

Non Raceday Inquiry RIU v R J Butt - Penalty Reasons and Decision dated 1 February 2021 - Chair, Hon J W Gendall QC

Rules:

Repondent(s)/Other parties:

Name(s):

Decisions:

Before a Judicial Committee of the Judicial Control Authority for Racing

IN THE MATTER of the New Zealand Rules of Harness Racing

BETWEEN THE RACING INTEGRITY UNIT

(Ms K R Williams, Investigator)

Informant

AND ROBERT JOHN BUTT

Open Driver

Respondent

Information Number: A13230

Judicial Committee:

Hon J W Gendall QC (Chair)

Mr A Harper (Member)

Present: Mr C Lange, Counsel for RIU

Mr K Cook, Counsel for Mr R J Butt

Ms K R Williams, Investigator for RIU

Mr R J Butt, Respondent

Mr S Renault, Registrar

Hearing Date: 29 January 2021 at Addington Raceway, Christchurch

Oral Decision: 29 January 2021

PENALTY REASONS AND DECISION DATED 1 FEBURARY 2021

REASONS FOR DECISION

(1) The RIU charged Mr Butt with breaches of Rule 513(3)(a) and (4)(c) of returning a breath alcohol level greater than 100 micrograms of alcohol per litre of breath (0.02%) when tested prior to Race 1 at the Banks Peninsula Trotting Club meeting on 24 January 2021.

(2) He was listed to drive in 2 of the 11 races on that day. A “passive” test indicated the presence of alcohol in his body and subsequent mouthpiece testing (on two occasions) within 10 minutes of each) revealed levels of 268 mcg/l and 287 mcg/l. Mr Butt admitted the charge and was stood down from driving in any race on that day.

(3) The Raceday Judicial Committee adjourned a hearing of the Information to enable it to be dealt with by this Non-Raceday Committee.

(4) At the conclusion of the hearing this Committee delivered its penalty decision and we now commit that decision and reasons to writing.

(5) A number of drivers, including Mr Butt, were subject to breath testing that day. The levels returned by him of 268 mcg/l and 287 mcg/l were very much above the required limit of 100 mcg/l – over 2 ½ times as much.

(6) As with other drivers, Mr Butt knew of and understood the Rule. He has held a licence for 15 years, drives frequently and has had success with over 200 winning drives.

In explanation to the Investigator he said that he had been at a social event the previous evening but had finished drinking by about 12 midnight (that is, about 12 hours before he was to drive in Race 1).

(7) Mr Butt has previously breached the Rule on 6 March 2016, at Reefton TC, when he was suspended from driving for 8 driving days (approximately 1 month) and fined \$1,000.

(8) In its submissions as to penalty the Informant referred to the well-known sentencing principles (deterrence of others and the offence; punishment, to reflect disapproval of JCA and RIU of the behaviour, rehabilitation) and the important safety, integrity and public interest. Welfare and safety of all who compete in races require absolute adherence to the Rules relating to alcohol and drug use.

(9) The Informant also emphasised the disadvantage caused to owners and trainers where a driver has to be stood down on raceday and replacements have to be found.

(10) The Informant submitted that Mr Butt had to recognise a problem with alcohol and needs to take some treatment which has to be successful to ensure he does not present to drive when in breach of the Rule. It suggested that a penalty might be aimed at rehabilitation though any suspension (sought at 6 months) being subject to a reduction (to 4 months) "if Mr Butt elects to satisfactorily complete an alcohol rehabilitation programme."

(11) The Informant referred the Committee to a number of cases, in both Harness and Thoroughbred Codes, as examples of the types and ranges of penalties which range from suspensions of up to 6 months or fines of \$750 to \$2,500. We recognise that every offence and offender is different, and the proper approach is to fix a starting point, and then factor in the relevant aggravating and mitigation factors as they relate to the offence itself and the offender.

(12) Mr Butt's submissions as to penalty can be summarised:

- He was co-operative with the Investigator and is remorseful and regrets his breach.
- Since his previous breach of the Rule on 6 March 2016 he has been tested on many occasions with no untoward results.
- He presented through Counsel a number of very impressive references who speak of his good character, general integrity.
- He has a young family on whom any lengthy suspension would have serious impact as his sole income is derived from the Harness Racing Industry.
- He does not accept the proposition that he is an alcoholic or has a significant problem with alcohol. But he accepts he has had inadequate insight or understanding of the effects, and elimination process, of alcohol use and is prepared to undertake counselling to educate and assist him to make "better choices".

PENALTY

(13) We do not regard a starting point of 6 months suspension is necessary. But any penalty has to provide a deterrent to Mr Butt and, importantly, to others. We respectfully endorse the comments of the Judicial Committee in its decision – RIU v Gillies 22 September 2009 (a jockey suspended for 6 weeks):

"The Committee takes the view that the safety aspect in the industry is paramount and the actions of the Defendant in presenting himself on raceday with excess alcohol level is deemed to be irresponsible. It is unacceptable for a senior rider or any rider, such as the Defendant, to put himself in a position where this could occur and was an absolute breach of the trust of his fellow riders The integrity in racing is of the utmost importance. It was seriously compromised on this occasion. The Rules are there for a clear purpose."

(14) We take as a starting point a term of suspension of 6 weeks. From this an uplift of 4 weeks is required to reflect the previous breach of this Rule in 2016. This leads to a 10-week suspension.

(15) Mr Lange, on behalf of the RIU accepted that significant mitigating personal factors existed. He postulated that because of Mr Butt's willingness to undertake some "education and counselling" a form of suspended sentence of "6 months suspension with leave" to the JCA to reduce it to 4 months, if this treatment occurred. We are not sure that the Rules may specifically allow this but do not have to express any decided view, as we propose – as a "front end" measure and to deal with any sanction by accepting Mr Butt's undertaking to take counselling as a personal mitigating factor. It needs to be clearly understood that "sentencing" is not a bargaining matter and it is only because we accept as genuine the remorse, and undertaking to take realistic remedial steps, that we take this approach with this Respondent. In many cases, mere claims of remorse and intention to remedy personal deficiencies, may have a hollow ring, if the JCA Committee is not persuaded they are genuine. In Mr Butt's case we consider his undertaking and contrition is genuine.

(16) As a consequence, we allow a discount of 2 weeks suspension to reflect his personal mitigating factors, and his undertaking which we accept as genuine to follow a remedial pathway.

(17) The end result is that:

(a) Mr Butt's Driver's Licence is suspended for 8 weeks commencing at the conclusion of racing on 31 January 2021 (as he has committed engagements that day) and finishing at the end of racing on 28 March 2021.

(b) It is not fixed by reference to race days, and those drivers who transgress this vital safety Rule, may expect suspension in terms of weeks or months, irrespective of their usual driving opportunities.

(18) Because of the personal family circumstances and obvious financial impact on a suspension of 8 weeks, we do not in our discretion see that a fine in which would be punitive, is also necessary. The suspension provides sufficient punishment, and deterrence to Mr Butt and others.

(19) The RIU do not seek an order for costs and no order is made. Although not mentioned at the hearing it is appropriate that a small contribution of \$750 be made to the JCA.

Dated 1 February 2021

Hon J W Gendall QC (Chair)

Penalty: