

APPEAL PANEL OF RACING NEW SOUTH WALES

APPEAL OF LICENSED STABLE-HAND MATTHEW HOPKINS

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

Appearances: **Racing New South Wales: Mr T Moxon, Senior Stipendiary Steward**

Appellant: Mr D Kane, Solicitor, Advocatus Lawyers & Consultants

Date of Hearing **4 October 2022**

Date of Reasons and Orders: **4 October 2022**

Rules involved: **AR 139 (1)(a) – metabolite of cocaine in urine sample**

Outcome: **Appeal allowed in part (variation to terms)**

REASONS FOR DECISION

Mr R Beasley SC, Presiding Member, for the Panel

Introduction

1. On 17 August 2022, licensed Stable-hand Mr Matthew Hopkins (“the Appellant”) pleaded guilty to a breach of AR 139(1)(a) which provides that it is a breach of that rule if a banned substance is detected in a urine sample taken from a rider. The Appellant’s plea followed the results of a urine sample taken from him after he had completed trackwork riding at Randwick Racecourse on 25 July 2022, which revealed the presence of a metabolite of cocaine.
2. The Stewards determined that the appropriate penalty was a base suspension in full of 9 months, which they reduced to 6 months on account of the Appellant’s plea and cooperation.

3. The Appellant has appealed against the severity of the penalty imposed upon him. He was represented by Mr D Kane, solicitor, who made it clear from the outset of his submissions that what was really sought on the Appellant's behalf was a variation to the terms of the penalty. The Stewards were represented by Mr T Moxon, Senior Stipendiary Steward. An Appeal book was tendered, as where various documents relating to the Appellant's Visa status, as well as some character references on his behalf.

Submissions

4. The submissions made by both Mr Moxon and Mr Kane had few points of difference. Mr Kane accepted the objective seriousness of the breach involved here. His client's conduct was obviously stupid, and something he regrets and is contrite about – a matter he made clear at the Stewards' Inquiry. No submission was made that the amount of cocaine detected in the Appellant's urine sample meant that he posed a risk to safety of horses or other track riders, although it might be the case that some risk of that was taken. That is probably a matter that only expert evidence could resolve, but in any event, wherever the fact of that matter lies, the presence of prohibited substances involves serious breach of the rules.
5. The purpose of imposing penalties for breaches of the rules is well settled. They are entirely protective in nature. They are not punitive. An appropriate penalty for a breach of the rules demonstrates to the public that racing does not condone certain conduct, and will take proper steps to uphold the integrity of the sport. This public demonstration that offending conduct will not be tolerated also has a deterrent effect.
6. There was no dispute between the parties that similar breaches of the Rules to that involved here has more often than not attracted full suspension, and for a period of 6 to 9 months. There was some debate amongst the Panel as to whether a penalty of that magnitude for first offending might be too severe absent further aggravating circumstances. That matter need not be determined in this appeal given the approach we have taken to the Appellant's suspension described below. In any event, as set out above, the thrust of Mr Kane's submission was directed to an unfortunate and grave potential consequence for the Appellant that is a possible side effect of a full suspension, which we have also set out below.

Resolution

7. The Appellant is 29 years of age. He was an apprentice rider in England, and has lived in Australia for about 5 years. For about 3 of those years he has been employed by Snowden Racing, primarily as a track rider, earning about \$54,000 per annum. Based on the reference supplied on his behalf by Snowden Racing, the Appellant is a valued and reliable employee.
8. The Appellant is lawfully in Australia pursuant to a Class 482 Visa (**Visa**). His current “sponsor” under his Visa is Snowden Racing. One of the terms of his Visa is that he must not cease work for more than 60 consecutive days. Further, he is only entitled to work as a “horse trainer”, an occupation which we are told is given a broad interpretation.
9. As pointed out by Mr Kane, an aspect of the penalty imposed by the Stewards is that because it is a “full” suspension, it risks the Appellant losing his job. This risks him breaching the terms of his Visa, and hence there is the potential added consequence that he might be forced to leave Australia. This, we are told, might mean that his defacto partner, who is a British national, would also have to leave Australia.
10. As set out above, penalties are to serve the purpose of protecting the sport, not punishing offenders. A full suspension however runs the risk that this penalty – through no fault nor design of the Stewards – might have an impact on the Appellant that is more akin to punishment.
11. Taking into account all relevant matters, we are of the view that we should alter the penalty so as to avoid, as far as we can, the risk that it forces the Appellant from Australia. Taking full account of the objective seriousness of the breach of the Rules here, it does not warrant that as a consequence. We have been told by the Appellant that during the period he cannot ride track work, Snowden Racing will put him on duties otherwise related to the training and care of racehorses. We will vary the penalty accordingly.
12. One aspect of this variation should be made clear, however. It should not be seen as a precedent for all Visa holders in similar positions to the Appellant. The variation we

make to his penalty is specific to the Appellant's total subjective circumstances, and is not solely related to his Visa status.

13. The orders we make are as follows:

Orders

- (1) Appeal against severity of penalty allowed in part.
- (2) Penalty of a 6-month suspension confirmed, however the penalty is varied from full suspension such that:
 - (i) The appellant is suspended from riding track work or in trials for 6 months; but
 - (ii) the Appellant is permitted to perform other work for Snowden Racing (or, if relevant, another stable) generally related to the training and care of their horses.
- (3) The suspension is to commence at midnight 4 October 2022, and expires on 4 April 2023. Before being permitted to return to track riding or riding in trials, the Appellant must provide a urine sample clear of any prohibited substances.
- (4) Appeal deposit to be refunded.