

Non Raceday Inquiry RIU v G R Dixon - Decision dated 10 April 2018 - Chair, Mr A Dooley

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 Rules of Harness Racing

BETWEEN THE RACING INTEGRITY UNIT (RIU)

Informant

AND Mr GR Dixon

Licensed Public Harness Trainer

Respondent

Information No: A8465

Date of hearing: 8 April 2018

Venue: Counties Racecourse

Appearing: Mr O Westerlund- Investigator, Racing Integrity Unit

Mr G Dixon – Licensed Harness Trainer

Mr R Lawson – Lay Advocate representing Mr Dixon

Judicial Committee: Mr A Dooley, Chairman - Mr A Smith, Committee Member

Charge

The Informant Mr O Westerlund, Racing Investigator alleged that on Saturday the 16th December 2017, Gareth Ryan DIXON was the licensed Trainer of the Standardbred Harness Racehorse “Gimmegold” which was presented for and raced in Race 8, the New Year’s Eve Auckland Cup Twilight Races Mobile Pace 2200m, at a race meeting conducted by the Auckland Trotting Club at Auckland, when the said Standardbred was found to be presented to race with a Prohibited Substance in its system, namely Cobalt, being an offence under the provisions of Rules 1004(1A) and 1004(3) and punishable pursuant to Rule 1004(7) and (8) of the New Zealand Rules of Harness Racing.

The relevant Rules are as follows:

Rule 1004(1A)

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

Rule 1004(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

Rule 1008

In the absence of any express provision to the contrary in any proceeding for a breach of these Rules:

(a) it shall not be necessary for the informant to prove that the defendant or any person intended to commit that or any breach of the Rule; and

(b) any breach of a Rule shall be considered as an offence of strict liability.

Penalty Provisions

Rule 1004(7)

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

(a) a fine not exceeding \$20,000; and/or

(b) be disqualified or suspended from holding or obtaining a licence for any specific period not exceeding 5 years.

Rule 1004(8)

Any horse connected with a breach of sub-rule (1), (2) or (3) shall be disqualified from any race entered and/or liable to a period of disqualification not exceeding five years

Mr Dixon acknowledged that he understood the Rules and he confirmed that he admitted the breach.

Mr R Lawson, Lay Advocate, represented Mr Dixon at the hearing.

Mr Dixon acknowledged that all the relevant documents from the RIU had been disclosed to him. Mr Dixon confirmed that the Summary of Facts were not disputed.

Mr Westerlund produced a letter from Mr M Godber, General Manager for the Racing Integrity Unit, authorising the filing of the Information pursuant to Rule 1108(2).

Agreed Summary of Facts by the Informant

The respondent Gareth Ryan DIXON is a licensed Public Trainer and Trials Driver under the Rules of New Zealand Rules of Harness Racing.

On Saturday the 16th December 2017 "Gimmegold" was correctly entered and presented to race by Mr DIXON in Race 8: 9.15pm – New Year's Eve Auckland Cup Twilight Races Mobile Pace 2200m at the Auckland Trotting Club meeting at Alexandra Park, Auckland.

"Gimmegold" is a 6 year-old bay gelding (Changeover – Charbella Gold) owned by Mr AM Roberts and Mrs CD Roberts and is trained by the Respondent, Mr DIXON.

"Gimmegold" finished first of the nine horse field and won a stake of \$7758.

"Gimmegold" underwent a random Post Race urine swab. Mr DIXON does not contest the swabbing process.

All swab samples from the meeting were couriered to the New Zealand Racing Laboratory and were analysed for the presence of substances prohibited under the Rules of New Zealand Rules of Harness Racing.

On the 9th January 2018 the Official Racing Analyst reported in writing that the samples from "Gimmegold" had tested positive to Cobalt.

The horse returned a Cobalt level of 293 ug/L (micrograms per litre).

Cobalt at a concentration above 100 micrograms per litre in urine is a Prohibited Substance within the meaning of the Rules and its presence in a race day sample is, prima facie, a breach of the Rules.

Cobalt is an essential trace element required for life through the actions of Vitamin B12 of which Cobalt makes up about 5% of its weight. Cobalt is absorbed from the gut either as elemental or incorporated in Vitamin B12.

Mr Dixon was spoken to on Monday the 15th January 2018 at his Stable in Pukekohe. He could offer no explanation for the positive test result on the horse.

In the Stable Block several items were located which contain Cobalt.

Located 'Blud-Boost-Equine Athlete' a 1kg packet that was already opened - a supplement containing B12. When the 'Blud-Boost' was tested it was found to contain Cobalt at the level of 1.4 mg/kg (milligrams per kilogram).

Also located 'Ironcyclen' 1 litre container. The label indicates that this product is an iron supplement with copper and cobalt for horses and dogs. Mr Dixon admitted giving the horse 10-15mls the day before it raced. When the 'Ironcyclen' was tested it was found to contain Cobalt at the level of 5.2 mg/kg (milligrams per kilogram).

Also located was a 100 ml bottle of 'Hemoplex'. The label indicates a supplement source of vitamins, minerals, and amino acids for horses, cattle, dogs and cats, for use during periods of stress and convalescence. Mr Dixon admitted giving the horse 10mls two days before the horse raced. When the 'Hemoplex' was tested it was found to contain Cobalt at the level of 81 mg/kg (milligrams per kilogram).

A Certificate of analysis provided by the Assure Quality laboratory confirmed there were no anomalies in any of the products tested.

Mr DIXON has been involved in the Harness Racing Industry for 35 years. He holds a Public Trainer and Trials Driver Licence and trains eight race horses.

He has been training for 15 years.

He is aged 45 years and has not previously appeared.

An order is sought for the horse "Gimmegold" to be disqualified from the race and the stakes money to be repaid.

In response to a question from the Committee, Mr Westerlund said that the RIU analysis of TAB betting records revealed that there was nothing out of the ordinary associated with the betting patterns on GIMMEGOLD.

Submissions by the Respondent

Mr Lawson made the following points:

- 1) The Positive Test result of the swab was notified to the RIU on the 9th Of January 2018.
- 2) Gimmegold (the horse concerned) raced again on January 13th (4 days later)
- 3) Mr Dixon was not notified until January 15th.
- 4) Gimmegold was swabbed on January 13th after finishing in sixth position. Mr Dixon felt this extremely unusual at the time. (although obviously on the following Monday he found out why)
- 5) Gimmegold was tested for Cobalt and returned a reading of 11 for the January 13th run.
- 6) Gimmegold was given the exact same proprietary items as his race winning (and positive swab for December 16th.)
- 7) Mr Dixon is at a complete and utter loss as to explain why the horse tested high on December 16th.
- 8) Cobalt is a natural substance and horses will have natural levels and each may also excrete excess Cobalt differently.
- 9) Many Horse feeds including hay have Cobalt in them and so do water supplies.
- 10) Trainers are not in a position to test their own horses for Cobalt levels so at any time are totally unaware of the levels in their horses.
- 11) Despite the proprietary items having low levels of Cobalt in them – on one occasion the horse tests high and then on the next occasion it tests low.
- 12) Cobalt in racehorses is a very inexact science.
- 13) There is no definitive scientific evidence that proves it is detrimental to a horse's welfare and there is also no scientific evidence to prove that it improves equine performance.
- 14) However it is conceded that – it does not have to have either of the above to be determined that it is at a certain level – a prohibited substance.
- 15) The point we are making here is that despite a large amount of publicity surrounding Cobalt there is very little if any definitive evidence of how and why a horse can test high for it.
- 16) Mr Dixon has been and is extremely concerned and upset that he has received this positive result. He prides himself on his integrity and this is an unfortunate chapter in his training career.
- 17) Mr Dixon has compensated the owner of this horse for loss in winning stakes due to this positive test.
- 18) In an effort to keep costs to an absolute minimum the "B" sample was not requested to be tested.
- 19) It is accepted that the horse will be disqualified from the race in question.
- 20) Mr Dixon now takes extreme care and is fastidious in trying to ensure his horses are not exposed to potential Cobalt that could cause a high reading.

Mr Dixon provided the Committee with two written character references and advised that he was also a commercial breeder and seller. He said that his reputation is everything and he wouldn't knowingly put himself in this position. He added that his Trainers percentage for winning the race was \$700.

Decision

As Mr Dixon admitted the breach the Committee found the charged proved.

Submissions on Penalty by Informant

1. INTRODUCTION:

1.1 The respondent Gareth Ryan DIXON is a licensed Public Trainer and Trials Driver under the New Zealand Rules of Harness Racing.

1.2 He has been involved in the racing industry for 35 years and a trainer for 15 years.

1.3 Mr DIXON is 45 years of age.

1.4 It is submitted that a fine of \$8000 is sought.

2. OFFENDING:

2.1 Mr DIXON has admitted the breach of the Rules in relation to the standard bred race horse "Gimmegold".

2.2 "Gimmegold" raced at the Auckland Trotting Club meeting held at Alexandra Park on Saturday the 16th December 2017.

2.3 The details of Mr DIXON's offending are contained in the Summary of Facts which is agreed.

2.4 The prohibited substance concerned is Cobalt.

Noted: That the level for Cobalt under New Zealand Rules of Harness Racing was reduced on the 1st August 2017 from 200 ug/L to 100 ug/L (micrograms per litre).

3. PENALTY PROVISIONS:

3.1 The penalties which may be imposed are fully detailed in the Charge Rule Penalty Provisions document.

4. SENTENCING PRINCIPLES:

4.1 The four principles of sentencing can be summarised briefly:

- Penalties are designed to punish the offender for his/her wrong doing. They are not meant to be retributive in the sense the punishment is disproportionate to the offence but the offender must be met with a punishment.
- In a racing context it is extremely important that a penalty has the effect of deterring others from committing similar offences.
- A penalty should also reflect the disapproval of the JCA for the type of offending in question.
- The need to rehabilitate the offender should be taken into account.

4.2 The first three principals have relevance in this case.

5. PRECEDENTS:

5.1 In support of this penalty I will refer to four previous decisions by the J.C.A which may be of some assistance.

5.1.1 RIU v BROSNAN (13.02.18) – 3 x Cobalt positives. Total fine imposed of \$19,200.

5.1.2 RIU v DALGETY (16.05.2017) – 5x Cobalt positives. Total fine imposed of \$32,000.

5.1.3 R.I.U v BAMBRY (4.12.17) - 1 x Cobalt positive. A fine imposed of \$11,000.

5.1.4 RIU v O'SULLIVAN & SCOTT (22.03.2016) – 3x Cobalt positives. Total fine imposed of \$50,000.

6. MITIGATING FACTORS:

6.1 That he has admitted the breach at the first opportunity.

6.2 That he has been fully co-operative throughout the process.

6.3 That he has had no previous charges before the Committee.

7. AGGRAVATING FEATURES:

7.1 No aggravating features.

8. CONCLUSION:

8.1 The RIU believe that the breach can be dealt with by way of a monetary penalty. To that end the RIU seek a fine of \$8000.

8.2 Under Rule 1004(8)

8.2.1 "Gimmegold" is required to be disqualified from the respective race on the 16th December 2017

8.2.2 Any stake money paid out is required to be repaid.

8.3 The RIU are seeking no costs.

Submissions of Penalty by Respondent

Mr Lawson made the following points:

1. The JCA Penalty Guide shows a Starting Point as an \$8000 fine for a Breach of The Prohibited Substance Rules. This is for a first offence and a single positive.
2. We are dealing with a first offence and a single positive in this case.
3. From the Starting Point we must add or detract based on the aggravating or mitigating circumstances of the case.
4. In this case we agree that there are no aggravating features.
5. There are a number of mitigating circumstances – they are as follows:-
 - The Guilty Plea and admission at first opportunity
 - Mr Dixon has been fully co-operative throughout the enquiry
 - Mr Dixon has no previous charges before the committee and in fact has an exemplary record.
 - The References as to the excellent character of Mr Dixon
 - His dismay at this charge and the effect on his reputation.
6. Mr Dixon is a family man with a new baby and two other young dependents.
7. He is able to pay a fine although would appreciate a modest one.

In Summary given all of the above we submit that a fine based on the starting point of \$8000 with a 20-25% discount for the mitigating factors would be appropriate. This would be in line with principles on previous cases (in particular the R Brosnan case)

The RIU are generously not seeking any costs – that is appreciated and as the case is being heard on a raceday it would also be appreciated if there were no JCA costs – in line with a number of other similar cases heard on raceday.

Reasons for Penalty

The Committee have carefully considered all the evidence and submissions presented.

The JCA Penalty Guidelines have a starting point of \$8,000 fine for a first offence of presenting a horse to race with a prohibited substance in its system. That figure was adopted in this case.

The Committee was conversant with the four precedent decisions referred to by the RIU.

The Committee notes that the level of Cobalt detected (293 ug/L) in GIMMEGOLD's system was in the mid-range compared to other cases involving this Prohibited Substance.

There has been much publicity and discussion about Cobalt in both the Harness Racing Code and the Thoroughbred Code in New Zealand in recent years. This should have put all Licenced Holders on notice.

The purpose of Rule 1004 is to maintain the integrity of Harness Racing and to impose an obligation on all Trainers to ensure horses are presented to race free of Prohibited Substances. It is a long established principle of racing that there is a high obligation on the part of Licence Holders who transport a horse to a race meeting to ensure compliance with the Rules. It is therefore paramount that racing is conducted on a level playing field.

There were no aggravating factors that warranted an uplift in penalty.

The mitigating factors for which we afforded Mr Dixon a reduction in penalty were:

- Mr Dixon's admission of the breach.
- Mr Dixon was fully cooperative with the RIU during their investigations.
- Mr Dixon has an unblemished record under this Rule after 15 years of training approximately 2,200 Standardbred horses.

We had regard for the two written character references where both referees had known Mr Dixon for many years and both emphasised his honesty and integrity.

After having regard for the particular circumstances of this case we consider that a fair and reasonable reduction from the starting point was \$1,500.

After taking into account all of the above factors the Committee considered that an appropriate penalty was a \$6,500 fine.

Penalty

Accordingly, Mr Dixon was fined the sum of \$6,500.

Disqualification of the Horse

Pursuant to Rule 1004(8) the Committee orders the disqualification of GIMMEGOLD from, the New Year's Eve Auckland Cup Twilight Races Mobile Pace 2200 metres. Disqualification effective from Monday, 16 April 2018.

The amended placings are:

1st No.1 IDEAL LASS

2nd No. 3 WILL TAKE CHARGE

3rd No. 9 LYNTON CREEK

4th No. 2 STAND SURE

The Committee was informed that the stake money for this race has not been paid out.

Therefore the Committee authorised the payment of stakes in accordance with the amended placings.

Costs

The RIU has sought no costs.

As this charge was heard on a raceday, there was no order for JCA costs.

Dated this 10th day of April 2018

Adrian Dooley

Chair

Penalty: