

**Non Raceday Inquiry RIU v K Ormsby - Decision dated 19 June 2017 - Chair, Mr A Godsolve**

**Rules:**

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

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE OF**

**THE JUDICIAL CONTROL AUTHORITY**

**UNDER THE RACING ACT 2003**

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

**BETWEEN THE RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND KADE ORMSBY**

Licensed Trackwork Rider

**Respondent**

**Information No** : A7145

**Date of hearing** : 16 June 2017

**Venue** : Cambridge Raceway

**Judicial Committee** : Mr A Godsolve - Chairman

Mr N McCutcheon – Committee Member

**Appearing** : Mr A Cruickshank - Investigator, Racing Integrity Unit

Mr K Ormsby - Licensed Trackwork Rider

**Date of Decision** : 19 June 2017

**Charge**

The Informant Mr A Cruickshank, Racing Investigator alleges that:

On the 16th day of May 2017, at the Cambridge Jockey Club, Cambridge, having been required by an Investigator to supply a sample of urine in accordance with Rule 656(3) of the New Zealand Rules of Racing, had urine which was found upon analysis, to contain the controlled drug THC (Cannabis) as defined in the Misuse of Drugs Act 1975 and thereby committed a breach of the said Rule 656(3) AND IS therefore liable to the penalty or penalties which may be imposed pursuant to Rule 803 of the said Rules.

Rule 656(3)

*A Rider, or any other Licence Holder who has carried out, is carrying out, or is likely to carry out a Safety Sensitive Activity at a Racecourse, Training Facility or Trainers 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.*

Penalty Provisions

Rule 803(3)

*Subject to Rule 803(2)(b), where any Licence holder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainers 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 Licence holder 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.*

Mr ORMSBY acknowledged that he understood the nature of the charge and the Rule and that he admitted the breach.

Mr ORMSBY acknowledged that all the relevant documents from the RIU had been disclosed to him; and that he accepted the contents of the documents and consented to them being admitted as evidence.

The proposed procedure for this hearing was explained to Mr ORMSBY and he had no concerns or objections.

Mr CRUICKSHANK produced a letter from Mr M GODBER, Operations Manager for the Racing Integrity Unit, authorising the filing of the Information pursuant to Rule 903(2)(a).

### **Summary of Agreed Facts by the Informant**

On Tuesday 16th May 2017, officials from the Racing Integrity Unit conducted routine drug testing at the Cambridge Jockey Club in Cambridge.

Kade ORMSBY was one of the people randomly selected for testing and was served the appropriate notice at 6.42am by a Stipendiary Steward.

Mr ORMSBY later provided the required urine sample, however the sample was deficient in Creatine meaning it was unable to be analysed. Mr ORMSBY was then served with a notice requiring him to present himself at The Drug Detection Agency offices in Hamilton before 4pm that day in order to provide a sample.

This sample was provided at 3.23pm and gave an indicative positive test to THC (Cannabis).

The sample was given unique number U311989 and forwarded to the ESR later that day by a Drug Detection Agency (TDDA) authorised agent of the Racing Integrity Unit for confirmation analysis.

On 26th May 2017, the Racing Integrity Unit was advised, in writing, that the sample provided by Mr ORMSBY had, on analysis, been found to contain the controlled drug THC (Cannabis) Acid Level 110 ng/mL.

A Stand Down Notice and a copy of the ESR Certificate in accordance with Rule 657(1)(a) were served on Mr ORMSBY on Thursday the 1st June 2017 as provided in Rule 911(1)(b).

When spoken to, Mr ORMSBY stated that he had smoked Cannabis with rugby associates about two days prior to undertaking the test.

Mr ORMSBY voluntarily stood himself down from any further riding on 16th May 2017 until the results of the ESR analysis were confirmed and the Stand Down Notice served.

Kade ORMSBY is a permanent employee of licensed trainer Mr Tony Pike. He has one previous drug positive from 2010.

### **Submissions by the Respondent**

Mr ORMSBY confirmed that he agreed with the Submissions and Summary of Facts presented by Mr CRUICKSHANK.

He confirmed to the Committee that he was employed by trainer Mr T Pike, of Cambridge. He said he was a full-time employee of Mr Pike and had no other income. He said his job entailed riding trackwork at the Cambridge Training Track in the mornings. He said he also worked at the trainer's stables in the mornings following trackwork and also in the evenings. He considered that he held a senior role in the stables and was tasked at times to be a travelling foreman for Mr Pike, that role entailed being in charge of horses on racedays at tracks in New Zealand, and periodically in Australia.

### **Informant : Submissions on Penalty**

1. The respondent Kade ORMSBY is a licensed Track Rider currently employed by licensed trainer Tony Pike. He has been involved in the racing industry for most of his adult life. He is 29 years of age with a date of birth of 19 March 1988.

2. He has admitted a breach of the rules in relation to the positive drug test undertaken on 16 May 2017 at the Cambridge Jockey Club in Cambridge.

3. New Zealand Thoroughbred Racing has been drug testing industry participants since 1995 and since that time there has been a growing awareness that there is an absolute obligation on those riding horses to present themselves free of the influences of any drugs.

4. All riders are aware of the policy and the consequences should they not comply. The testing is conducted for two reasons, the need to maintain a healthy and safe workplace and secondly to maintain the integrity of the industry.

5. Historical penalties for breaches of the industry drug laws show some divergence. The type of drug, the situation and the amount of the drug in the system add to this divergence.

6. On this occasion Mr ORMSBY has presented himself at the Cambridge Jockey Club to ride track work while the drug THC (Cannabis) was within his body.

7. THC (Cannabis) is a Class C controlled drug.

#### 8. Sentencing Principles

The four principals of sentencing can be summarised briefly

1. Penalties are designed to punish the offender for his / her wrongdoing. They are not retributive in the sense that the punishment is disproportionate to the offence but the offender must be met with a punishment.

2. In a racing context it is extremely important that a penalty has the effect of deterring others from committing like offences.

3. A penalty should also reflect the disapproval of the JCA for the type of behaviour in question.

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

The first three principles are particularly important here.

#### 9. Relevant Precedent:

R.I.U v B.A. SWINBURNE (22.05.17) In this case an unlicensed track work rider tested positive to Methamphetamine, Amphetamine and Cannabis (77 ng/mL). He was sentenced to 10 months suspension on the Methamphetamine and Amphetamine charge and 3 months suspension on the Cannabis charge, to be served concurrently, in addition to costs of \$187.50.

This was Mr Swinburne's second offence for Cannabis within a 20-month period. The Committee adopted a 3-month suspension as a starting point before considering aggravating and mitigating factors.

R.I.U v P. ORMSBY (1.12.2011) In this case a licensed track work rider tested positive to THC Cannabis. Mr Ormsby was suspended for 3 months with costs of \$172.21 awarded. This was his second breach of this rule.

R.I.U v G.P. HEEMI (24.11.16) In this case a licensed track work rider tested positive to Cannabis. He received a 6-week suspension and costs of \$187.50.

R.I.U v K.J. ROBINSON (24.11.16) In this case a licensed track work rider tested positive to Cannabis (270 ng/mL). He received a 6-week suspension and costs of \$187.50.

R.I.U v T BISHOP (19.11.16) In this case a Class C trainer tested positive to Cannabis (30 ng/mL) and received a 6-week suspension and costs of \$187.50.

R.I.U v L BURTON (23.09.16) In this case an unlicensed track work rider tested positive to Cannabis (30 ng/mL). She received a 6-week suspension and costs of \$187.50.

R.I.U v H.L. BORROWS (14.12.15) In this case a track work rider tested positive to Cannabis (110 ng/mL). She received a 2-month suspension and costs of \$187.50.

R.I.U v B.A SWINBURNE (2.4.14) In this case a track work rider tested positive to Cannabis (73 ng/mL). He received a 5-week suspension and a \$200 fine and costs of \$187.50

#### 10. Aggravating Features –

Mr ORMSBY should be well aware that the use of cannabis is prohibited under the Rules and he has admitted using cannabis in the weekend prior to being tested.

Mr ORMSBY has a previous breach of this Rule.

#### 11. Mitigating Factors –

Mr ORMSBY has been very co-operative with Investigators and admitted the breach at the first opportunity.

Mr ORMSBY's previous breach of this Rule was 7 years ago.

#### Conclusion

It is submitted that a period of 10 weeks suspension and the cost of the analysis of \$187.50 (to the RIU) should be imposed.

#### **Respondent : Submissions of Penalty**

Mr ORMSBY said that his previous breach of this Rule-which also involved cannabis-was approximately 7 years ago. He said he had been tested since that breach with a negative outcome.

Mr ORMSBY referred to the matter of RIU v BA SWINBURNE (22.05.17) which was put forward by Mr CRUICKSHANK as a Relevant Precedent when presenting his Penalty Submissions. He said that it appeared in that case that the Respondent had re-offended with 20 months of his original breach. He did not believe that his re-offending was in the same manner as this case.

Mr ORMSBY said that he had been fully co-operative with the RIU, and that he had embarrassed both himself and his employer by this offending. He said it was a 'silly error of judgement' and that it would not happen again. He pointed out that he had stood himself down as soon as he was made aware of the positive result of the analysis.

### **Discussion**

Prior to adjourning this matter to consider an appropriate penalty, the Committee wished to ascertain how a suspension of Mr ORMSBY'S licence would impact on his employment.

Mr CRUICKSHANK stated that a suspension of his trackwork licence would not prevent Mr ORMSBY from continuing to work in Mr Pike's stables.

Mr ORMSBY pointed out that he was considered to be one of the most valued riders in Mr Pike's stables, and that a suspension of his trackwork licence had a big impact on the stables. Mr Pike is one of the most successful trainers in New Zealand and has consistently won big races in New Zealand and Australia.

### **Reasons for Penalty**

The JCA Penalty Guide does not provide a starting point for breaches of this Rule. It makes reference to the penalties being 'fact dependant'.

It is therefore incumbent on Committees to take each set of circumstances, relative readings and any past breaches of respondents into consideration when assessing appropriate penalties.

Clearly penalties imposed on other industry participants for similar breaches are relevant.

Most of the previous penalties imposed in the cases referred to by Mr CRUICKSHANK in his Penalty Submissions have resulted in suspension of licences for between 6 weeks and 3 months.

Mr ORMSBY has been co-operative throughout this process. He stood down as soon as he was made aware of the positive result of the analysis of his sample. The Committee was impressed with his demeanour. He is clearly a valued senior member of staff at one of New Zealand's most successful racing stables.

Mr ORMSBY has a previous breach of this Rule. That was approximately 7 years ago. He has told us that he has since been tested with a negative result. This cannot be confirmed, however we accept what he has told us. The Committee is aware that testing of industry participants is carried out on a regular basis.

Cambridge Training Track is the busiest training centre in New Zealand. We understand that up to 1000 horses are trained there at any one time. As such the use of drugs of any kind are a real concern. The possibility of a person riding or otherwise in control of a horse when affected by a drug could result in serious accidents to other riders, ground staff, and/or horses.

While we were impressed by Mr ORMSBY, the fact that he has had a prior breach of drug Rules must result in consequences for him.

We took note of Mr CRUICKSHANK'S submission that a 10-week suspension was viewed by the RIU as a suitable penalty. However, we believed that we could show some leniency towards Mr ORMSBY given his clear record since his initial breach, and that we considered that he was remorseful and resolute that he would not offend in this manner again.

### **Penalty**

After taking all of the above matters into consideration the Committee imposed a period of suspension of his licence on Mr ORMSBY. This suspension is to begin on 17 May 2017, being the day following the testing and subsequent positive analysis and will conclude on 12 July 2017.

This suspension will therefore encompass 8 weeks.

Mr ORMSBY is further ordered to pay to the RIU the cost of the sample analysis, being \$187.50.

The RIU have made no application for further costs.

As this matter was heard on a Raceday, there will be no JCA costs.

Alan Godsolve

Chairman

**Penalty:**