

Non Raceday Inquiry RIU v R C Harris - Written Reserved Decision dated 25 June 2021 - Chair, Mrs N Moffatt

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 the New Zealand Thoroughbred Rules of Racing

Information A14704

BETWEEN RACING INTEGRITY UNIT

Simon Andrew Irving Investigator

Informant

AND

Robert Clive Harris

Licensed Trackwork Rider (Class B)

Respondent

Judicial Committee: Mrs N Moffatt (Chair), Mr T Castles (Member)

Appearing: Mr Neil Bullock (for the Informant)

Mr R Harris (Respondent)

Mr G Lynds (Licensed Trainer and employer of Mr Harris)

Venue: Awapuni Racecourse

Date of Hearing: 19th June 2021

Date of Written Decision: 25th June 2021

RESERVED DECISION OF JUDICIAL COMMITTEE

INTRODUCTION

This charge was heard at Awapuni Racecourse on 19 June 2021. Licensed Trackwork Rider, Mr R Harris appeared in person to answer a charge alleging a breach of Rule 656(3) of the Rules of Thoroughbred Racing.

The Respondent was supported throughout the hearing by his employer Mr G Lynds.

THE RELEVANT RULE

Rule 656(3) reads as follows:

A rider or any other licensed holder who has carried out, is carrying out or is likely to carry out, a safety sensitive activity at a race course, 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.

THE CHARGE

Information no: A14704 alleges:

On the 28th of May 2021 at Palmerston North, having been required by a Racing Investigator to supply a sample of your urine in accordance with Rule 656(3) of the NZTR Rules of Racing, you provided urine which upon analysis was found to contain the controlled drug Methamphetamine as defined in the Misuse of Drugs Act 1975 AND THAT you are thereby liable to the penalty imposed pursuant to Rule 803 of the rules

The charge was admitted and is therefore deemed to be proved.

Mr Harris confirmed that he had received the following documents:

- Authority to charge signed by Mr M Godber, General Manager RIU
- Information No: A14704
- Charge Rule and Penalty Provisions
- Service of Information confirmation
- Agreed Summary of Facts
- Penalty Submissions

SUMMARY OF FACTS

The Respondent, Robert Clive Harris is a Licenced Trackwork Rider under the Rules of New Zealand Thoroughbred Racing.

He is 40 years old and has been involved in the Racing Industry as a Trackwork Rider and was an Apprentice Jockey from 2015-2018.

On Friday 28 May 2021 Investigators from the Racing Integrity Unit conducted routine drug testing at the Awapuni Racecourse.

Mr Harris was one of the 18 people selected for testing and was served with the appropriate notice.

Later that day Mr Harris presented at the Drug Detection Agency in Palmerston North and provided a urine sample at 4.42pm.

The sample was forwarded to the ESR for analysis and on 02 June the ESR issued a report detailing the sample positive to Methamphetamine.

When interviewed two days later regarding the result, Mr Harris stated that he had smoked some Methamphetamine with some associates on the evening before the testing day.

In explanation Mr Harris stated that this was the first time he had consumed Methamphetamine.

Mr Harris has no previous charges under the NZTR Rules.

Respondents' Response

Mr Harris said he had made a stupid error which he regretted. On the day of the test, he had childcare responsibilities which prevented him from going to get tested until later that day.

PENALTY SUBMISSIONS - RIU

Introduction

The Respondent Robert Clive Harris is a Miscellaneous Class B (Trackwork Rider) Licence holder under the Rules of New Zealand Thoroughbred Racing (NZTR).

He is 40 years old and is employed by Lynds Racing, Awapuni.

Mr Harris has admitted a breach of the Rules in relation to the positive drug test returned at the Awapuni Racecourse on 28 May 2021.

On this occasion Mr Harris was trackwork riding at the Awapuni Racecourse while the drug Methamphetamine was within his body.

New Zealand Thoroughbred Racing commenced drug testing Industry participants in 1995 and since then there has been growing awareness that there is an absolute obligation on Riders to present themselves free from the influences of drugs.

All Riders are aware of the policy and the consequences should they not comply.

The testing is conducted to maintain a safe and healthy workplace and to maintain the integrity of the Industry.

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.

It is submitted that a 12-month disqualification (backdated to 04 June when Mr Harris was 'stood down') should be imposed, with a period suspended pending the completion of a drug rehabilitation programme.

Offending

The details of Mr Harris' offending are contained in the RIU Summary of Facts which are agreed.

Penalty Provisions

The penalty provisions for this matter are contained under 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 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,

Sentencing Principles

The four principles of sentencing can be summarised briefly:

- Penalties are designed to punish the offender for his / her wrongdoing. 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 behaviour in question.
- The need to rehabilitate the offender should be taken into account.

All four principles apply in this matter.

Previous Cases

The following are the most relevant recent decisions involving Trackwork Riders testing positive to Methamphetamine:

- RIU v DONAGHUE (December 2019) – Positive to Methamphetamine; 12 months disqualification with three months suspended upon completion of a drug rehabilitation programme.
- RIU v BURTON (November 2017) – positive to Methamphetamine; 10 months disqualification
- RIU v LANGE (November 2017) - positive to Methamphetamine; 10 months disqualification
- RIU v JANSON (August 2017) – positive to Methamphetamine and Cannabis (one previous charge to Cannabis); 10 months disqualification on the Methamphetamine charge, six weeks suspension on Cannabis charge
- RIU v SWINBURNE (May 2017) – positive to Methamphetamine and Cannabis; 10 months disqualification on the Methamphetamine charge, three months suspension on Cannabis charge

Aggravating Factors

Mr Harris stated that he had smoked Methamphetamine with associates on the evening prior to Trackwork riding the following morning.

Mitigating Factors

Mr Harris has been co-operative with RIU Investigators throughout the investigation and prosecution process.

He has admitted the breach at the earliest possible stage.

He has had no previous charges before the Committee.

Mr Harris has since engaged with the NZ Racing Drug and Alcohol Counsellor.

In the last five years Mr Harris has been routinely tested on two other occasions and produced a clear sample.

Conclusion

The RIU therefore seek a 12-month disqualification from Trackwork riding (backdated to 04 June when Mr Harris was 'stood down'), with a period suspended pending completion of a drug programme.

Normally costs of the ESR sample analysis would be sought by the RIU, however given Mr Harris' personal circumstances no costs are sought on this occasion.

PENALTY SUBMISSIONS – RESPONDENT

Mr Lynds said Mr Harris had worked for him for 7 years and described him as a fantastic worker. There was nothing to indicate he had been using Methamphetamine. He was loyal, reliable, and an exceptional Rider of young horses. Mr Lynds said he did not tolerate the use of Methamphetamine in Racing but urged the Committee to consider some of the pressure Mr Harris had faced in recent times.

His partner had left him, and he had sole responsibility for 5 children. Mr Harris was very remorseful and realised how much he had let the stable down.

DECISION

There is no recommended starting point for drug cases - they are all fact dependent. The Committee had regard to the precedent cases put forward by the RIU which were useful in ensuring consistency between similar charges.

The use of drugs by people involved in the Racing Industry cannot and will not be tolerated. The health and safety of both horse and Rider is paramount along with maintaining the integrity of the Industry. Methamphetamine is a Class A drug in the spotlight for the large amount of damage and harm it causes in society.

There is further concern for the possibility of contamination to horses by persons who have been using Methamphetamine. There is no place for it in the Racing Industry.

The RIU submitted a 12-month disqualification period, and the Committee used this as a starting point.

Mr Harris showed genuine remorse. There is an acceptance that a period of disqualification is inevitable, and he fully understands the effect this will have on his family and the Lynds' Stable. He is the main provider to five children and has no other employment.

Mr Harris has no previous drug charges, and it is notable that two random drug tests within the last 5 years have returned clear results. He maintains that this incident was a one-off and that he would like to return to the Industry.

Mr Lynds has provided invaluable support to Mr Harris, and his family, in seeking out alternative job opportunities and ensuring they have adequate housing.

Taking into account all submissions the Committee sets the period of disqualification at 11 months.

We were presented with a letter from Dianna Young (AOD Clinician to the Racing Industry) which stated Mr Harris has agreed to attend a drug treatment course in Palmerston North. Mr Harris confirmed to us that he would attend this course and was waiting on confirmation of placement.

PENALTY

Accordingly, Mr Harris is disqualified for 11 months, backdated to 4th June 2021.

Upon completion of a drug rehabilitation course through the MASH programme 3 months of this period will be suspended.

COSTS

Having regard to Mr Harris' personal circumstances there is no order for costs.

Nicki Moffatt

Chair

Penalty: