

Non Raceday Inquiry RIU v R Brosnan - Penalty Decision dated 13 February 2018 - Chair, Mr M McKechnie

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

BEFORE A JUDICIAL COMMITTEE OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of New Zealand Rules of Harness Racing

RACING INTEGRITY UNIT

INFORMANT

RICHARD BROSNAN, Licenced Trainer

DEFENDANT

Judicial Committee: Mr Murray McKechnie, Chairman & Mr Gavin Jones

Present: Mr Andy Cruickshank, Racing Investigator, Racing Integrity Unit

Mr Richard Brosnan, Licenced Trainer

PENALTY DECISION NON-RACEDAY JUDICIAL COMMITTEE

DATED THIS 13th DAY OF FEBRUARY 2018

1. INTRODUCTION

1.1 At a hearing which took place at Alexandra Park Raceway on the 9th day of February this year the Committee considered three (3) informations laid by the RIU against Mr Brosnan under Rules 1004(1A) and 1004(3).

1.2 In an interim decision delivered on the 9th day of February the Committee made orders disqualifying the horses *BOPPER JET*, *GRENADO* and *OUR PETITE LADY* from the races where positive cobalt readings had been returned. That interim decision is to be read alongside this penalty decision.

1.3 As explained in the interim decision the Committee reserved the question of penalty and now turns to that.

2. PENALTY

2.1 Rule 1004(7) provides as follows:

Every person who commits a breach of sub-rule (2) or (3) shall be liable to:

- a) A fine not exceeding \$20,000; and/or
- b) Be disqualified or suspended from holding or obtaining a licence for any specific period not exceeding 5 years.

3. RIU SUBMISSIONS

3.1 The submissions set out the four well-known sentencing principles. These are as follows:

- a) 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;
- b) In a racing context it is extremely important that a penalty has the effect of deterring others from committing similar offences;
- c) A penalty should also reflect the disapproval of the JCA for the type of behaviour in question;
- d) The need to rehabilitate the offender should be taken into account.

3.2 The RIU submissions point to what are said to be “aggravating considerations”. These are said to be as follows:

- a) Despite being expired by several years 4 vials of Cobalt Chloride were located in a fridge in the stable block;
- b) In the same fridge 2 syringes containing high levels of Cobalt were located.

3.3 The submissions then point to a number of mitigating factors. These are as follows:

- a) Mr Brosnan immediately accepted responsibility for the positives and has been fully cooperative with the RIU throughout the investigation;
- b) Mr Brosnan has admitted guilt and liability at the first available opportunity;
- c) Mr Brosnan has an unblemished record over 50 years as a Licence Holder and Trainer.

3.4 The RIU took a number of items from the Brosnan stable and had these analysed. Three (3) contained high levels of Cobalt. These were the following:

- a) Elevate B12 2000 Plus Selenium. The label indicates that this product is used to treat Cobalt and Selenium deficiency in sheep and cattle. Mr Brosnan stated that he gave the horses 10 mls of Elevate B12 2000 orally after hard working them on the Wednesday before they raced (2 days);
- b) Four ml Cobalt Chloride Vials. These vials contained extremely high levels of Cobalt (18,000 mg/kg). Mr Brosnan stated that he was advised by his Vet to use this product in 2012 as the neighbours were using chemical sprays on their potatoes which were impacting the welfare and fitness of his horses. The original order for Mr Brosnan in 2012 was for 25 x 4 ml vials of Cobalt Chloride. Of these four vials were located and each vial contained the full 4 mls as stated on the label;
- c) Syringes. Two of the syringes contained high levels of Cobalt indicating that at some stage they had been used to administer products containing high levels of Cobalt.

3.5 The RIU acknowledges that it is not possible to demonstrate that Mr Brosnan administered Cobalt to his horses. The report from Dr Grierson makes clear that it is unlikely that the Cobalt levels which were returned came about from the horses eating food which contained Cobalt. It is the RIU position that having vials of Cobalt Chloride and syringes with traces of Cobalt in the stables puts Mr Brosnan’s level of culpability at the higher end.

3.6 The RIU submissions draw attention to the prohibited Cobalt level under the Harness Racing New Zealand Rules being reduced from the 1st August 2017 from 200 ug/L to 100 ug/L (micrograms per litre).

3.7 The RIU submissions make reference to previous Cobalt decisions in both harness racing and thoroughbred racing. These decisions are:

- RIU v DALGETY (16.05.2017)
- RIU v BAMBRY (04.12.17)
- RIU v O’SULLIVAN & SCOTT (22.03.2016)

The Committee has carefully considered each of those decisions.

3.8 In conclusion the RIU seeks a fine within the range of \$15,000 to \$35,000.

4. MR BROSINAN’S POSITION

4.1 By a document dated the 5th day of February 2018 Mr Brosnan made a detailed response to the RIU submissions. The Committee emphasises the following matters which have been put forward by Mr Brosnan:

- a) No issue is taken with the summary of facts;
- b) Mr Brosnan says that at no time did he deliberately administer or inject Cobalt to any of his horses;
- c) Mr Brosnan acknowledged that there was a failure on his part to recognise that supplements he was giving to the horses could give rise to prohibited levels of Cobalt;
- d) Mr Brosnan acknowledged that he was at fault and said that this is why he accepted the charges immediately.

4.2 Mr Brosnan pointed to the penalty guide for New Zealand Harness Racing. This provides for an \$8,000 fine for a first presentation. Here three (3) horses tested positive.

4.3 In answer to questions from the Committee Mr Brosnan advised that he was 69 years old. He told the Committee that he had been licenced since the age of 21. To quote from Mr Brosnan’s written material:

“I have found this an extremely stressful process. It has damaged my reputation at a time when I am about to retire. It is a huge punishment for me”.

4.4 References and testimonials were put forward on behalf of Mr Brosnan. These included a letter from his wife. The reference and testimonials came from a large number of persons holding prominent positions in the training of standard bred horses and in the administration of standard bred racing. These references and testimonials speak of Mr Brosnan's integrity throughout his career and make for most persuasive reading.

5. DISCUSSION

5.1 In the interim decision there is reference to Dr Grierson's report. That demonstrates, as noted above, that the high Cobalt levels are unlikely to have come from food given to the horses. The Committee notes in particular the very high level returned by the horse *OUR PETITE LADY*.

5.2 There has been much publicity and discussion about Cobalt in both the harness racing code and the thoroughbred code in New Zealand and Australia in recent years. This should have put all licenced persons on notice. Trainers should have been alert to the risks that necessarily would arise where Cobalt is stored in stables as was the case here.

5.3 Mr Brosnan told the Committee that he took sole responsibility and did not seek to place any blame upon staff members.

5.4 In his written material Mr Brosnan submitted that the *Bambry* decision was most relevant and should be followed. The Committee does not agree. In that case only one (1) horse was involved. It is accepted that the *O'Sullivan & Scott* decision involves very different circumstances from those that are before the Committee. The *Dalgety* decision has more relevance. That involved five (5) different occasions when horses returned Cobalt levels beyond the permitted 100 ug/L. That was between November 2016 and March 2017. Further Mr Dalgety had two (2) previous convictions for breaches of the Prohibited Substance Rules. Neither involved Cobalt. The *Dalgety* decision is comprehensive and most helpful.

5.5 In the Committee's view the offending here, for the reasons set out above, is more serious than in the *Bambry* case but less serious than in the *Dalgety* case. Thus it is for the Committee to fix the appropriate level of financial penalty. As already noted the penalty guide proposes a fine of \$8,000 for a so-called *first presentation*. If that were applied in respect of each of the three (3) breaches the fine would be \$24,000. The Committee considers that some discount is appropriate to acknowledge Mr Brosnan's previous completely unblemished record and his prompt acknowledgement of responsibility. An appropriate discount would be 20%. That results in the figure of \$24,000 being reduced to \$19,200 and that is, in the Committee's view, an appropriate figure and in line with the decisions spoken of earlier. That figure of \$19,200 is proportionate to the circumstances around the three (3) admitted breaches of Rules 1004(1A) and 1004(3).

6. DECISION

6.1 In respect of the three (3) informations to which Mr Brosnan has pleaded guilty he will be fined in total the sum of \$19,200.

6.2 The RIU do not seek costs. Mr Brosnan must make some contribution to the costs and expenses incurred by the Judicial Control Authority. An appropriate figure is \$500 and that is the sum that shall be ordered to be paid to the JCA.

DATED this 13th day of February 2018

Murray McKechnie

Chairman

BEFORE A JUDICIAL COMMITTEE OF THE

JUDICIAL CONTROL AUTHORITY

UNDER THE RACING ACT 2003

IN THE MATTER of New Zealand Rules of Harness Racing

RACING INTEGRITY UNIT

INFORMANT

RICHARD BROSANAN, Licenced Trainer

DEFENDANT

Judicial Committee: Mr Murray McKechnie, Chairman & Mr Gavin Jones

Present: Mr Andy Cruickshank, Racing Investigator, Racing Integrity Unit

Mr Richard Brosnan, Licenced Trainer

INTERIM DECISION NON-RACEDAY JUDICIAL COMMITTEE

DATED THIS 9TH DAY OF FEBRUARY 2018

1. NATURE OF THE CHARGES

1.1 Mr Brosnan faces three (3) charges laid under Rules 1004(1A) and 1004(3) of the New Zealand Rules of Harness Racing. Those charges relate to horses being presented with the prohibited substance Cobalt. The charges relate to the presentation of the horse *BOPPER JET* at the Auckland Trotting Club on the 31st day of August 2017, the horse *GRENADO* on the 31st day of August 2017 at the Auckland Trotting Club and the horse *OUR PETITE LADY* on the 22nd day of September 2017 at the Auckland Trotting Club. There was a teleconference on the 19th January 2018. At that time Mr Brosnan indicated that he had pleaded guilty to all three charges and those pleas were recorded and those pleas were recorded. Mr Brosnan does not take issue with the summary of facts prepared for the Racing Integrity Unit. A copy of that summary of facts (2 pages) is attached to this decision and is to be read as part of the decision.

2. HEARING ON 9TH DAY OF FEBRUARY 2018

2.1 There has this afternoon been a hearing at Alexandra Park Raceway. The Committee has before it extensive submissions from the RIU. There are also detailed submissions from Mr Brosnan together with extensive testimonials and references.

2.2 On the 5th February 2018 Dr Andrew Grierson the Chief Veterinarian for Harness Racing New Zealand prepared a report for Mr Cruickshank the RIU Investigator and this has been made available to the Committee and to Mr Brosnan. At the commencement of the hearing this afternoon Mr Brosnan made it clear that he was concerned that this material had reached him very late and outside the clear timetable that was set at the telephone conference on the 19th January. Mr Brosnan also made it known that Dr Grierson's practice acts for his stable and that he was concerned that Dr Grierson should in those circumstances prepare this report for Harness Racing New Zealand. That is a matter upon which the Committee cannot appropriately comment. If Mr Brosnan wishes to take that issue further then he must take that up with Dr Grierson. Mr Brosnan asked if he wished to have time to respond to the material from Dr Grierson. He was told by the Committee that if he did wish to do that then the Committee would grant an adjournment of the hearing in order for that to take place. Mr Brosnan made plain that he did not wish to have an adjournment and "wished to get it over with today". The Committee has considered the material from Dr Grierson. In particular the Committee is stuck by the very high cobalt level of 522 ug/L returned by the horse *OUR PETITE LADY* on the 22nd September 2017. Mr Brosnan was asked about that. He said that the only explanation that he could offer was that medication given to that mare which medication had been obtained from the Auckland Veterinary Clinic may have brought that about. That medication is to prevent mares from coming into season. That medication was given to *OUR PETITE LADY* but not to the other two horses *BOPPER JET* and *GRENADO*.

3. SUBMISSIONS

3.1 The Committee has heard from both Mr Cruickshank and Mr Brosnan and they have responded to questions from the Committee. It was explained that it will be necessary to give a detailed reasoned decision as to the penalty level which the Committee will impose. That written decision should be available without significant delay.

4. DECISION

4.1 In the meantime this decision now sets out that the horse *BOPPER JET* is disqualified from Race 2 that took place at Alexandra Park Raceway on the 31st August 2017 and the horses which finished behind *BOPPER JET* are moved forward. That may affect the ratings of those horses in consequence. The horse *GRENADO* is disqualified in respect of Race 5 that took place at Alexandra Park Raceway on the 31st August 2017 and likewise the horses that finished behind *GRENADO* are moved forward one place in consequence of that disqualification. *OUR PETITE LADY* raced on the 22nd September 2017 at Alexandra Park Raceway and won Race 3. She is disqualified and again the horses that were placed behind her move forward in the places. There will be an order for the return of all stake money in respect of the horses *BOPPER JET*, *GRENADO* and *OUR PETITE LADY*. The rule under which disqualification has been made is R1004(8). The Committee is informed that the stake money has not been paid out and it follows from what is said above that this stake money will be distributed in accordance with the disqualifications which have taken place. When the Committee recorded that the stake money was to be refunded it was not at that time aware that the monies had not in fact been paid.

4. RESULT OF DECISION.

4.1 The decision given today is to be immediately notified by the RIU to Harness Racing New Zealand. A typed up decision will be available within a few days. A more detailed decision fixing the penalty levels and the reasons will follow thereafter.

DATED at Auckland this 9th day of February 2018

Murray McKechnie

Chairman

BEFORE THE JUDICIAL COMMITTEE

AT AUCKLAND

IN THE MATTER of the New Zealand Rules of Harness Racing

BETWEEN

RACING INTEGRITY UNIT

Andy Cruickshank

Investigator

Informant

AND

Richard BROSNAN

Licensed Trainer HRNZ

Respondent

SUMMARY OF FACTS

The respondent Richard BROSNAN is a licensed Public Trainer and Open Horseman under the Rules of the Harness Racing New Zealand.

On the 31st August 2017 "Bopper Jet" was correctly entered and presented to race by Mr BROSNAN in Race 2 the Hes Watching Tender Closes Tonight 8pm Mobile Pace at the Auckland Trotting Club meeting at Alexandra Park, Auckland.

"Bopper Jet" is a 6 year-old bay gelding (Jereme's Jet – Big Bopper) owned by Mrs J L Brosnan, R J Brosnan and A J Lavrencic and is trained by the Respondent Mr BROSNAN.

"Bopper Jet" finished second of the twelve horse field and won a stake of \$2465.00.

"Bopper Jet" underwent a random Post Race urine swab. Mr BROSNAN does not contest the swabbing process.

On the 31st August 2017 "Grenado" was correctly entered and presented to race by Mr BROSNAN in Race 5 the McGregor Bailey Chartered Accountants Hcp Trot at the Auckland Trotting Club meeting at Alexandra Park, Auckland.

"Grenado" is a 6 year-old bay gelding (Pegasus Spur - Strapless) owned by Mrs P A Dunnell, Miss S D Brosnan, L M Gurney and Mrs J L Brosnan, and is trained by the Respondent Mr BROSNAN.

"Grenado" finished first of the eleven horse field and won a stake of \$6420.00.

"Grenado" underwent a random Post Race urine swab. Mr BROSNAN does not contest the swabbing process.

All swab samples from the meeting were couriered to the New Zealand Racing Laboratory and were analysed for the presence of substances prohibited under the Rules of New Zealand Harness Racing.

On 28 September 2017 the Official Racing Analyst reported in writing that the samples from "Bopper Jet" and "Grenado" had tested positive to Cobalt.

"Bopper Jet" returned a Cobalt level of 136 ug/L (micrograms per litre) and "Grenado" a Cobalt level of 128 ug/L (micrograms per litre).

On the 22nd September 2017 "Our Petite Lady" was correctly entered and presented to race by Mr BROSNAN in Race 3 the Pegasus Spur Tender Closes 13 October Hcp Trot at the Auckland Trotting Club meeting at Alexandra Park, Auckland.

"Our Petite Lady" is a 4 year-old bay mare (Pegasus Spur – Petite Sunshine) currently leased by C H Weaver and Miss I M Elsley and is trained by the Respondent Mr BROSNAN.

"Our Petite Lady" finished first of the eleven horse field and won a stake of \$7920.00.

"Our Petite Lady" underwent a random Post Race urine swab. Mr BROSNAN does not contest the swabbing process.

All swab samples from the meeting were couriered to the New Zealand Racing Laboratory and were analysed for the presence of substances prohibited under the Rules of New Zealand Harness Racing.

On the 31st October 2017 the Official Racing Analyst reported in writing that the sample from "Our Petite Lady" had tested positive to Cobalt.

"Our Petite Lady" returned a Cobalt level of 522 ug/L (micrograms per litre).

Cobalt at a concentration above 100 micrograms per litre in urine is a Prohibited Substance within the meaning of the Rules and its presence in a race day sample is, prima facie, a breach of the Rules.

Cobalt is an essential trace element required for life through the actions of Vitamin B12 of which Cobalt makes up about 5% of its weight. Cobalt is absorbed from the gut either as elemental or incorporated in Vitamin B12.

Mr BROSAN was spoken to at his home address on Thursday 5 October 2017. He was unable to explain the positive tests and was adamant that he had not administered Cobalt to any of his horses.

Four 4ml vials of Cobalt Chloride were located in a fridge in the stabling area of Mr Brosnan's property along with four syringes (1 x 1ml, 1 x 2ml, 2 x 10ml) which were taken for analysis testing.

The vials of Cobalt Chloride were compounded by Optimus Healthcare Limited on 6 September 2012 and had a "Use by" date of 5 March 2013. When tested the vials were shown to have a level of Cobalt of 18000 mg/kg. The four vials were the remaining part of an order of 25 x 4ml vials.

When the syringes were tested the 10 ml syringes had a Cobalt reading below .02 mg/kg (milligrams per kilogram). The 1ml syringe showed a Cobalt level of 330 mg/kg (milligrams per kilogram) and a 2ml syringe showed a Cobalt level of 69 mg/kg.

Mr Brosnan was spoken to again on Tuesday the 5th November 2017 and the scenario that he had deliberately injected his horses with Cobalt was put to him. Mr Brosnan denied this and explained that he had the Cobalt Chloride on the recommendation of a Veterinarian. He stated that a few years ago the neighbours were using chemical sprays on their potatoes which was impacting the welfare and fitness of his horses. His vet recommended Cobalt as a method to pick the horses up although Mr Brosnan stated that the effect was limited. He stated that he forgot that the Cobalt was in the fridge and must have been since that time. He further stated that if he wanted to cheat he would not have left the Cobalt in the fridge where it would be easily located.

Mr BROSAN has been involved in the Harness Racing Industry for 50 years. He holds a Public Trainer and Open Horseman Licence and trains a number of race horses. Mr Brosnan has no previous breaches of a similar nature.

Penalty: