

Non Raceday Inquiry RIU v T R Vince - Decision dated 7 January 2021 - Chair, Mr G Jones

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 Harness Racing

BETWEEN Mr O Westerlund of the Racing Integrity Unit (RIU)

Informant

AND Mr Timothy Robin Vince (Licensed Trainer)

Respondent

Information: A8489

Judicial Committee: Mr G Jones (Chairman), Mr A Godsalve (Member)

Present: Matter heard 'on the papers' per r 21.1 of 5th Schedule

Date of Decision: 7 January 2021

DECISION OF THE JUDICIAL COMMITTEE

Introduction

[1] This is the penalty decision arising from the charge filed against Licenced (Harness) Trainer Mr TR Vince ("the Respondent").

Determination on the papers

[2] Pursuant to r 21.1 of the Fifth Schedule – of the *Rules of Practice and Procedure for the Judicial Committees*, with the consent of the Informant (Mr Westerlund) and the Respondent (Mr Vince), this matter is dealt with 'on the papers' and therefore without the need for an oral hearing.

[3] The Judicial Committee ("the Committee") was provided with and perused all of the relevant documents. These included

- Signed Information No A8489 and Service of Information confirming guilty plea and statement from Mr Vince dated 23 December 2020
- Charge, Rule and Penalty Provisions
- RIU letter of authorisation to lodge charge dated 11 December 2020
- RIU Sample Identity Record 156695
- NZRLS Certificate of Analysis dated 26 November 2020
- Letter from Dr A Grierson dated 30 November 2020
- RIU Summary of Facts and Penalty Submissions

The Charge

[4] By way of memorandum dated 11 December 2020, Mr Godber, the General Manager: Racing Integrity Unit (RIU) authorised the filing of this charge against the Respondent alleging he breached Rule 1004A(2) and (4) of Harness Racing New Zealand Rules of Racing. More specifically the charge alleged that Licensed Trainer, Mr Vince presented the horse HAPPY PLACE to run on Friday 13 November 2020 with a prohibited substance in its system namely Phenylbutazone and Oxyphenbutazone.

[5] Information number A8489 which sets out the full particulars of the charge was served on the Respondent on 23 December 2020, by the Informant, RIU Investigator Mr Westerlund.

[6] The particulars of the charge are that:

On Friday the 13th November 2020 at Auckland, Timothy Robin Vince was the licenced trainer of the Standardbred Harness Race Horse "Happy Place" which was presented for and raced in Race 1, the Thursday \$20 Steak Night At The Alex Mobile Pace 4yo + R55 Junior Drivers 2200 metres, at a race meeting conducted by the Auckland Trotting Club, when the said horse was found to have in its metabolism a prohibited substance, namely 'Phenylbutazone and Oxyphenbutazone' in breach of New Zealand Harness Racing Rules 1004A(2) and (4) and (6) and are therefore subject to the penalty or penalties which may be imposed pursuant to Rules 1004D(1) & (2) and 1004E(1) of the said Rules.

The Relevant Rules

[7] Rule 1004A(2) provides that "a horse shall be presented for a race free of prohibited substances".

[8] Rule 1004A(4) provides that "when a horse is presented to race in contravention of sub-rule (2) or (3) the trainer of the horse commits a breach of these Rules".

[9] Rule 1004A(6) provides that "a breach of sub-rule (2), (3), (4), or (5) is committed regardless of the circumstances in which the TCO2 level or prohibited substance came to be present in or on the horse".

[10] Rule 1008 provides that in the absence of any express provision to the contrary in any proceeding for a breach of these Rules:

a) it shall not be necessary for the informant to prove that the defendant or any person intended to commit that or any breach of the Rule;

and

b) any breach of a Rule shall be considered as an offence of strict liability.

Preliminary Matters

[11] On 11 December 2020, following a Request for a Ruling, this Committee ruled:

a) That pursuant to Rule 1004D(6) HAPPY PLACE is disqualified from 1st place in Race 1 at Alexandra Park on 13 November 2020.

b) That the disqualification is effective as of 13 December 2020.

c) Placing and stakemoney are to be adjusted in accordance with our Ruling.

[12] A copy of the written decision relating to the Request for a Ruling has been posted on the JCA website.

The Plea

[13] Mr Vince has admitted the breach. The charge is therefore proved.

[14] The facts and RIU penalty submissions are not disputed.

[15] Mr Vince elected not to provide penalty submissions and the penalty decision was therefore determined on that basis.

Summary of Facts (Salient points)

[16] On Friday 13 November 2020 HAPPY PLACE was correctly entered and presented to race by Licensed Mr Vince in Race 1, the Thursday \$20 Steak Night at The Alex Mobile Pace 4yo + R55 Junior Drivers 2200 metres, at the Auckland Trotting Club meeting held at Alexandra Park.

[17] HAPPY PLACE is co-owned by Mr Vince and Ms S Wigg and is trained by Mr Vince.

[18] HAPPY PLACE finished first of the seven runners, winning a stake of \$6,600.

[19] HAPPY PLACE underwent a random post-race urine swab. Mr Vince does not contest the swabbing process.

[20] 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.

[21] On the 26th November 2020 the Official Racing Analyst reported in writing that the sample from HAPPY PLACE had tested positive to 'Phenylbutazone' and 'Oxyphenbutazone'.

[22] Phenylbutazone, commonly known as 'bute', is a nonsteroidal anti-inflammatory drug commonly used to treat short term pain and fever in horses. Oxyphenbutazone is a metabolite of Phenylbutazone.

[23] Phenylbutazone is a Prohibited Substance within the meaning of the Rules and its presence in a raceday sample is, prima facie, a breach of the Rules. Result were accepted and the 'B' sample was not required to be examined.

[24] On Friday 27 November 2020 Mr Vince was spoken to at his stables in Kumeu. He was shocked to learn of the positive result and was unable to assist in determining how the Phenylbutazone had got into the horse's system. He further stated that one of his horses was prescribed by the local Vet (Vets Associates) the product 'Phenylbutazone' which is administered orally with a syringe.

[25] In the absence of any evidence to the contrary, it is highly likely cross contamination has occurred. The only persons authorised to administer medication or supplements to Mr Vince's horses are his Veterinarian, his stablehand Ms Wigg and himself. In addition, HAPPY PLACE was not being treated for any ailments or given Phenylbutazone.

[26] Dr Andrew Grierson the Chief Veterinarian for HRNZ, forwarded a formal report, confirming that Phenylbutazone and Oxyphenbutazone are classed as prohibited substances under the Rules of HRNZ.

[27] A written statement was obtained from Mr Vince consenting to the horse HAPPY PLACE to be disqualified from the said race on the 13 November 2020.

[28] A search of his Stables located a half empty container labelled "*Phenylbutazone*" 500 grams - *Withholding Times 8 days*". The container was safely secured in a fridge.

[29] Mr Vince also keeps a diary which documents the medication given to each horse in the stable. Mr Vince has since advised that he has improved his systems at the stable to avoid a similar occurrence in the future.

[30] Inquiries with the RIU Betting Analyst did not detect any irregular betting patterns with regards to the race.

[31] Mr Vince has been involved in the Harness Racing Industry for 40 years. He holds a Licence to Train and has been training for 10 years. He has no previous breaches of the Prohibited Substance Rule.

The Respondent's Response

[32] The facts are not disputed by the Respondent and he has not provided submissions in response to the facts that have presented by the Informant.

RIU Penalty Submissions

The written submissions of the RIU are summarised as follows:

[33] The charge is readily admitted and the facts are not disputed.

[34] The Informant advises that the Respondent has been fully co-operative throughout the investigative process.

[35] It was submitted that Mr Vince is an experienced horseman who should be well aware of the standard of care required when using or administering medications and supplements in horse racing management. In that regard Mr Vince has since improved his systems at the stable to avoid a similar occurrence in the future.

[36] Mr Vince has no previous charges for breaching the Prohibited Substance Rule.

[37] The RIU submit that this breach can be dealt with by way of monetary penalty and a fine of \$4000 is suggested.

[38] RIU do not seek costs.

[39] HAPPY PLACE has been disqualified by the JCA effective 13th December 2020 (refer paragraphs 11 and 12 of this decision).

Precedent Cases

[40] In support of this penalty the following precedent decisions were submitted for the consideration of the Committee:

RIU v S & K Alexander (20.04.20) – related to a positive test to Phenylbutazone and Oxyphenbutazone at a trial meeting in Matamata on 11 February 2020. The penalty imposed was a fine of \$2400.

RIU v D & C McGowan (17.05.19) – related to a positive test to Clenbuterol at a race meeting in Cambridge on 6 March 2019. The penalty imposed was a fine of \$4200.

RIU v G.F. Brick (15.09.16) – related to a positive test to Phenylbutazone and Oxyphenbutazone at a trial meeting at Te Teko on 2 August 2016. The penalty imposed was a fine of \$3000 and the horse disqualified.

RIU v M. Fraser- Campin and C. Campin (1.04.16) – related to a positive test to Phenylbutazone and Oxyphenbutazone at the Matamata Trials on 9 February 2016. The penalty imposed was a fine of \$3000 and the horse disqualified.

RIU v A Browne (1.09.17) – related to a positive test to Sotalol at a race meeting in Auckland on 5 June 2017. The penalty imposed was a fine of \$4000.

[41] In distinguishing the cases referred to; it was submitted that the cases relating to *McGowan and Browne* occurred on a raceday whereas *Alexander, Brick and Fraser Campin & Campin* occurred at trial meetings thus accounting for the differing fines that were imposed.

[42] It was submitted that positive results that are detected on racedays are considered more serious due to stake money on offer and the fact that public betting is available.

Penalty Provisions

[43] The breach is admitted and therefore is therefore proved.

[44] Rule 1004D(1) provides that a person who commits a breach of a Rule in Rules 1004A, 1004B, or 1004C shall be liable to:

(a) a fine not exceeding \$20,000.00; and

(b) be disqualified or suspended from holding or obtaining a licence for any specific period not exceeding five years.

[45] Rule 1004D(2) provides that:

Any horse connected with a breach of the rule must be disqualified from the race and may in addition be disqualified for a period not exceeding five years.

[46] Rule 1004E(1) provides that:

Any horse taken to a racecourse for the purpose of engaging in a race which is found to have administered to it or ingested by it a prohibited substance or an out of competition prohibited substance must be disqualified from that race.

Reasons for Decision

[47] The Committee fully considered all of the relevant facts as well as the submissions lodged by the Informant. Although the Respondent did not provide submissions due consideration was given to the explanation he provided as part of the RIU investigation.

[48] For parity and consistency our decision-making was informed by the JCA Penalty Guide and from penalty decisions arising from precedent cases.

[49] In addition, we had regard for the specific circumstances of this case in terms of the Respondent's culpability, as well as his personal circumstances.

[50] The investigation carried out by the RIU was unable to establish or confirm, with absolute certainty, how the prohibited substance got into the horse (HAPPY PLACES) system. However, it is assumed, based on the known facts that in some way HAPPY PLACE has been contaminated, through ingestion or other means, with the prohibited substance Phenylbutazone. This is entirely plausible because Mr Vince has advised that in order to treat one of his horses on the property Phenylbutazone was prescribed by his Vet and this was administered orally with a syringe. In confirmation of this, following a search of Mr Vince's stable, the RIU Investigators located a half empty container labelled Phenylbutazone 500 grams – (withholding times 8 days).

[51] It was established that Mr Vince maintains in a diary a documentary record of which medication is given to each horse in the stable.

[52] The Committee was provided with a memorandum (dated 30 November 20) from the Chief Veterinarian for HRNZ Dr A Grierson. He advised that *"Using a paste ensures the right horse is treated and there is no mistaken administration by swapping of feed buckets which can be problematic in a racing stable. The injection is very irritant to tissues so administration is only by the intravenous route and usually by veterinarians"*.

[53] Although as stated, it cannot be clearly established, it seems more probable than not, HAPPY PLACE was contaminated as a result of the product being administered to another horse on the property which was being legitimately treated. However, if this is the case, and we reiterate it seems most likely, Mr Vince must take full responsibility for not ensuring adequate checks and balances were in place to mitigate the risk of cross contamination when he was treating the other horse. We understand that only three people could have treated the other horse (his Vet, Miss Wigg or Mr Vince) clearly there was breakdown in adherence to good practice.

[54] We are told that Mr Vince has since improved his systems at the stable to avoid a future reoccurrence.

[55] The JCA Guide establishes a starting point of \$8000 fine for a first breach of this Rule.

[56] The RIU, in their submissions highlighted five precedent cases where they submit offending is similar in nature to this breach. In those cases, fines ranging between \$3000 and \$4200 were imposed. In distinguishing the relative differences between the five cases it was pointed out that in relation to *McGowan and Browne* the offending occurred on a raceday whereas with regards to *Alexander, Brick and Fraser Campin & Campin* the offending related to presentation at trial meetings. Thus, accounting for the differing fines that were imposed.

[57] We agree with the Informant's submission that a raceday breach has greater consequences than a breach detected at a trial meeting. For that reason, we believe that the *McGowan and Browne* more closely match the circumstances of this case and it is noteworthy they resulted in fines of \$4000 and \$4200 respectively. Therefore, in keeping with these two cases and based on our own assessment of Mr Vince's culpability we have determined this breach to be at the lower end and we adopt \$4000 as our starting point

before contemplation of aggravating and mitigating factors.

[58] Other than what we believe to have been a lack of care to avoid the possibility of contamination there are no particular aggravating factors. And as has been highlighted, systems have now been put in place to prevent a recurrence. An uplift from our starting point is therefore not deemed necessary.

[59] Notwithstanding HAPPY PLACE won the race, there were no betting irregularities. Nor is there any evidence whatsoever before the Committee to suggest a deliberate intent to deceive or gain an advantage on the part of the Respondent.

[60] In terms of mitigating factors Mr Vince has a clear record. Therefore, combined with the fact that he readily admitted the breach; cooperated with the RIU investigation and agreed to having the matter heard on the papers we have afforded Mr Vince 15% (\$600) reduction from our starting point. This particularly reflects the fact that had Mr Vince not agreed to have the case heard on the papers it would have been necessary to convene a costly and time-consuming hearing.

Decision

[61] In the final result we impose a fine of \$3400.

[62] We confirm our previous ruling of 11 December 2020 that:

d) That pursuant to Rule 1004D(6) HAPPY PLACE is disqualified from 1st place in Race 1 at Alexandra Park on 13 November 2020.

e) That the disqualification is effective as of 13 December 2020.

f) Placing and stakemoney are to be adjusted in accordance with our Ruling.

Costs

[63] The RIU have made no application for costs. On that basis and due to the fact, this matter was determined 'on the papers' we make no order for costs in favour of the RIU or JCA.

Dated at Auckland this 7 day of January 2021

GR Jones

Chairman

BEFORE A JUDICIAL COMMITTEE OF THE JUDICIAL CONTROL AUTHORITY UNDER THE RACING ACT 2003

AND IN THE MATTER of the New Zealand Rules of Harness Racing

BETWEEN Racing Integrity Unit (RIU)

Informant

AND Mr Timothy Robin Vince (Licensed Trainer)

Respondent

Information: A8487

Judicial Committee: Mr G Jones (Chairman), Mr A Godsolve (Member)

Venue: Alexandra Park, Auckland

Present: Matter dealt with 'on the papers' at venue

Date of Decision: 11 December 2020

DECISION OF JUDICIAL COMMITTEE

The request

[64] This is a Request for a Ruling filed by the RIU pursuant to R 1009 (3) seeking:

a) the disqualification of HAPPY PLACE from its first placing in Race 1 the "Thursday \$20 Steak Night at The Alex Mobile Pace 4yo + R55 Junior Drivers 2200 metres" at the Auckland Trotting Club meeting at Alexandra Park on 13 November 2020; and

b) the forfeiture of any stakemoney paid out as a result of finishing in first place in the said race.

Information Number A8487 provides:

Pursuant to Rule 1106(1)(c) that in accordance with Rule 1004D(1) of the New Zealand Rules of Harness Racing, the horse "HAPPY PLACE", be disqualified from Race 1, the 'Thursday \$20 Steak Night At The Alex Mobile Pace 4YO + R55 Junior Drivers 2200 metres' held by the Auckland Trotting Club at Alexandra Park on Friday the 13th November 2020, following the said horse having been taken to a racecourse for the purpose of engaging in a race and being found to have administered to it, or ingested by it, a prohibited substance, namely Phenylbutazone and Oxyphenbutazone

Determination on the papers

[65] Pursuant to r 21.1 of the Fifth Schedule – of the *Rules of Practice and Procedure for the Judicial Committees*, with the consent of the Informant (Mr Westerlund) and Respondent (Mr Vince), this matter is dealt with 'on the papers' and therefore without the need for an oral hearing.

The relevant Rules

[66] Rule 1004D provides:

(1) Any horse taken to a racecourse for the purpose of engaging in a race which is found to have administered to it or ingested by it a prohibited substance (which includes out of competition prohibited substances) must be disqualified from that race.

(2) The mandatory disqualification under sub-rule (1) applies regardless of the circumstances in which the substance came to be present in or on the horse.

(5) The owner or trainer of the horse subject to a positive result may notify in writing the General Manager of the Racing Integrity Unit that they intend to challenge the analysis and the basis for that challenge. The notification must be within 10 working days of being advised of the results of the analysis, or the result of the reserve sample (if applicable). The Judicial Committee shall then determine whether the horse is to be disqualified after hearing from the parties.

(6) Disqualification and changes of placing under this rule, will take effect from the immediate Monday following the judicial decision or such other time as the Judicial Committee determines.

[67] Rule 1106(1)(c) provides that *an information may (c) request a ruling.*

[68] Rule 1109(3) provides that *other than during a race meeting, an information requesting a ruling may only be filed by a Stipendiary Steward or Racecourse Inspector.*

Effect of Disqualification

The effect of the disqualification from a race is contained within R1308 (1).

R 1308 provides that:

(1) Where a horse is disqualified from a race its handicap shall be adjusted by deducting the penalty incurred for the race in which it was disqualified.

(2) No horse shall be eligible to start in any race after its disqualification when as the result of the reverting of its handicap it would no longer be eligible to enter that race.

R 1308A provides that:

(1) Where a horse is disqualified from a race any stake money available to all other starters shall be paid in respect of such horse.

(2) Sub-rule (1) does not apply when the horse is disqualified in connection with a breach of these rules relating to prohibited substances.

Summary of Facts

[69] On Friday 13 November 2020 HAPPY PLACE was correctly entered and presented to race by Licensed Mr Vince in Race 1, the Thursday \$20 Steak Night at The Alex Mobile Pace 4yo + R55 Junior Drivers 2200 metres, at the Auckland Trotting Club meeting held at Alexandra Park.

[70] HAPPY PLACE is co-owned by Mr Vince and Ms S Wigg and is trained by Mr Vince.

[71] HAPPY PLACE finished first of the seven runners, winning a stake of \$6,600. The official results for the race were:

1st HAPPY PLACE

2nd JEMMA

3rd IDEAL AGENT

4th MISS TAKEN

5th EDAMFAST

[72] HAPPY PLACE underwent a random post-race urine swab. Mr Vince does not contest the swabbing process.

[73] 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.

[74] On the 26th November 2020 the Official Racing Analyst reported in writing that the sample from HAPPY PLACE had tested positive to 'Phenylbutazone' and 'Oxyphenbutazone'.

[75] Phenylbutazone, commonly known as 'bute', is a nonsteroidal anti-inflammatory drug commonly used to treat short term pain and fever in horses. Oxyphenbutazone is a metabolite of Phenylbutazone.

[76] Phenylbutazone 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.

[77] On Friday 27 November 2020 Mr Vince was spoken to at his stables in Kumeu. He was shocked to learn of the positive result and was unable to assist in determining how the Phenylbutazone had got into the horses' system. He further stated that one of his horses was prescribed by the local Vet (Vets Associates) the product 'Phenylbutazone'. The product is administered orally with a syringe. In the absence of any evidence the contrary, it is highly likely cross contamination has occurred.

[78] HAPPY PLACE is not being treated for any ailments or given Phenylbutazone.

[79] A search of the stables located a half empty container labelled- "Phenylbutazone 500 grams - withholding times 8 days".

[80] Dr Andrew Grierson the Chief Veterinarian for HRNZ, forwarded a formal report, confirming that Phenylbutazone and Oxyphenbutazone are classed as prohibited substances under the Rules of HRNZ.

[81] A written statement was obtained from Mr Vince consenting to the horse HAPPY PLACE to be disqualified from the said race on the 13 November 2020.

Ruling – Decision

[82] The request is upheld.

[83] Pursuant to r1004D (6) HAPPY PLACE is disqualified from 1st place in race 1 at Alexandra Park on 13 November 2020.

[84] The disqualification is effective as of 13 December 2020.

The new placings are:

1st JEMMA

2nd IDEAL AGENT

3rd MISS TAKEN

4th EDAMFAST

Placing and stakemoney are to be adjusted in accordance with out ruling.

G R Jones (Chair)

Penalty: