to his horses.

19] He then spoke about the metabolism of individual horses being different and felt the only way to assess the impact of any supplement was through regular testing. He expressed concern the RIU were not testing for Cobalt on a more regular basis.

20] To questions from the Committee, Mr Caskey confirmed, as he had previously stated, that he did feed a supplement containing Cobalt to "Kaliper" on the morning of the races. He said he was responsible for feeding his horses although on the rare occasion that he might be unavailable Ms McEwan would do so. He also said he could not recall receiving any specific information about Cobalt from NZTR although was aware that the threshold of 200ug/L had been lowered to 100ug/L on 1 August 2016.

DECISION

21] As Mr Caskey has admitted the breach the charge is found to be proved.

SUBMISSIONS ON PENALTY BY THE INFORMANT

22] *"The Respondent, 59 year-old Donald Joseph Caskey is a Licensed Class 'A' Trainer under the Rules of Thoroughbred Racing New Zealand. He first held a trainers licence in 1993 and is currently training 2-3 horses from his property near New Plymouth.*

23] *The Respondent has admitted a breach of Rule 804(2) and the circumstances are detailed in the Summary of Facts.*

24] *Cobalt is an essential micronutrient in the form of Vitamin B12 (cobalamin). It is a substance included under Part A (1.1.7) of the Prohibited Substance Regulations of the NZ Rules of Racing - capable at any time acting directly or indirectly on the blood system - and under the rules, when present in urine above 100ug/L is a prohibited substance in accordance with these rules.*

25] *Although there is no requirement to establish the cause of administration for a breach of the Prohibited Substance Rule, the RIU investigation concluded that the positive swab probably resulted from the use of the Cobalt containing supplements used by the Respondent and that it was most likely that 40mls of Equi-Gold Iron Tonic in the feed on race morning contributed significantly to the recorded level.*

26] *As per the JCA Penalty Guidelines effective from the 01st May 2015 the starting point for a Thoroughbred or Harness Racing first 'Presentation' offence is \$8000.*

27] *The Respondent does not bet. An analysis of TAB betting records revealed no unusual bets associated with the horse or the race.*

28] *RIU consulting vet Andrew Grierson offered the opinion (copy provided to the Committee) that the supplement regime as detailed by Mr Caskey "...could have elevated (to the level) if administered the day of racing. However, it also possible that the combination given daily and then the day before the race maybe enough to elevate the reading as well especially if there was a chronic accumulation occurring."*

29] *In mitigation it is acknowledged that the Respondent has been fully cooperative throughout the investigation and pleaded guilty to the breach at the first opportunity. The Respondent has been involved in thoroughbred industry all his life and has an exemplary record throughout his 25 years of training. The Respondent only trains 2-3 horses at a time and stated that he has kept the same feed and supplement regime for many years with no issue (he has no previous swabs tested for Cobalt). As in RIU v R & P the Cobalt containing supplements the Respondent was feeding were all vet approved, from reputable manufacturers and were given near to the recommended daily doses.*

30] *It is submitted that in aggravation Mr Caskey is culpable of 'mid-low level' carelessness, failing to take proper and reasonable care by giving "Kaliper" a number of Cobalt containing supplements up to and including the morning of the race.*

31] *In the 2012 Appeals decision RIU v S it was stated "Where the culpability falls on the spectrum of seriousness is best determined by reference to the extent to which the elevated level is in excess of the statutory limit." The level of 375ug/L is 'mid-range' when compared to other positive results recorded in JCA decisions - 'high-range' being 640ug/L (RIU v O & S) and 'low range' being 120ug/L (RIU v H).*

32] *Recent decisions relating to Cobalt include:-*

* *RIU v RICHARDSON & PARKER (13.07.18) – TR Cobalt positive at 198ug/L. \$6000 fine*

* *RIU v BAMBRY (04.12.17) – TR Cobalt positive at 172ug/L. \$11000 fine*

* *RIU v HALE (15.08.18) – HR Cobalt positive at 120ug/L. \$4500 fine and*

* *RIU v DIXON (10.04.18) – HR Cobalt positive at 293ug/L. \$6000 fine*

33] *Given the recommended starting point of \$8000, the aggravating factor of ‘mid-low’ level negligence as an uplift, the mitigating factors as listed, and the overall circumstances considered in this case, I believe an \$8,000 fine is an appropriate penalty.*

34] *Under Rule 804(8) “Kaliper” is required to be disqualified from the race.*

35] *The RIU are seeking no costs”.*

36] Mr Irving reiterated that the supplements used by Mr Caskey all came from reputable manufacturers. He also highlighted the view of Dr Grierson that the likely cause of the high reading was not only the administration of Cobalt on the morning of the races, but the combination of supplements given daily including the day before the races especially if there was a “chronic accumulation occurring”. In relation to this latter point he referred to the decision in *RIU v Richardson and Parker* where the Judicial Committee said at paragraph 5.4 –

“It is not for the Committee to try and establish how “Wild Flower” came to have the Cobalt level revealed following the race on the 10th of March. What might be an explanation is a particular metabolism which this horse has which makes it somewhat unique in being unable to shed Cobalt from its system as most other horses – something in excess of 90% we are told – are able to do”

SUBMISSIONS ON PENALTY BY THE RESPONDENT

37] In Mr Caskey’s written statement referred to above (para 16) he concluded by saying” *Mr Irving has stated that a fine at \$8000 to be an appropriate penalty. I find this very excessive to someone in my position. Yes, I believe I am guilty of ignorance, but that is all I am guilty of. I have no idea of what level of Cobalt is in my horses, as I, until now, have never had a reading. I gave “Kaliper” a B12 shot on the day before the races, and she had her usual everyday 40mls of Iron Tonic Plus in her feed on the day of the races. On reading the instructions on the tonic label, I should have only been feeding 30mls per day!!! This practice has been very similar for the past 10 years. Any fine will have a huge impact on my training operation, so I’m asking you to be very mindful of the mitigating circumstances I have pointed out, along with my full cooperation to bring this soul destroying heartbreak to an end. Thank you for your time.”*

38] Mr Caskey also provided a letter of support from his vet, Dr Hall from Energy Vets Taranaki, which said Mr Caskey had been a regular user of Coforta/Catasol and Duoject as well as other mineral and vitamin supplements such as Iron Tonic Plus, Boost Paste, Tasmix and an in house saline mineral mix with many of those products containing Cobalt at a recommended maintenance level. The letter included comments that Dr Hall “has every confidence in Donald’s ability ...to follow instructions andI have no reason to believe there has been any deliberate inappropriate administration of these products as Donald often rings for veterinary advice before proceeding with any treatment of his horses....”.

39] Mr Caskey concluded by reiterating he had no way of knowing the impact of the supplements he was giving to his horses and that if he had been able to have them regularly tested he would have become aware of the excessive Cobalt reading and adjusted his feeding regime accordingly.

REASONS FOR DECISION

40] The Committee has carefully considered what the starting point penalty should be for this breach. The JCA Penalty Guide dated 1 August 2018 states the starting point for a breach of this Rule is a fine of \$8000. The Committee takes the view that the starting point quoted in the Penalty Guide is for a mid-range breach of the Rules. The maximum fine permissible in terms of Rule 840(7) is \$25,000.

41] We are disturbed by the reading provided by “Kaliper” of 375ug/L with it being nearly four times above the permissible limit and significantly higher than all but two of the readings relating to the three recent cases within the Thoroughbred Code ie *Richardson/Parker, Bambry and O’Sullivan/Scott*. We have not considered comparisons with recent Cobalt cases in the Harness Code.

42] Given the small number of Cobalt related hearings in the Thoroughbred Code since 2016, determining whether the severity of the breach of the Rule is either low range, mid-range or high range is very subjective. However, we note in the case *RIU v Bambry* the RIU considered a level of 173 ug/L was mid-range and the Judicial Committee agreed. If we were to apply the same thinking then the “Kaliper” reading of 375ug/L must be considered well above mid-range. We note, however, that the 375ug/L reading is significantly lower than two of the readings (541 and 640ug/L) in the *RIU v O’Sullivan and Scott*.

43] Mr Caskey’s feeding regime appears to have been very specific with 40mls daily of Equi-Gold Iron Tonic Plus in the mornings, 3-4ml injection of Duoject B the day prior to raceday and 30mls Palmountains Equine Plus in the evening feeds. Of concern to the Committee is Mr Caskey’s admittance that he gave “Kaliper” 40mls of Equi-Gold iron Tonic on the morning of the races knowing full well that it contained Cobalt.

44] Mr Caskey has been involved in the industry in various roles since his teens and obtained his first trainers license 25 years ago. There was a responsibility on Mr Caskey to have a clear understanding of all the supplements and products he was giving “Kaliper”.

He did not have this understanding, and this is relevant when determining the degree of culpability. Whilst noting Mr Irving's comment that the amount of supplements given "were near to the recommended daily doses" we also note Dr Grierson's comments that a contributing factor to the elevated reading could have been because of "chronic accumulation occurring".

45] This breach is one of absolute liability and after taking all these matters into consideration we have determined the severity of the breach to be above mid-range and have decided to apply an increase to the starting point of \$8,000 rather than starting with the maximum possible fine of \$25,000 and calculating a percentage of that figure. Accordingly, we have adopted a starting point of a \$10,000 fine, that being an increase of 25% on the mid-range starting point.

46] Mitigating factors that have been taken into consideration are Mr Caskey's admission of the breach and his cooperation throughout the investigation process. We have also taken into consideration the fact he has no previous breaches of this Rule in the 25 years he has been training although this is because his horses have never been previously post-tested for Cobalt.

47] We also note comments made during the hearing about for how long after being administered Cobalt remains "active". "Kaliper" raced in Race 1 on the day and it is possible that, had the horse raced in the last Race on the programme and then tested positive to Cobalt, the reading may have been significantly lower. That said, the "metabolism" issue detailed above could also have meant a similar reading to the 375ug/L may have occurred.

48] Taking those mitigating factors into account we have decided a reduction of \$2000 from the increased starting point is justified. This represents a discount of 20% which means the penalty will be a fine of \$8000. Whilst not a mitigating factor, we also note the required disqualification of "Kaliper" – see below - means Mr Caskey will not receive the \$625 trainer's percentage for winning the race.

DECISION

49] Mr Caskey is fined \$8000.

COSTS

50] The RIU are not seeking any costs. While there have been some costs incurred by the JCA, as this matter was held on a Raceday there will be no costs awarded in favour of the JCA.

DISQUALIFICATION OF "KALIPER"

51] Under Rule 804(8) it is necessary to order the disqualification of "Kaliper" from Race 1 at the Waverley RC meeting on 28 June 2018 and an order is made accordingly. It follows that all the horses that finished behind "Kaliper" in that race will move forward by one placing. It follows from the disqualification that the stake money to which the connections of "Kaliper" would otherwise have been entitled to is forfeited.

Paul Williams

Chairman

Penalty: