

Appeal decision

Date: 6 October 2015

Code of racing: Thoroughbred.

Appeal panel: Mr P. Elliott (chair).

Appearances: Mr K. Ring, National Occupational Health & Safety Officer, Australian Jockeys Association – appeared on behalf of jockey J. Babarovich

Mr L. Collins – Chief Steward Rockhampton - appeared on behalf of the stewards.

Decision being appealed: Suspension of licence to ride in races for a period of 3 months.

Appeal result: Upheld.

Extract of proceedings – in the matter of the finding of the finding of a metabolite of synthetic cannabinoid 5F-PB-22 in a swab sample taken at Alpha on 27 June 2015: Jockey J. Babarovich

THE CHAIRMAN: Gentleman, the situation is I haven't changed my opinion. I believe the stewards have done their best with the limited abilities available to them, and I cannot criticise the stewards in any way. I know that the jobs they have got to do on a racecourse - and in this case it was the Alpha Racecourse - are many and tedious, and the manpower available to them is certainly not what one would normally expect.

I think however though that in this situation any sort of testing that is involved comes with a very high onus, particularly where there is a protocol that is to be followed. I would understand based on the material that has been put before me - and that includes the letter that I got today that of 28 September 2015 from Stewart Willers, the Workplace and Technical Operations Manager - it seems unlikely that the sample has been contaminated with the parent drug. That being the case, it still doesn't satisfy the doubts that I have got and the problems I can see for a jockey that is put in this situation.

The jockey, I believe, doesn't understand the procedures. He is simply following what he is told to do. As was pointed out by his counsel, there probably wouldn't have been a problem if it hadn't come back positive, but when it comes back positive, he looks around and says why did this happen, and the only thing he can put it down to is: well, there was a procedure there where the sample bottles and the cup were on a table and it is possible that somebody else interfered with them, and from an outsider's point of view - someone looking at it from

the outside would say, "Yes, there has to be problems here. There has got to be doubts and the benefit of those doubts has to be given to the jockey."

I fully understand the onus that is involved in this particular case, but I also understand in this case it is almost a quasi criminal matter because a person is not only charged with an offence, they are convicted with an offence and then a penalty is imposed. So, to me, the onus is on the higher end of the scale, and the onus, in my opinion, has not been satisfied in this instance. I believe there are doubts between 12.25 and 2.45 as to the integrity, and for that reason I have decided to allow the appeal.

I set aside the conviction and penalty that has been imposed. I order that the appeal fee be refunded.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au