

Non Raceday Inquiry RIU v PI Ormsby - Written decision dated 19 December 2017 - 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
AND IN THE MATTER of the New Zealand Rules of Thoroughbred Racing
BETWEEN THE RACING INTEGRITY UNIT (RIU)**

Informant

AND MR P ORMSBY

Licensed Class A Stable Hand Rider

Respondent

Information No: A8463

Date of hearing: 19 December 2017

Venue: Ruakaka Racecourse

Judicial Committee: Mr A Dooley, Chairman - Mr B Scott, Committee Member

Appearing: Mr O Westerlund- Investigator, Racing Integrity Unit, Mr P Ormsby – Licensed Class A Stable Hand Rider
Mr C Gibbs – Licensed Trainer and employer of Mr Ormsby

Charge

The Informant Mr O Westerlund, Racing Investigator alleged that on Thursday the 2nd day of November 2017, at the Ruakaka Racecourse in Northland, having been required by a Racing 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) states:

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 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, artefacts or isomers.

Penalty Provisions

Rule 803(3) states:

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 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 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 Rules and he admitted the breach.

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

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 903(2)(d).

Summary of agreed Facts by the Informant

On Thursday 2nd November 2017, officials from the Racing Integrity Unit conducted routine drug testing at the Ruakaka Racecourse in Northland.

Patrick Ike ORMSBY was one of the people randomly selected for testing and was served the appropriate notice at 8.51am by a Racing Investigator.

Mr ORMSBY provided the required urine sample at 10.11am. The sample gave an indicative positive test to THC (Cannabis).

The sample was given the unique number U302422 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 the 6th November 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 230 ng/mL.

A Stand Down Notice and a copy of the ESR Certificate in accordance with Rule 657(1) (a) was served on Mr ORMSBY via Donna Logan on the 14th day of November 2017 as provided in Rule 911(1)(e).

When spoken to Mr ORMSBY stated that he knew he was going to fail the test. He is a regular Cannabis smoker and smokes two Cannabis joints a day. He further stated that he has no excuses and that he likes smoking it.

Mr ORMSBY had voluntarily stood himself down from any further riding on the 2nd November 2017 until the results of the ESR analysis were confirmed and the Stand Down Notice served.

Mr ORMSBY is currently employed as a Stable Hand Rider for the Donna Logan and Chris Gibbs Stable.

He derives his income solely from the racing industry and earns \$600 per week.

He is a licensed Class A Stable Hand Rider.

He has previously appeared on drug related Rule breaches.

In addition, the Committee was supplied with a report dated 22 November 2017 from Ms D Young, Drug and Alcohol Clinician contracted to the Racing Integrity Unit. Following the positive result for cannabis, Mr Ormsby was referred to Ms Young and an interview took place. Mr Ormsby was educated on the risks of his continued substance use and advised that seeking treatment would be beneficial. Mr Ormsby chose to decline all treatment and this was confirmed by Mr Westerlund.

Submissions by the Respondent

Mr Ormsby was invited by the Committee to present his submissions. He said that he was scheduled to do the rehab Programme but there was no transport available to him. He told the Committee that contrary to the report supplied to us by Ms Young he was now willing to complete the Intensive Alcohol and Drug Programme at the Northland Salvation Army Bridge Programme. At this point the Committee adjourned the hearing so Mr Westerlund could arrange for Mr Ormsby's employers Mr Gibbs or Mrs Logan to be present the hearing.

Mr Gibbs at the request of the Committee read Ms Young's report so he was fully aware of the circumstances. Mr Gibbs advised the Committee that he would make sure that Mr Ormsby would be transported to the Programme which is based at Whangarei over an 8 week period for 3 hours per day.

In response to questions from the Committee, Mr Ormsby assured us that he would commit himself to the programme. To Mr Gibbs' credit he said that he would support Mr Ormsby to complete the Programme because he was a productive part of their stable. He said that Mr Ormsby was currently carrying out ground staff duties at the stables.

Mr Gibbs was forthright with the Committee in that if Mr Ormsby did not to complete the Programme he would then lose faith in him.

The Committee advised Mr Ormsby that if he was to breach this Rule again a Judicial Committee in the future could disqualify his Stablehand rider's license. Mr Ormsby and Mr Gibbs accepted this fact.

When questioned by the Committee as to why he now wished to complete the Programme, Mr Ormsby stated that when he was interviewed by Ms Young the conversation went "lopsided" and he got his "back up".

In response to a question from the Committee, Mr Ormsby advised that he had not been drug tested since his last breach in 2011. He added that he has been employed by the Logan / Gibbs stable for the last 2 years.

Decision

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

Submissions on Penalty by Informant

INTRODUCTION:

- 1.1 The respondent Patrick Ike ORMSBY is a Licensed Stable Hand Rider under the New Zealand Rules of Thoroughbred Racing.
- 1.2 He has been involved in the racing industry all his adult life.
- 1.3 Mr ORMSBY is 27 years of age with a date of birth of 4th March 1990.
- 1.4 The Racing Integrity Unit is seeking a penalty of 4 months suspension and costs of \$187.50.

OFFENDING:

- 2.1 Mr ORMSBY has admitted a breach of the Rules in relation to the positive drug test returned at the Ruakaka Racecourse on the 2nd November 2017.
- 2.2 The details of Mr ORMSBY's offending are contained in the Summary of Facts which is agreed.
- 2.3 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.
- 2.4 All riders are aware of the policy and the consequences should they not comply. The testing is conducted to maintain a healthy and safe workplace and to maintain the integrity of the industry.
- 2.5 Historical penalties for breaches of the industry drug laws show some divergence dependent on the type of drug, the amount of the drug in the system and additional circumstances.
- 2.6 On this occasion Mr ORMSBY presented himself at Ruakaka Racecourse to ride track work while the drug THC (Cannabis) was within his body.
- 2.7 THC (Cannabis) is a Class C controlled drug within the meaning of the Misuse of Drugs Act 1975.

PENALTY PROVISIONS:

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

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 All four principles apply in this matter.

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 K ORMSBY (19.06.17) –In this case a licensed track work rider tested positive to Cannabis (110 ng/mL). He received 8 weeks suspension and costs of \$187.50. (Second drug related breach).
 - 5.1.2 RIU v SWINBURNE (22.05.17) –In this case an unlicensed track rider tested positive to Methamphetamine, Amphetamine and Cannabis (77ng/mL). He was sentenced to 10 months disqualification on the Methamphetamine and Amphetamine charge and 12 weeks suspension on the Cannabis charge, to be served concurrently plus costs of \$187.50.
 - 5.1.3 RIU v TEELUCK (30.01.16) –In this case an Apprentice Jockey tested positive to Cannabis (>300 ng/mL). He received 3 months and 3 weeks suspension and costs of \$187.50. (Second drug related breach)
 - 5.1.4 R.I.U v BORROWS (14.12.15) - In this case a track work rider tested positive to Cannabis (110 ng/mL). She received 8 weeks suspension and costs of \$187.50.

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 voluntarily stood himself down when he was aware of the positive result of the analysis of his sample.

AGGRAVATING FEATURES:

7.1 That Mr ORMSBY should be well aware that the use of Cannabis is prohibited under the Rules and he had admitted using Cannabis prior to been tested.

7.2 That he is a habitual Cannabis user.

7.3 That this is his third Cannabis related Rule breach.

CONCLUSION:

8.1 The RIU therefore seek a period 5 months suspension from track-riding (backdated to the 2nd November when he was 'stood-down') and cost of analysis of \$187.50 to the RIU.

Submissions of Penalty by Respondent

Mr Ormsby was invited to make submissions on penalty. He said the submissions made by Mr Westerlund were fine.

Mr Gibbs said that the proposed penalty was very fair and it was up to Mr Ormsby to succeed.

Reasons for Penalty

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

The JCA Penalty Guidelines do not provide a starting point for a breach of this Rule. Historically these type of cases are fact dependant.

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

The noteworthy aggravating factors that have be taken into consideration were:

- Mr Ormsby is a repeat offender with this being his 3rd breach of this Rule.
- Mr Ormsby admitted to smoking 2 cannabis joints daily
- Mr Ormsby was riding track work whilst under the influence of cannabis and thereby posing a significant Health and Safety risk to himself and others at Ruakaka racecourse and Ruakaka beach.

The mitigating factors were:

- Mr Ormsby's admission of the breach albeit unsurprising given the circumstances of this case
- Mr Ormsby voluntary stood himself down from riding track work on 2 November 2017
- Mr Ormsby has had a change of heart and now tells us that he is committed to complete the Intensive Alcohol and Drug Programme at the Northland Salvation Army Bridge Programme with the support of his employers Mrs D Logan & Mr C Gibbs.

After taking into account all of the above factors the Committee considered that an appropriate penalty is a suspension of Mr Ormsby's track work license.

Penalty

Mr Ormsby's track work license is suspended from 2 November 2017 the date that he stood himself down from riding track work to 2 May 2018 (6 months).

- (a) Pursuant to Rule 812 the Committee requires Mr Ormsby to enrol in and attend the Intensive Alcohol and Drug Programme at the Northland Salvation Army Bridge Programme commencing on the 15th of January 2018.
- (b) Subject to Mr Ormsby completing the Programme referred to in paragraph (a) and providing satisfactory evidence of such completion to the General Manager of the RIU the suspension will be reduced by 1 month.
- (c) In the event of any failure by Mr Ormsby to complete the Programme referred to in paragraph (a) no reduction in the penalty will be applied.

Costs

The RIU has sought costs of \$187.50, being the cost of the sample analysis, and the Committee orders that Mr Ormsby pays that sum to the RIU.

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

Adrian Dooley
Chairman

Penalty: