

**Non Raceday Inquiry RIU v M Moka - Reserved Decision dated 4 February 2021 - Chair, Prof G Hall**

**Rules:**

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

**Name(s):**

**Decisions:**

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

**AND IN THE MATTER of the New Zealand Rules of Thoroughbred Racing  
BETWEEN RACING INTEGRITY UNIT (RIU)**

**Informant**

**AND MS MOANA MOKA**

Unlicensed

**Respondent**

**Information:** A7121

**Judicial Committee:** Prof G Hall, Chairman

Mr A Smith, Member

**Appearing:** Mr A Cruickshank, Racing Investigator, for the Informant

The Respondent in person, with the assistance of Ms B Davies and Mr I Marks, licensed trainer

**Date of hearing:** 12 December 2020

**Date of reserved decision:** 4 February 2021

**RESERVED DECISION OF JUDICIAL COMMITTEE**

[1] An Information was filed by Racing Investigator, Mr Cruickshank against Ms Moka, alleging "on the 19th day of May 2015, at the Pukekohe Racecourse Auckland, being a Licensed Trackwork Rider having been required by a Stipendiary Steward to supply a sample of urine, she wilfully failed to comply with that request thereby committing a breach of r 656(3) of the New Zealand Thoroughbred Racing Rules and is therefore liable to the penalty or penalties which may be imposed pursuant to r 803 of the said Rules."

[2] Mr Cruickshank was permitted to correct the reference in the Information to r 656(2) and not r 656(3). Ms Moka acknowledged she understood the nature of the breach that was alleged and did not object to the amendment.

[3] Rule 656(2) reads:

*A Stipendiary Steward or Investigator may require a Rider, or any other 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, to supply a sample at a time and such place nominated by the Stipendiary Steward or Investigator. If so, such Rider, or any other Licence Holder must comply with such a requirement. Any Rider, or any other 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, acting in contravention of this Rule shall be reported to NZTR by the Stipendiary Steward or Investigator dealing with the breach and NZTR shall consider whether, in addition to any penalty which may be imposed by the Judicial Committee, such person's Licence should be reviewed (including having conditions imposed on it), cancelled, withdrawn or suspended under r 322(1) of these Rules.*

[4] Rule 803 reads:

*Subject to r 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 Licence Holder committing the breach may: be disqualified for a period not exceeding 5 years; and/or be suspended from holding or obtaining a Licence for a period not exceeding 12 months; ... and/or a fine not exceeding \$50,000.*

[5] The charge was heard as a Non Raceday hearing at the Waikato Racing Club's meeting at Te Rapa on 12 December 2020. Mr Cruickshank produced the necessary authorisation for the charge to be heard.

[6] Ms Moka admitted the charge and there was an agreed summary of facts before the Committee.

[7] At about 6.30am on 19 May 2015 Ms Moka was riding trackwork at the Pukekohe Racecourse in Auckland.

[8] At this time Ms Moka was served by a Stipendiary Steward with a notice pursuant to r 656(2) (Drug and Alcohol Testing) of the NZ Rules of Thoroughbred Racing.

[9] The notice required Ms Moka to present herself, and provide a sample, at the NZ Drug Detection Agency (NZDDA) office at Unit 8, 41 Smales Road, East Tamaki Auckland before 4pm on Thursday 21 May 2015.

[10] The notice was explained to Ms Moka and she was fully aware of what the notice required her to do.

[11] Ms Moka wilfully failed to comply with the request and did not, and has not attended the NZDDA office in East Tamaki as required.

[12] On 19 August 2020 Ms Moka contacted Investigators advising that she wanted to ride track work again and wanted to know what she was required to do in order to gain a Licence.

[13] Ms Moka was reminded of this offence and that an Information had been filed with the JCA. She was advised that this matter would need to be resolved before any Licence was granted.

[14] Ms Moka was interviewed on 13 November 2020 and she admitted that she did not attend the NZDDA office in East Tamaki. In explanation, she stated that she did not attend because she was embarrassed that she was not going to pass the test. She stated that she was in a bad relationship at the time and was mainly using cannabis and a little bit of 'meth'. She said she just wanted to run and hide.

[15] Ms Moka is currently unlicensed. She is single, aged 29, and has a young child.

#### **Decision as to breach**

[16] As Ms Moka has admitted the breach it is found to be proved.

#### **Penalty submissions**

[17] Mr Cruickshank produced a written submission.

[18] Ms Moka is currently working as a kennel hand, having previously worked as a freelance track rider. She had been involved in the racing industry all of her adult life until the time of her first breach of the Rules.

[19] Ms Moka has admitted a breach of the Rules in relation to her failure to undertake a drug test as required by the notice served on her on 19 May 2015. That notice allowed Ms Moka until 4pm on 21 May 2015 to comply with the requirement.

[20] The purpose of the drug testing Rules is to enable random testing to be carried out at any trial, race meeting or training facility at any time to ensure that Licence Holders who are engaged in safety sensitive activities are free from any illicit substances.

[21] The safety and welfare of all Licence Holders and horses is paramount. Drug testing of industry participants has been conducted since 1995 and all Licence Holders are aware that there is an absolute obligation under the Rules to present themselves free of the influence of any drugs.

[22] Historical penalties for breaches of industry drug laws show some divergence. Significant factors are the type of Licence held, drug involved, circumstances of the case and the amount of the drug in the system.

[23] On this occasion Ms Moka had been riding track work at Pukekohe racecourse. She was served with the relevant documentation and had its requirements explained to her. However, rather than undertake the test as required, Ms Moka choose to ignore the notice. She then disappeared.

[24] The informant identified relevant precedents as being: *RIU v Harrison* (14.11.2019) Trackwork Rider – failed to supply a sample — suspended for 12 months — penalty reduced to 8 months if completion of two clear drug tests at his expense and as randomly arranged by the RIU; *RIU v Campbell* (19.01.15) Trackwork Rider — failed to supply a sample — suspended 9 months; *RIU v Robb* (23.03.14) Open Driver HRNZ — failed to supply a sample — disqualified for 6 months; *RIU v Ramage* (16.07.12) Open Driver HRNZ

— failed to supply a sample — suspended for 9 months; *RIU v Moka* (17.05.12) Unlicensed Trackwork Rider — failed to supply a sample — suspended 7 months; *NZTR v Thornton* (25.05.10) Trackwork Rider — stated he was not going to supply — disqualified 6 months; and *RIU v Kennett* (9.09.11) Open Driver HRNZ — failed to supply a sample — suspended for 9 months and fined \$400.

[25] Mr Cruickshank drew the Committee's attention to the comment in *Kennett* that "the requirements of the drug-testing regime are not negotiable as far as horsemen are concerned. It is obviously a serious matter for a horseman to refuse to comply with the drug-testing requirements and the consequences of a refusal must reflect that."

[26] The Informant identified the mitigating factors as: the admission of the breach; that Ms Moka had effectively penalised herself by spending a considerable amount of time (five years) away from the racing industry; and, despite her actions, Ms Moka had been co-operative at all times when spoken to by Investigators.

[27] Aggravating factors were that Ms Moka had been aware of this charge for some time and had only decided to face up to it because she wanted to be involved again in the industry; this was the second time she had failed to provide a sample within a three year period, having previously been suspended for seven months and ordered to pay costs of \$200; and she had been in the racing industry virtually all her adult life and was well aware of the Rules regarding the drug testing of track work riders.

[28] Mr Cruickshank informed the Committee that he understood Ms Moka was going to send to him the results of the drug test that she had agreed to take before our hearing of the matter. He had not received this.

[29] The RIU sought a suspension in the range of 12 to 15 months.

### **Respondent's penalty submissions**

[30] Ms Moka read from a prepared statement. She said she had been in an abusive relationship at the time of her failure to present herself for the drug test. She was deeply passionate about working with thoroughbreds and was proud of the steps she had taken to be the person before us today.

[31] Ms Moka recounted her early years. She described the two years she had worked for Mr Reid as a stablehand when in her late teens. She had had a big role in the team and was entrusted with significant responsibilities. This had ended when she entered an abusive relationship and used drugs and alcohol. As she said to us, she had "chucked it away".

[32] Ms Moka said her partner at the time controlled her. She was scared and this was why she had not turned up for the drug test. She emphasised that the person before us today was very different to that person. She now had a supportive partner, was making great choices, and had been drug free for five years. She reiterated her love for racing, which was second only to that for her daughter.

[33] Ms Moka acknowledged she would have to be punished, as "actions have consequences", but she asked that it be a suspension rather than a disqualification. She asked that the suspension be six months or less. She had "great horseman skills and [her] life now was not as it once was." For example, since 2015 she had obtained a scuba diving certificate. She had been working in a marine reserve but it was only summer work.

[34] Ms Moka said she had taken a drug test and was awaiting the results.

[35] Ms Davies spoke in support of Ms Moka while Mr Marks produced a written statement.

[36] Ms Davies said she believed Ms Moka was both alcohol and drug free, and reiterated that Ms Moka would take any tests that the RIU might require.

[37] Ms Davies spoke of the difficulty that the stable had in working horses at Te Aroha. The district could not attract trackwork riders and the ones that were there were aged in their mid-fifties or older and were reluctant to ride young horses. They had been advertising for riders for months and no one suitable other than Ms Moka had replied. She emphasised that she and Mr Marks would assist Ms Moka to find accommodation and would help with any family arrangements. Ms Moka, together with her partner, was keen to shift. She was currently not working but was looking after dogs and caring for her six-year-old daughter.

[38] Ms Davies said Ms Moka had had a life of punishment and she asked that the penalty the Committee imposed be one that would help her.

[39] Mr Marks' written statement in support of Ms Moka echoed many of Ms Davies' comments. He stated that over the past five years Ms Moka had got her life back on track.

[40] Mr Marks stated he has 22 horses in his stable and that they rarely get worked because of a shortage of trackwork riders in Te Aroha. He had made many attempts to attract trackwork riders and Ms Moka was the only person to come forward.

[41] Mr Marks said that both he and his partner, Ms Davies, were impressed by Ms Moka's attitude and passion for horses. They had experience in dealing with young adults who had troubled pasts and were willing to mentor Ms Moka. He believed this was a critical moment in Ms Moka's future life path. She had had a life of punishments and this was an opportunity for her to be encouraged rather than our making an example of her.

[42] Mr Marks said he and Ms Davies would continue to support Ms Moka whatever the decision of this Committee, but asked that we take all the factors into account and “enable us all to continue in our chosen field”.

[43] The possibility of any suspension being deferred was raised by the Respondent. We indicated we were not aware of any precedents for deferring the start of a suspension and that we were concerned as to the absence of accountability and deterrence were this to be the approach taken.

[44] We also considered the consequences of a suspension. Under r 1106(1) a person who is suspended is not able to ride any horse in any Race. Rule 324 provides only a Licence Holder may ride a horse at any Racecourse, Training Facility or Trainer's Premises. Under r 327 a trainer cannot employ or otherwise permit any unlicensed person to work or to assist in any capacity in connection with the care, control or training of any horse.

[45] We then discussed with the parties the possibility of part of the period of suspension being suspended and various time frames were considered. Ms Moka reaffirmed her willingness to take drug tests when required by the RIU. She also offered to pay a fine if this was the penalty the Committee imposed. She anticipated she could access her Kiwi Saver for this purpose.

### **Decision as to penalty**

[46] We accept the need for the penalty we impose to incorporate the need for accountability, specific and general deterrence, and Ms Moka's rehabilitation.

[47] While we have every sympathy for the difficulties Ms Davies and Mr Marks have in obtaining trackwork riders, this must be considered in the light of these principles. The penalty that we impose has given consideration to these concerns.

[48] We believe a lengthy suspension is appropriate for a second breach of this Rule. Clearly the penalty imposed on the first occasion was not such as to deter Ms Moka from drug use, hence her failure to report for the test. She has admitted to Mr Cruickshank to using cannabis and “a little bit of meth” at the time of the latter breach.

[49] Ms Moka was very contrite in her appearance before us on the day of the hearing and expressed a desire to turn her life around in her own interests and for the benefit of her young daughter. She said she now had a supportive partner, which was not the case at the time of both the previous breach and her failing to report on this occasion.

[50] We were impressed by Ms Moka's submissions to us and her recognition that she would have to be punished for the breach. She appeared sincere when she stated she was no longer the woman in her past, that she was drug-free, and had been for some time. However, despite these submissions she has not produced a clear sample, which was the undertaking she gave first to Mr Cruickshank and subsequently to this Committee.

[51] Ms Davies and Mr Marks were willing to mentor Ms Moka and we were told that mucking out boxes and groundwork might be available on their property whilst she was serving her suspension. Their support appeared to us to be invaluable. Again, we are informed that Ms Moka has not been in contact with Ms Davies and Mr Marks concerning her failure to undertake a test and to provide a clear sample. Understandably, they are now diffident to offer her their assistance.

[52] The Committee does not believe that a financial penalty is appropriate having regard to both the serious nature of the breach and Ms Moka's financial circumstances.

[53] The integrity of the thoroughbred industry, the health and safety concerns with respect to industry participants that are necessarily associated with a breach of this nature, and the respondent's eventual rehabilitation we believe are best met by a lengthy suspension. We were considering suspending the operation of this after a period of time during which Ms Moka was to demonstrate that she had remained drug free by providing a clear sample when randomly tested at the discretion of the RIU.

[54] However, despite our delaying the delivery of this decision by some seven weeks to give Ms Moka every opportunity to produce a clear sample, she has not demonstrated to us that she is drug free. Thus, imposing a suspension of Ms Moka's Licence and ordering that this period be reduced upon continued evidence of reform is no longer an appropriate outcome for this Committee to pursue.

[55] Ms Moka is suspended from holding or obtaining a class B Miscellaneous Licence (Trackwork Rider) for a period of 14 months commencing on 4 February 2021 up to and including 4 April 2022.

### **Costs**

[56] The RIU did not seek costs. The hearing was on raceday and there is no order in favour of the JCA.

Dated at Dunedin this 4th day of February 2021.

Geoff Hall, Chairman

### **Penalty:**