

Non Raceday Inquiry RIU v J Laking - Written Decision dated 29 April 2018 - Chair, Prof G Hall

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

**BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY AT DUNEDIN
UNDER THE RACING ACT 2003**

AND IN THE MATTER of the New Zealand Rules of Racing

BETWEEN RACING INTEGRITY UNIT RIU

Informant

AND JASON LAKING, Licensed Jockey

Respondent

INFORMATION NO. A8201

COMMITTEE: Prof G Hall (Chairman)

Mr P Knowles (Committee Member)

PRESENT: Mr C Allison for the Informant

Mr J Laking in person

DATE OF ORAL DECISION: 24 April 2018

DATE OF WRITTEN DECISION: 29 April 2018

WRITTEN DECISION OF JUDICIAL COMMITTEE

[1] The respondent Mr Jason Laking has a problem with his riding weight. He has admitted a breach of r 656(3) and appears before this Judicial Committee for the imposition of penalty.

[2] Mr Laking is a licensed Class A Rider. He was initially licensed in the 1998/1999 season. He has ridden in a total of 3353 races, as at 9 April 2018, for 344 wins.

[3] On 11 March 2018 Mr Laking was one of twelve riders selected for drug testing at the Wyndham Racing Club's annual meeting held at the Gore Racecourse. The riders were all advised in writing that they were required under the Rules of Racing to provide a urine sample for analysis.

[4] Mr Laking was formally advised of the request to supply a sample at 12.01 pm and he supplied a urine sample at 4.00 pm. The testing was conducted by an authorised person from The Drug Detection Agency.

[5] Prior to the test being conducted Mr Laking openly admitted to the authorised person that he had taken a half tablet of Frusemide the previous evening.

[6] Mr Laking's sample number U332918 was negative for any illicit drugs but was forwarded to ESR for further analysis for diuretics. On 23 March 2018 TDDA advised sample number U332918 returned positive for Frusemide. Frusemide is banned from the racing industry due to the effects the drug has on the welfare of riders.

[7] Mr Laking has a declared riding weight of 57 kgs with Thoroughbred New Zealand on the day and he had four rides carrying between 57.5 – 58.5 kilograms.

[8] In explanation for taking the diuretic, Mr Laking advised the RIU that he was having difficulty with his weight since returning to race-day riding this season. He was co-operative throughout the testing procedure and follow up investigation, conducting himself in a professional manner.

[9] Mr Allison produced written permission to file a non-raceday information from the General Manager of the RIU, Mr M Godber, in accordance with r 903(2)(d) of the New Zealand Rules of Thoroughbred Racing alleging a breach of r 656(3). The letter was dated 29 March 2018.

[10] Information A8201 states: "On the 11th of March 2018 at the Gore Racecourse Jason Darryl Laking a Class A Rider having been required by Racing Investigator Christopher John Allison to supply a sample of his urine to an authorised person namely Petronella Van Der Sluys, was found upon analysis to contain the diuretic Frusemide. The respondent is alleged to have thereby committed a breach of Rule 656(3) of the New Zealand Thoroughbred Racing Rules and is liable to the penalties that may be imposed on him pursuant to the provisions of Rule 803(3)."

[11] Rule 656(3) provides:

A Rider, or any other Licenceholder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises, who, having been required by a Stipendiary Steward or Investigator to supply a sample in accordance with this Rule must not have a sample which is found upon analysis to contain any controlled drug as defined in the Misuse of Drugs Act 1975 or other illicit substance or diuretic and/or its metabolites, artifacts or isomers.

[12] The penalty provisions which apply in this case are in r 803(3), which states:

Subject to Rule 803(2)(b), where any Licenceholder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises commits or is deemed to have committed a breach of these Rules related to drugs or alcohol and a penalty is not provided elsewhere in these Rules for that breach, that Licenceholder committing the breach may:

(a) be disqualified for a period not exceeding 5 years; and/or

(b) be suspended from holding or obtaining a Licence for a period not exceeding 12 months; and/or

(c) be fined a sum not exceeding \$50,000....

[13] As Mr Laking has admitted the breach, it is found to be proved.

Informant's penalty submissions

[14] Mr Laking resides at Ashburton and rides track work in the Canterbury region. He is a regular rider throughout the South Island.

[15] Rule 656(3) covers the requirements of a rider's responsibility in relation to presenting themselves to ride free of any illicit substances, controlled drugs pursuant to the Misuse of drugs Act 1975, and diuretics.

[16] The RIU summarised the four principles of sentencing as:

Penalties are designed to punish the offender for his/her wrong doing. They are not meant to be retributive in the sense that 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 J.C.A for the type of behaviour in question.

The need to rehabilitate the offender should be taken into account.

[17] Previous cases which Mr Allison believed might be of assistance to the Judicial Committee were:

RIU v Bullard 9 April 2011 — Mr Bullard tested positive for Frusemide. Mr Bullard admitted the breach and was fined \$750 and ordered to pay costs of \$225 to the JCA.

RIU v Bothamley 9 March 2015 — Mr Bothamley admitted a breach after testing positive for Frusemide. Mr Bothamley requested a suspension rather than a fine due to his financial position. He was suspended for four riding days and ordered to pay costs of \$150 to the RIU for the analysing of the sample.

RIU v Stackhouse 9 April 2011 — Mr Stackhouse was an apprentice rider who tested positive to Frusemide. Mr Stackhouse admitted the breach and was fined \$650 and ordered to pay \$225 costs to the JCA.

RIU v Bishop 23 September 2017 — Mr Bishop admitted a breach after providing a positive test to Frusemide. Mr Bishop was fined \$750 and ordered to pay costs of \$187.50 to the RIU for the analysing of the sample.

[18] Mr Laking was co-operative with Racing Investigators and conducted himself in a professional manner. He admitted the charge at the first opportunity and assisted in having the matter dealt with on a raceday. He has no previous breaches of this rule.

[19] Mr Allison said that NZTR has an illicit drug free policy in terms of all riders whether they ride in races, trials or in track work. The Rules were amended in January 2007 to include the diuretic drug Frusemide, and the change came about for the reasons of health and safety, and after consultation with the Jockey's Association.

[20] The Racing Integrity Unit were seeking a fine of \$750 and costs of \$187.50 for the analysing of the sample with ESR.

[21] Mr Laking explained that he had been wasting the day before the meeting and had not eaten all day. He was up at 4 o'clock to travel to Christchurch from Ashburton to ride trackwork and had then driven to Invercargill in the late afternoon. He did not want to let anyone down and so he took half a tab of Frusemide that night as a last resort. He had been in a spa pool on the morning of the meeting.

[22] Mr Laking said that he had been prescribed Frusemide by his doctor and had had the drug from the time before he had taken a break from racing. When questioned by the Committee, he said he had disposed of the drug and expressed a determination not to resort to its use again. He readily admitted he found it difficult to keep to his riding weight without a strict diet and regular use of the sauna.

Decision

[23] Our starting point has to be that it is important to maintain the integrity of thoroughbred racing and to uphold health and safety standards in the work place. It is therefore important to denounce the respondent's actions and to hold him accountable for what he has admitted was a deliberate decision to take a diuretic the evening before raceday, despite the fact, as an experienced rider, he knew it was contrary to the Rules of Racing. Deterrence, both general and specific, is a further consideration.

[24] We have regard to Mr Laking's admission of the breach and the frankness of his statements to the tester and when questioned by Mr Allison. We note also the forthright nature of his submissions to this Committee and his assurance to us that he would not use the drug in the future. The respondent's record is clear under this Rule.

[25] We have regard to comparable cases and note that in both *Bullard* and *Bothamley* the RIU submitted that a penalty of between \$500 and \$750 was appropriate. Penalties since 2011 have ranged between \$500 to \$750 for a first breach.

[26] We impose a fine of \$650. We understand that the respondent will be able to pay by instalments should he so wish.

[27] The RIU sought costs of \$187.50 for the ESR's analysis of the respondent's sample. After hearing from Mr Laking with respect to this issue, we order costs in this sum. As the matter was heard on raceday, there are no costs to the JCA.

Dated at Invercargill this 29th day of April 2018.

Geoff Hall, Chairman

Penalty: