

Non Raceday Inquiry RIU v J B McDermott - Written Decision dated 7 March 2019 - Chair, Mr R G McKenzie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE

HELD AT CHRISTCHURCH

IN THE MATTER of the New Zealand Rules of Harness Racing

IN THE MATTER of Information No. A8908

BETWEEN R A QUIRK, Stipendiary Steward for the Racing Integrity Unit

Informant

AND JOHN BEDE McDERMOTT, of Prebbleton, Holder of Licence to Train

Respondent

Date of Hearing: 3 March 2019

Venue: Addington Raceway, Christchurch

Judicial Committee: R G McKenzie (Chair)

H M Weston (Member)

Present: Mr R A Quirk, the Informant

Mr J B McDermott, the Respondent

Date of Oral Decision: 3 March 2019

Date of Written Decision: 7 March 2019

DECISION OF JUDICIAL COMMITTEE

The Charge

[1] Information No. A8908 alleges that the Respondent, Mr J B McDermott, Holder of a Licence to Train, committed a breach of Rule 411.2 in that, "on the 27th February 2019, being the person responsible for the nomination and acceptance of the registered racehorse, BETTER FLY (a 3YO black filly by Bettors Delight from Flyover), an acceptor for Race 19, a 2600 metres standing start Workout at a Workouts Meeting conducted by the North Canterbury TOA at Rangiora, he in fact presented RUBY'S A DELIGHT (a 2YO bay filly by Bettors Delight from Supreme Gem) for the purpose of competing in such Workout as the horse BETTER FLY".

[2] Mr Quirk produced a letter from Mr M R Godber, General Manager of the Racing Integrity Unit pursuant to Rule 1108(2) authorising the lodging of the information. The information had been served on Mr McDermott. Mr McDermott had signed the Statement by the Respondent on the information form indicating that he admitted the breach.

[3] Mr McDermott was present at the hearing of the information. The charge and the Rule were read to him and he confirmed that he understood both and that he admitted the breach.

[4] Mr McDermott having admitted the breach, the charge was found proved.

The Rule

[5] Rule 411 provides as follows:

(2) Where a horse has, or is deemed to have been accepted for a race at a particular racecourse no other horse shall be brought to the racecourse for the purpose of racing there as the first-mentioned horse.

Summary of Facts

[6] Mr Quirk presented the following Summary of Facts:

1. Rule 105(1) of the Rules of Harness Racing New Zealand defines a "Workout" as "a trotting or pacing race, the programming of which is not approved by HRNZ" and "Workouts" and "Workouts Meeting" shall have a corresponding meaning.
2. On Wednesday the 27th of February 2019, the North Canterbury TOA Trials were held at Rangiora Raceway. The programme for the meeting showed that Race 19 on the day was a Workout Learners 3.35 Pace to be run over 2600 metres.
3. Horse No.4 in that Workout was shown to be BETTER FLY, a three-year-old black filly by Bettor's Delight – Flyover. The horse was trained by John McDermott. The brand for the horse was listed as 15Z on the top line, and 3127 on the bottom line. There are no white markings listed for this horse.
4. The horse was inspected by Mr Quirk at the stabling area prior to the race and he identified that the brand on the horse's neck did not match the brand that was shown on the Stewards' programme which is used to identify all the horses at the Trials and Workouts. The brand on the neck of the horse presented read 16Z on the top line, and 5337 on the bottom line. There were no white markings on the horse.
5. Mr Quirk immediately informed Mr McDermott and spoke to him regarding the issue of the brand on the horse differing from that listed for BETTER FLY. Mr Quirk then scratched the horse from its heat.
6. Mr McDermott was very surprised with the confirmation that the horse was not the horse he had brought to the track and said that he had been working RUBY'S A DELIGHT for several months thinking that it was in fact BETTER FLY.
7. Neither horse had started in Workouts or Trials prior to the 28th of February.

The Informant's Penalty Submissions

[7] 1. Mr McDermott has held a trainer's licence since 2009 and has had no prior charges under this Rule. Mr McDermott has been very cooperative throughout the proceeding and has conducted himself in a professional manner. Mr McDermott has accepted full responsibility for his actions.

2. BETTER FLY was nominated to race in a Workout, not a Qualifying Trial or on a race day. The horse was able to be scratched prior to the Workout and did not race. There is no suggestion that this was an intentional act by Mr McDermott to deceive any party. The failure to check the brand on the horse was a basic error, which should not have occurred.

3. Recent cases in relation to this are;

- RIU v Barron 2012 (Harness) – Fined \$400
- RIU v Richardson 2012 (Thoroughbred) – Fined \$500
- RIU v McQuade 2013 (Thoroughbred) – Fined \$500
- RIU v Tiley 2013 (Thoroughbred) – Fined \$450
- RIU v Hope & Hope (Harness) 2013 – Fined \$500
- RIU v Court 2019 (Harness) – Fined \$500

4. Workouts are frequently televised, although being a Learners Heat this would have minimal impact for a punter's assessment. Mr McDermott has been negligent in probably not confirming the brands off the neck when submitting a trainer notification to HRNZ. Taking into account the fact that the status of race, being a workout, is of less significance than Qualifying Trials, which were the subject of the above Harness cases, Stewards are submitting that a fine in the \$250-\$300 range is appropriate in this case.

Submissions of Respondent

[8] Mr McDermott said that the brand had not been checked against the HRNZ website. When he submitted the Trainer Notification form, the horse was not on the property. It has an "ongoing chiropractic problem", he said, and for the previous 10-14 days it had been at the property of Mr Geoff Dunn who had rectified the problem, which required a daily treatment.

[9] The present situation has absolutely stunned not only himself but also his staff member and Mr Nick Le Lievre, who trains from his property. The two horses had swapped identities as far as their daily activities around the stable are concerned, but have also swapped their ability and their manners. One has gone from being an extremely difficult horse to break in and has caused all sorts of problems, to now being a "perfect horse", whereas the other has gone from being an absolute dream to being a horse with quite a few issues, he said.

[10] Although the horses are different ages, they do look alike. He did not know when the "mix-up" occurred. He had been out of the country for six weeks in May/June 2018 while both horses were in training.

[11] This was the first horse he had taken to a Workout at a Trials Meeting and he was not expecting to have the horse inspected. Also, he was aware of three horses at the Motukarara Trials on 2nd March that did not have a trainer shown. He had lodged his Trainer Notification form, the day before the Workouts, because he liked to do things right, Mr McDermott said.

[12] Mr Quirk explained that Stewards do not generally attend Workouts but the onus has always been on the trainer to take the correct horse to the Workouts. Stewards do try to check as many Workouts horses at Trials meetings so that, when those horses are eventually presented for Qualifying Trials, they have already been "signed off". Because there were two Stewards at this particular Trials Meeting, Mr Quirk said, he was free to be able to check the horses that were there for Workouts.

[13] Mr Quirk said that, as far as Trainer Notification was concerned, a horse will not be qualified by Stewards until such time as a Trainer Notification form is received. This was a reasonably common situation, Mr Quirk added. Mr McDermott's horse would have been checked regardless of whether or not the Trainer Notification had been received.

[14] Mr Quirk said, and Mr McDermott acknowledged, that he had done Mr McDermott a favour by checking the horse, thereby avoiding a more serious situation at a later stage. Mr McDermott referred to the old system under which it was a requirement to produce the ownership papers for a horse when he would check the brand against that document. In any event, Mr Dunn had brought the horse to the Workouts meeting. The present system is superior, Mr Quirk said.

[15] Finally, Mr McDermott said, he owns approximately 30 horses but prides himself on knowing each and every horse, so this error is a "bolt from the blue". Had the horse been at his place the mix-up would possibly have been noticed.

[16] In relation to penalty, Mr McDermott submitted that he had been a victim of circumstances. At no stage was there any attempt on his part to deceive, he said. The situation was "bizarre" and he could not believe that it had happened. He accepted the need to present the correct horse to Workouts.

Reasons for Penalty

[17] In arriving at penalty, the Committee looked at the previous decisions referred to by Mr Quirk in his submissions. The most relevant of those is the decision in *Court* (January 2019), principally, because it is the most recent and, also, closest to the fact situation of the present case. In that case, a trainer took a 2-year-old to a Trials Meeting where it was discovered that the wrong horse had been presented for the 1609 metres 2-y-o Mobile Pace. The horse was scratched when it was discovered that the brand did not match. The horse wrongly presented had started in one previous Workout a week before this Trial, which it won, under another name.

[18] The Judicial Committee in *Court* took as a starting point, for a mid-range breach, a fine of \$600 and gave a discount of \$100 for the mitigating factors – admission of the breach and previous clear record. The Committee drew no assistance from the two other previous harness racing cases cited by Mr Quirk, taking the view that they were somewhat dated.

[19] There are two principal points of difference between the present case and *Court*. Firstly, in *Court*, the wrong horse was presented for a Trial and not a Workout, as in this case. Secondly, that horse had previously started in a Workout under the wrong name. In the present case, the error was detected before either horse had raced in a Trial or Workout. Those two points of difference are significant, and this needs to be reflected in the penalty in this case. The present case is, fortunately, a case of "no harm done". The Committee is of the view that, having regard to those points of difference, we should adopt a starting point of a \$350 fine.

[20] Mitigating factors are, as in the *Court* case, Mr McDermott's very frank admission of the breach and his previous unblemished record. We give Mr McDermott a discount of \$100 for those mitigating factors.

Penalty

[21] Mr McDermott is fined the sum of \$250.

R G McKenzie

Chair

Penalty: