

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED JOCKEY MR H. VAN DER HOVEN

Appeal Panel: **Mr R. Beasley SC, Principal Member; Mr J. Murphy; Mr C. Tuck.**

Appearances: **Racing NSW: Mr T. Moxon, Deputy Chairman of Stewards, Racing NSW**
Appellant: Mr T. Crisafi, CEO of Jockeys Association for the Appellant

Date of Hearing and Orders: 6 June 2023

Date of Reasons: 9 June 2023

REASONS FOR DECISION OF THE PANEL

1. On 29 May 2023, licensed Jockey Heavelon Van Der Hoven (**the Appellant**) pleaded guilty to a breach of AR139(1)(a) of the Australian Rules of Racing. That Rule is in the following terms:

AR139 Offences where riders use banned substances

- (1) A rider breaches these Australian Rules if:
 - (a) a banned substance under AR136(1) is detected in a sample taken from the rider.
2. What led up to this plea was that the Appellant had a urine sample taken from him during track work on the morning of 9 January 2023 at Murwillumbah Racecourse. The urine sample was subsequently found to contain the banned substances: hydrocodone and bromazepam.
3. Those substances are consistent with the ingestion of a pain-relieving tablet, and a sleeping pill or relaxant. It was not in dispute that they are prohibited substances under AR136(1).
4. On the day before the urine sample was taken from him, the Appellant developed a sore and inflamed eye. That night his mother, who was visiting him from South Africa, gave him an over-the-counter pain tablet that is readily available in South

Africa, as well as a prescription sleeping tablet, as he was having difficulty sleeping because of the pain.

5. Prior to supplying the urine sample the next day, the Appellant told the Stewards that he had taken a pain killing tablet (like Nurofen), but he forgot to tell them or otherwise disclose that he had taken the sleeping tablet.
6. AR139(1)(a) is a rule of absolute liability. A defence of honest and reasonable mistake is not available. The Appellant was therefore correct to plead guilty.
7. The Stewards imposed a penalty of a three-week suspension of the Appellant's licence to ride in races. That penalty is consistent with penalties they have imposed for similar offending under the rule.
8. The penalties imposed under the Australian Rules are not for the purpose of punishment. They are entirely protective in nature – that is, they are to protect the image and integrity of the sport. In this instance, clearly Racing needs to send the message that it will not tolerate jockeys engaged in track work or race riding having substances in their system that can adversely affect their judgment and performance, such as sleeping pills or relaxants. That has obvious dangers.
9. The three-week penalty the Stewards imposed is in our view clearly within an appropriate range of penalties that could have been imposed for this offending. However, we have decided to impose a slightly reduced penalty.
10. We have taken into account that the Appellant has no record of similar offending. He is 30 years of age and, for the moment, is earning a modest income as a track rider at Warwick Farm. He is hopeful of increasing his number of race rides, and is now being engaged by trainers to do so. He is also clearly remorseful.
11. The Appellant expressed a concern that these Reasons would be published on the Racing New South Website. They usually are, and there are good reasons why they should be published. The decisions of the Panel should be transparent, which involves the Panel providing written reasons, and for Racing then to make them

generally available to participants, and to the general public who might be interested for various reasons.

12. The Appellant is embarrassed by his actions. While it was careless of him in particular to take the sleeping pill, the Appellant has in essence here merely made a mistake. He did not intend to deliberately breach the rule, and what was involved was likely to be a one-off error. The offending is at the low end of the scale for this Rule, and we think it highly unlikely that the Appellant will breach it again.

13. In all the circumstances, we consider a two-week penalty of the Appellant's licence to ride in races is appropriate. The Orders we make are as follows:
 - (1) Appeal upheld.

 - (2) In lieu of the 3-week suspension, the Appellant's licence to ride in races is suspended for 2 weeks. That penalty commenced on 6 June 2023, and expires on 20 June 2023, on which day the Appellant may resume riding in races.

 - (3) Appeal deposit to be refunded.