

**Request for a Ruling - RIU & A Sharrock - Decision dated 29 June 2021 - Chair, Hon J W Gendall QC**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**JUDICIAL CONTROL AUTHORITY**

**Information Nos:** A8723 and A8724

**IN THE MATTER** of an application under Rule 918 of the NZ Thoroughbred Rules of Racing seeking a Ruling of the Judicial Committee

**Applicant:** THE RACING INTEGRITY UNIT (Mr A Cruickshank), Racing Investigator

**Judicial Committee:** Hon JW Gendall QC (Chair)

Mr C Wilkinson-Smith (Member)

**DECISION OF JUDICIAL COMMITTEE DATED 29 JUNE 2021**

1. Mr A Cruickshank, a Racing Investigator for the RIU, has filed 2 Informations seeking Rulings and disqualification of 2 horses which finished first in their respective races at the Feilding Jockey Club meeting at Awapuni Racecourse on 25 April 2021.

2. Those horses are ALHAMBRA LAD, which won Race 5, the "Carrfields Livestock 1400" and RELIABLE MISS, which won Race 6, the "Power Farming Manawatu 2100". The Trainer of both horses was Mr A Sharrock.

3. Both horses were subject to post race swabs which upon analysis, reported to the RIU on 13 May 2021, were positive to the Prohibited Substance, Methamphetamine. Mr Sharrock and an employee had transported the horses to Awapuni, where they were boxed between noon and 3 pm before they raced. Mr Sharrock has not been charged with any breach of the Rules so is not a "Defendant", and the application describing him as the "Respondent" is a misnomer (Indeed Rule 918 seeking a Ruling only applies when there is no Defendant).

4. Rule 804(1) upon which the RIU relies, seeking the 2 disqualifications, provides:

*"A horse which has been brought to a Racecourse or similar racing facility and which is found by a Tribunal conducting an inquiry to have had administered to it or have had present in its metabolism a Prohibited Substance shall be, in addition to any other penalty which may be imposed, disqualified for any race or trial...in which it has started on that day*

5. Rule 804(2) has no application as the RIU is not charging any person with an offence under that clause.

6 The sole issue before the Committee is whether both or either horses are required to be disqualified from the races in which they competed. The Owners of both horses were advised by the Committee of the applications and invited to present submissions. This has been done by them or others on their behalf.

7. The owner of ALHAMBRA LAD responded in a letter to the RIU, which has been forwarded to the JCA. He expressed criticism directed towards the RIU and others associated with the Awapuni Racecourse, in not providing what he said were adequate measures to protect Owners who face post-race consequences if positive tests arise from third party actions totally outside the control of a Trainer or Staff in charge of a horse. He, and others, have contended that the positive swabs came about, or were caused, by urine contamination of sawdust in the horse boxes through third party drug user(s). That presence of Methamphetamine in the sawdust was found 3 weeks later after testing on 14 May 2021. The submission on behalf of the Owners of RELIABLE MISS was that the positive arose from the urination by a drug addict before the horses used the boxes. There is no evidence before us as to when any contamination of the sawdust may have occurred and we are not required or able to make any finding as to that, but we record that the RIU has stated in its "Summary of Facts" its conclusion that "The contamination of the boxes by person/s unknown has been identified as the cause of the Methamphetamine positives..." so it must have had some evidence on which to base that view.

8. Submissions from both sets of Owners highlight their belief that it is unfair to disqualify a horse in such a situation where no fault exists on the part of Connections or Trainer; the testing system is too sensitive and what are said to be small traces of a prohibited

substance ought not result in disqualification. The submission from RELIABLE MISS' Owners challenges whether the level of this positive level "could possibly be performance enhancing" and contends that the Judicial Committee has a discretion under Rule 804(1) not to disqualify and it should apply "fairness and logic" and decline to order disqualification.

9. It has generally been accepted, and it is the stance taken by the RIU, that Rule 804(1) requires as mandatory the disqualification of a horse which competes in a race with a prohibited substance in its metabolism. The Rule says SHALL be disqualified. We have been referred to the cases of *RIU v Brick Ramsay Ritchie and Manning* (12 July 2019), [Positives to Methamphetamine in 3 horses at Pukekura Raceway where the evidence indicated that the horses came into contact with the substance "via unknown ingestion, inhalation or contamination in or around the yards "of the raceway and "... the Trainers could not have done anything to prevent the positive swabs from occurring"]; and *RIU v Barron* (11 November 2016, [a Harness Racing decision where the mandatory disqualification followed upon a positive swab analysis where there had been unintended contamination of an anaesthetic drug (used in the gelding of a colt) which had rested for a time in a paddock later used by a filly raced by Mr Barron. The only explanation was some cross contamination occurred, but the horse was disqualified, and no charges were preferred against the Trainer, who was without fault.

10. The purpose of Rule 804 (1) is to ensure that the result of a race is to be governed by all horses competing on "equal terms or a level playing field" – as is the case in athletic competitions governed by the WADA (World Anti Doping Rules) where disqualification from an event or competition is mandatory and follows where a competitor (often unknowingly) has a prohibited substance in his or her body. The integrity of the competition, and in horse racing the race, has required such an outcome. The prohibited substance is simply that which is described in the Rules. Arguments that a substance is not "performance enhancing" are sometimes made, but have no bearing, because some prohibited substances may inhibit or detract from performance, (ie. not "enhance") and others are prohibited because they mask or hide the presence of other illegal substances. The substances are not necessarily prohibited because they may "enhance performance" and that criteria is not encompassed in the Rule.

11. The claim by one submission we received was that a low level in which the prohibited substance is present in the animal was relevant in deciding disqualification, because the testing is so sensitive. Unfortunately, this ignores the Rule which defines a "Prohibited Substance) and the fact that with some substances (for example Cobalt) they only become "Prohibited" when found on analysis to be above a certain defined level. But with Methamphetamine there is no prescribed level and the prohibition is absolute if, as here, no level is prescribed, the presence of the prohibitive substance will infringe the Rule.

12. It needs it to be understood that the "brought to a racecourse "by someone when the horse has a prohibited substance in its body is the breach provision by that person. Naturally if the substance is administered on course by that person, it is a different liability (administration provision). But the disqualification provision, on a proper construction of the Rule and its purpose, applies if the horse races with a prohibited substance in its metabolism, whenever or by whatever means that occurred. Of course, if it does not race it cannot be disqualified. But the proper application of the Rule does not require the substance to be ingested before the horse is brought onto the racecourse – such a proposition for the disqualification purpose would be nonsensical. The purpose and intent of the Rule (as it relates to disqualification) - applying the required "purposive" approach in interpretation of Regulations is to require disqualification "for any race in which [the horse] has started that day" where on later analysis it is found to have competed with the prohibited substance in its system.

13. We are unable to accept the argument put forward in one submission, that the Rule affords a discretion to the Committee to not disqualify because of the word "may" appears in the Rule. But that relates ONLY to such other penalties or sanctions which may in the Committee's discretion follow after disqualification. It has no relationship to the word "SHALL" which applies to the first requirement to order disqualification.

14. We recognise the plight, even anguish, that is cast upon Owners and Trainers in these situations. They lose the stake, and a percentage of that to the Trainer, as well as a grading level of the horse, and we are sympathetic to them for the consequences.

But the Rule is clear, having been often applied, to ensure the integrity of the racing competitions and it requires that the RIU and JCA applies the Rules which govern all who participate, and which require that all compete on a "level playing field". It is mandatory.

15. Accordingly

(a) ALHAMBRA LAD is disqualified from the "Carrfields Livestock 1400, Race 5 at the Feilding Jockey Club Meeting on 25 April 2021.

(b) RELIABLE MISS is disqualified from Race 6, the Power Farming Manawatu 2100" at the Feilding Jockey Club Meeting on 25 April 2021.

(c) The payments of stakes to the other horses in such races, in accordance with the revised placings, is authorised.

16. There is no order as to costs.

By the Committee dated this 29th day of June 2021

Hon J W Gendall QC (Chair)

**Penalty:**