

Non Raceday Inquiry RIU v M Oulaghan - Decision dated 6 June 2021 - Chair, Mr N McCutcheon

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 Mr S Irving of the Racing Integrity Unit (RIU)

Informant

AND MR M OULAGHAN Licenced Trainer

Respondent

Information No. A14112

Charge: Admitted

Judicial Committee: Mr N McCutcheon, Chair - Mr B Mainwaring, Member

Present: Mr M Oulaghan, Respondent

Mr R Cunningham, Owner of SHADOWS CAST

Mr N Bullock (RIU)

Venue: Awapuni Racecourse, Palmerston North

Date of Oral Decision: 3 June 2021

Date of Written Decision: 6 June 2021

DECISION OF JUDICIAL COMMITTEE

The Charge, Rules and Penalty Provisions

On the 03 April 2021 at Awapuni Racecourse, being the Registered Trainer and person in charge of the horse, presented 'Shadows Cast' to the Manawatu Racing Club's meeting for the purpose of engaging in and did engage in Race 8 – the Bramco Granite & Marble Flying Stakes and failed to present the said horse free of the prohibited substance 'Citirizine', in breach of the NZTR Rule 804(2) and therefore subject to penalty pursuant to Rules 804(7) and 804(8).

Rule 804(2)

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.

Rule 804(7)

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

Rule 804(8)

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.

A letter from Mr Godber, General Manager of the Racing Integrity Unit authorising the filing of the Information had been received by the Committee.

Mr Oulaghan confirmed that he understood the Rules and that he admitted the breach.

Summary of Facts

Mr Irving presented the following Summary of Facts, which Mr Oulaghan acknowledged, were agreed by him.

1. The Respondent, Mark Kenneth Oulaghan, is 64 years old and is a Licensed Class A Trainer under the Rules of Thoroughbred Racing New Zealand (NZTR).
2. Mr Oulaghan trains the 8yo gelding 'Shadows Cast' which won Race 8 - the Bramco Granite & Marble Flying Stakes' Open Handicap, at the Manawatu Racing Club's meeting at Awapuni Racecourse on 03 April 2021.
3. 'Shadows Cast' earned his owner Mr R. Cunningham gross stakes money of \$27,000.
4. The horse was post-race swabbed (#79856) and on 15 April the NZ Racing Laboratory Services issued an Analytical Report detailing the sample positive to Citirizine.
5. Citirizine is a second generation antihistamine used to treat and prevent allergies such as rhinitis (hay fever) and skin allergies such as hives. It works by blocking the chemical histamine in the body which is released during an allergic reaction.
6. Under the Prohibited Substance Regulations for the Rules of Racing, Cetirizine is a prohibited substance under 1.1.2 and 1.1.7, capable at any time of causing either directly or indirectly an action or effect, or both an action or effect within one or more of the mammalian body systems.
7. Antihistamines are also specifically listed under 1.2.19 as a prohibited substance for the purpose of a horse racing on a raceday or a trial to which the Third Appendix applies.
8. Cetirizine is not registered under the Agricultural Compounds and Veterinary Medicines (ACVM) for use in horses in New Zealand, however there are recorded uses in the literature.
9. According to the NZTR Chief Veterinarian advisor, using the accepted Toutain model the withholding period for Cetirizine would be 5.6 days. In the European Horserace Scientific Liaison Committee (EHSLC) advisory the Detection Time is listed as 4 days.
10. On 21 April Mr Oulaghan was interviewed at his stables at Awapuni and detailed that he had given 'Shadows Cast' a course of 'Zista' as prescribed by his vet for the treatment of "mild hyperemia (in the) upper airways" discovered when the horse was scoped on 09 February.
11. 'Zista' is a human antihistamine containing 10mg of Cetirizone Hydrochloride and is available across the counter at pharmacies.
12. The clinical particulars of Cetirizine as listed, is the relief of symptoms associated with seasonal allergic rhinitis and perennial allergic rhinitis. Symptoms treated effectively include sneezing, rhinorrhea, post-nasal discharge, nasal pruritus, ocular pruritus and tearing.
13. Mr Oulaghan stated that, based on vet advice, in the weeks leading up to the race he gave 'Shadows Cast' 10 tablets of 'Zista' in the evening feeds, including on the Thursday afternoon before the Saturday race.
14. He also stated that when the vet prescribed the 'Zista', he was not advised of any withholding time for the product.
15. Inquiries with the vet confirmed that she prescribed a 14 day trial course of Zista (140 tablets) on 09 February and would reassess the horse after that time.
16. She stated that there is no recommended withhold time (RWT) for Citirizine based on the Equine Veterinarian Association guideline that she refers to and that Citirizine is not listed on that List. She therefore believed that it was not a Restricted Veterinarian Medicine (RVM) or a Prohibited Substance. She did advise Mr Oulaghan not administer Zista on raceday or the preceding day.
17. On 10 March the vet re-scoped 'Shadows Cast' and following some improvement she prescribed another 14 days of Zista.
18. If used every day this course would have run out on 23 March, however Mr Oulaghan stated that he missed some days and therefore had enough supply to give 10 tablets on the Thursday before the race.
19. Mr Oulaghan did not contest the swabbing process.

20. Mr Oulaghan has trained racehorses since 1984 and his NZTR record details he has had approximately 4330 starts for 491 winners. He has no previous charges for breaching the Prohibited Substance Rule or any other NRI charges.

Penalty Submissions of the Informant

Mr Irving presented the following Penalty Submissions

1. The Respondent, 64 year old Mark Kenneth Oulaghan is a Licensed Class 'A' Trainer under the Rules of Thoroughbred Racing New Zealand.
2. He first held a Trainer's Licence in 1984 and is currently training from his stables at Awapuni.
3. The Respondent has admitted a breach of Rule 804(2).
4. The circumstances are detailed in the attached Summary of Facts which have been agreed.
5. The penalties which may be imposed are detailed in the attached Charge Rule and Penalty Provisions Document.
6. The RIU believes that an appropriate penalty for this breach is a \$5,000 fine.
7. Chief Veterinarian advisor to the RIU states in his report: *Under the Prohibited Substance Regulations for the Rules of Racing the antihistamine Cetirizine and its metabolites are a prohibited substances under 1.1.2 and 1.1.7 of those substances at any time of causing either directly or indirectly an action or effect, or both an action or effect within one or more of the mammalian body systems and secondly antihistamines are specifically listed under 1.2.19 of substances falling within the categories of substances. (Refer attached Report)*
8. Citirizine is listed under the EHSLC (European Horserace Scientific Liaison Committee) as having a 96 hour 'Detection Time' and estimated by the Chief Veterinarian Advisor to have a withhold time of 5.6 days. (Refer attached EHSLC Guideline)
9. Citirizine is not listed in the NZEVA guidelines for Prohibited Substances as there are no ACVM (Agricultural Compounds and Veterinary Medicines) registered products for use in horses on the market in NZ. It is not a Restricted Veterinary Medicine; however it states on the guidelines under the heading 'A Guide for All NZVA Members' that ..."The list is not a list of all prohibited substances nor all drugs that are tested by the New Zealand Racing Laboratory Services"... (Refer attached NZEVA Guideline)
10. 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 resulted from the treatment of 'Zista' as prescribed to Mr Oulaghan by his vet.
11. 'Zista' is a human antihistamine with each tablet containing 10mg of Cetirizine Hydrochloride, available from pharmacies 'over the counter'.
12. It was prescribed in 2x14 day courses of 10 tablets in the daily feed.
13. It is undisputed that the vet failed to inform Mr Oulaghan that 'Zista' was a prohibited substance and had an associated withhold time.
14. 'Shadows Cast' swabbed clear in his next race on 24 April at Riccarton, with the treatment of 'Zista' having been stopped three weeks earlier.
15. Mr Oulaghan did not bet on 'Shadows Cast'. An analysis of TAB betting records revealed no unusual bets associated with the horse or the race.
16. 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.
17. Under Rule 804(8) 'Shadow's Cast' is required to be disqualified from the race.

PREVIOUS CASES

18. *RIU v B Towers* (2015) – HR trainer, 2x positives for same horse to the decongestant and bronchodilator Clenbuterol. Penalty: \$4,000 fine. In this case the Trainer had been using a non-prohibited substance (Bromo Tmps) to treat his horse and when this finished, he requested more from his vet, however the vet gave him a similar product (Airway Tmps) which was prohibited. The Trainer disputed the vet had informed him that it was a different product which was prohibited and had a withholding period.

"In aggravation, the Committee considered that Mr Towers has had experience in the racing industry over a number of years and must understand that there is an onus of responsibility upon him to ensure he presents a horse for racing without a prohibited substance in its system. While it is clear that the evidence does not fully support the proposition that his vet Mr Robbins definitely advised him of a withholding period for the product Airways Tmps, Mr Towers accepts that the ultimate responsibility rests with him as the Licensed Trainer. It is also clear that he did not make adequate enquiry into the use of the Airways Tmps product..."

19. *RIU v A Neal & L Neal* (2015) – HR Trainers, positive to the anti-inflammatory Flunixin. Second breach. Penalty: \$5,500. In this case the Trainer was treating the horse for a cold and was advised by the vet that it had a 4.2 day withhold. They gave it six days to be

safe but still returned a positive.

"In assessing an appropriate Penalty, the Committee felt it necessary to have the views of the parties relative to the issue of negligence made known. We stated that there is no evidence of this matter involving an 'illicit' deliberate or intentional administration of Flunixin. In these types of hearings, where negligence may be an issue, there are 3 levels of such negligence: (a) deliberate (b) gross (c) a failure to take proper care."

It is submitted that in the case of 'Shadows Cast' it has been the vet who has been negligent in not identifying 'Zista' as being a Prohibited Substance and having a detection time and therefore Mr Oulaghan can only be guilty of low-level carelessness, acting on vet's advice in good faith, albeit from a relatively 'junior' and not his usual vet.

MITIGATING FACTORS

20. Mr Oulaghan has been fully cooperative throughout the investigation and admitted the breach at the first opportunity.

21. Mr Oulaghan was acting on advice from his vet who failed to advise him that the product prescribed was prohibited and also failed to advise him that the product had a withhold / detection time.

22. Mr Oulaghan has been involved in Thoroughbred Industry all his life and has an exemplary record throughout his 37 years of training.

23. The Respondent has had in excess of 4330 starts for 491 winners and has no previous breaches of the Prohibited Substance Rule.

AGGRAVATING FACTORS

24. Mr Oulaghan, although acting in good faith on the advice of a vet, still has the ultimate responsibility to take proper and reasonable care for what is administered to his horses.

25. The race was a Listed race with a \$50,000 total stake.

26. The RIU are seeking no costs.

CONCLUSION

27. Given the recommended starting point of \$8,000, the aggravating and mitigating factors as listed and the overall circumstances considered in this case, it is submitted that a \$5,000 fine is an appropriate penalty.

Penalty Submissions by the Respondent

Mr Oulaghan asked that the Committee take into account his excellent record over many years and that his Veterinary Surgeon had failed to advise him that the product prescribed was prohibited and also failed to advise him that the product had a withholding/detection time. Mr Oulaghan added that he fully understood that it was his responsibility to present his horses drug free, but on this occasion, he felt that he had been let down by his vet.

Mr Cunningham, the Owner of 'Shadows Cast' and in support of Mr Oulaghan said that the horse had been swabbed and blood-tested many times and on those occasions the results were always clear. He said that the reason the horse was treated on this occasion was because it was suffering from pollen or something of that nature. He added that Mr Oulaghan should have been advised of the withholding time by his Veterinary Surgeon whom you rely on for professional advice.

Reasons for Penalty

In giving due consideration to penalty, the following matters were taken into account:

- Mr Oulaghan's exemplary record in racing since 1984
- The breach was admitted without undue delay
- Other penalties imposed for a breach of Rule 804(2)
- The Race was a Listed event with total prize money of \$50,000
- A significant mitigating factor was that the Veterinary Surgeon failed to advise Mr Oulaghan that the product prescribed was prohibited and also failed to advise of the withholding/detection time. This was due to her believing that there was no recommended withholding time for the drug Citirizine based on the Equine Veterinarian Assn Guideline that she refers to and that Citirizine is not listed on that list. She therefore believed that it was not a restricted veterinarian medicine or a prohibited substance.

The JCA Penalty Guide starting point for a breach of Rule 804(2) is a fine of \$8,000, however taking into account the aforementioned Reasons for Penalty the Committee determined that a fine of \$4,000 was appropriate.

Penalty

Mr Oulaghan was fined \$4,000.

Disqualification

Pursuant to Rule 804(8) 'Shadows Cast' was disqualified from the said event.

Costs

There was no order as to costs.

N McCutcheon
Chair

Penalty: