

RACING APPEAL PANEL OF NEW SOUTH WALES

IN THE MATTER OF THE APPEAL OF JAMES DOBIE

Appeal Panel: **Mr R Beasley SC – Principal Member**
Mr J Fletcher
Mr K Langby

Appearances: **Racing NSW: Mr M Van Gestel, Chairman of Stewards**
Appellant: Mr J Dobie

Date of Hearing and **11 May 2017**

Orders:

Date of Reasons **21 June 2017**

REASONS FOR DECISION

Introduction

1. The appellant, Mr James Dobie, is a licensed trackwork rider. He is 29 years of age, and has had a license for approximately 13 years.
2. During the course of trackwork riding at Muswellbrook racecourse on 30th December 2016, Mr Dobie provided a urine sample upon request from the Stewards. The power of the Stewards to make that request comes from AR8(jj) of the Australian Rules of Racing (“the Rules”). The sample was analysed and was found to contain the substances methamphetamine, amphetamine and methcathinone. These substances are stimulants and banned substances under AR81(B).
3. Mr Dobie requested that a “B” sample of his urine be analysed as he was entitled to do pursuant to part 9.3 of the Racing NSW Guidelines on Human Urine Collection adopted by the Racing New South Wales Board of February 2011. The B sample indicated a presence of methamphetamine at about 4676 micrograms per litre and amphetamine at about 1400 micrograms. No methcathinone was detected in B sample.
4. In evidence to the Stewards at the Stewards’ Inquiry, Mr John Keledjian, the General Manager of the Australian Racing Forensic Laboratory, described these readings as “very high”.
5. Other expert evidence was also given at the Stewards’ Inquiry which established that the reading of the appellant was consistent with the ingestion

of about 10 mls of methamphetamine orally about 7-10 hours before this urine sample was analysed.

6. At the Stewards' Inquiry Mr Dobie's evidence was that he was out late the night before trackwork on the 30th December, but did not take drugs, although he admitted to being intoxicated. He believed he either drank the wrong drink, or his own drink was spiked.
7. Following the Stewards' Inquiry, the Stewards charged Mr Dobie with a breach of AR 81A(1)(a) which is in the following terms:

AR81A(1) *any rider commits an offence and may be penalised if –*

(a) a sample taken from him is found upon analysis to contain a substance banned by AR81B.

8. Mr Dobie pleaded guilty to the charge. He was penalised by the Stewards as follows:
 - a) His license was suspended for a period of 12 months backdated to commence on Monday 20 February 2017, which was the day Mr Dobie stood down, and to expire on 20 February 2018.
 - b) Mr Dobie was advised under the provisions AR196(4) that should he complete a satisfactory period of professional counselling the final 3 months of his suspension would be stayed allowing him to return to trackwork riding on 20 November 2017.
 - c) Mr Dobie was further advised in accordance with AR81A(4) that he would be required to provide a urine sample free from any substance banned by AR 81B. Should Mr Dobie provide such sample and undergo counselling he would be permitted to recommence stablehand duties (not riding) in 6 months' time on 20 August 2017.
9. Mr Dobie has appealed to the Panel against the severity of the penalty imposed on him. He represented himself. The Stewards were represented by Mr Marc Van Gestel, the Chairman of Stewards.
10. Mr Van Gestel provided the Panel with a document containing previous penalties imposed for breaches of AR81(A) that also involved amphetamines. In general the penalty that has been imposed is a suspension, although occasionally disqualification has been imposed. The period of suspension imposed is frequently 12 months or more. Mr Van Gestel conceded however that each case turns on its own facts.
11. Mr Van Gestel submitted that the aggravating features of this matter were that:
 - (a) the appellant was clearly out very late the night before trackwork and admitted to being intoxicated the night before the drugs were detected in his system;
 - (b) his conduct created a danger to both himself and also to others;

(c) the level of banned substances detected was very high.

12. Mr Dobie asked the Panel to consider the following matters: first, his clean record; secondly, his lack of intent; thirdly, the hardship this suspension has caused him since he voluntarily stepped down on 20 February. He told the Panel that he is in a de facto relationship and pays a mortgage. Last October he was retrenched from working at a Drayton Mine. Trackwork is the sole source of his income along with breaking-in horses, which he undertakes at racetracks. The Panel has considered all these matters.
13. As emphasized by the Racing Appeal Tribunal in the appeal of *D. Smith* (15 August 2015), and by the Panel (see for example the recent Panel decision in the appeal of *Noel Callow* handed down on 9 May 2017), when imposing a penalty, the Panel must keep at the forefront of its determination the requirement for the penalty to protect and promote the interests and integrity of racing. Disciplinary proceedings such as these before an administrative body have as their primary object protection of the industry, not punishment. Clearly these proceedings are not criminal in nature, but the Panel is of view that it should take into account the principle of deterrence, and the matters of aggravation and mitigation (including the early plea) submitted to it, and the appellant's personal circumstances.
14. Taking all these matters into account we agree that the appropriate penalty is a 12-month suspension. No shorter period reflects the seriousness of the offence. Mr Dobie's conduct was potentially dangerous to both himself and others. We agree with what the Stewards' submission that Mr Dobie's license to ride is a privilege of sorts, not a right. Like the Stewards, the early plea has caused us to take the view the nature of the penalty should be suspension, not disqualification.
15. Where we differ slightly from the Stewards is in relation to the period the suspension should be suspended through an exercise of discretion under AR81(D). If Mr Dobie satisfactorily completes a period of professional counselling, we would stay the final 6 months of his sentence not the final 3. Mr Van Gestel advised the Panel that satisfactory completion of professional counselling would involve the appellant obtaining an appropriate certificate for attending 5 counselling sessions at counsellors that the appellant will be put in touch with by Racing NSW. Accordingly, the Panels orders are as follows;
 - 1) Penalty of 12 months' suspension confirmed. That penalty is backdated to 20 February 2017;
 - 2) Should Mr Dobie satisfactorily complete a period of professional counselling as described in the Panel's reasons above, the final 6 months of his suspension is stayed, meaning he can resume track riding on 20 August 2017;
 - 3) Appeal deposit forfeited.