

RACING NEW SOUTH WALES APPEAL PANEL

IN THE MATTER OF THE APPEAL OF MELINDA KINNY

Appeal Panel: **Mr R Beasley SC – Principal Member**
Mr T Marney
Mrs S Skeggs

Appearances: **Racing NSW: Mr P Dingwall, Deputy Chairman of**
Stewards
Appellant: Mr W Pasterfield, Solicitor

Date of Hearing: **2 November 2018**

Date of Reasons **2 November 2018**

REASONS FOR DECISION

Introduction

1. Licenced Jockey Melinda Kinny (“the appellant”), rode at Goulburn Races on 27 May 2018. A urine sample taken from her that day was later found - on 3 July 2018 - to contain the banned substance Methylamphetamine. The appellant stood herself down from riding on that day.
2. At a Stewards’ Inquiry held on 24 July 2018, the appellant pleaded guilty to a charge under AR 81A. That rule provides as follows:

AR 81A. (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 AR 81B.

There is no dispute that Methylamphetamine is a banned substance under AR81(B).

3. The South Eastern Racing Association Stewards suspended the appellant's licence in full for a period of nine months. She was told the penalty could be reduced by three months if she satisfactorily completed a drug counselling course – AR 81D. The appellant denies having a drug problem, and says she does not take drugs or alcohol. She told Stewards that the likely reason for the methylamphetamine being in her system was because she took "Codral" cold and flu tablets. On the evidence given to the Stewards by the General Manager of Australian Racing Forensic Laboratory, Mr John Keledjian, that would not seem possible.
4. Following notification of the positive sample, on 6 July the appellant volunteered to undertake another urine test, which she did at Goulburn. On the same day, she provided another urine sample to a private laboratory. That sample revealed no Methylamphetamine or other illicit substances in her system.
5. The appellant has appealed to this Panel on the ground that she alleges the penalty imposed upon her was too severe. She was represented on this appeal by Mr Wayne Pasterfield, Solicitor. Stewards were represented by Mr Phillip Dingwall, Deputy Chairman of Stewards. Mr Dingwall made the following submissions in relation to penalty:
 1. The offending is objectively serious
 2. The proper starting point for first offending of this kind is either a 12 month suspension or disqualification.
 3. A 25% discount for early plea is appropriate
 4. The nine-month full suspension by which the appellant was penalised is also appropriate given the serious nature of the offending.

While it is not clear the exact reasons why the appellant tested positive for Methylamphetamine, Mr Dingwall submitted, correctly, that the scientific evidence pointed against Codral as the culprit.

6. Mr Pasterfield called the appellant to give evidence, and led her through some background matters of relevance. The appellant has no relevant prior offences, is

a single mother supporting a young child, and because her licence was suspended in full the penalty imposed has placed a real financial burden on her. There is no evidence that she has a drug problem outside of the positive sample. Mr Pasterfield tendered evidence showing the appellant has gone through five drug education sessions at Pathaway Eurobodalla: Exhibit 3. He also tendered character references (Exhibit 4) that were additional to references in the appeal book (Exhibit A). Of significance, one reference is from the General Manager of the appellant's local race course at Moruya.

7. Mr Pasterfield submitted that his client had been penalised enough, and should have her suspension reduced to end today. Alternatively, he submitted her suspension should be varied to enable her to ride trackwork and trials now.
8. The Panel agrees with Mr Dingwall that the breach of the rule here is objectively serious. Riders can expect lengthy suspensions or disqualifications if they ride in races with illicit substances in their system. By doing so they expose not only themselves but other riders and horses to additional and unnecessary risks.
9. We are also in general agreement that a nine to twelve-month suspension or disqualification should be the usual starting point for a breach of this rule by first offenders, with a further discount for plea if relevant. The primary purpose of a penalty in this range is to ensure that it reflects the main aim of the penalty provisions in the rules which is to uphold the integrity and image of racing. An overly lenient penalty would not do that even if the subjective circumstances of the offender elicit sympathy. All appeals have slight differences and nuances, however.
10. In this matter, the appellant exhibited a high level of cooperation with Stewards, and has gone out of her way to demonstrate that she is not likely to offend again, and that she does not have a drug habit. We accept that further offending is unlikely, and the fact that she has ridden for ten years to date with no similar incidents underscores that confidence. While we do not consider that the South Eastern Racing Association Stewards imposed an excessive penalty, we have reached a different view.

11. We impose a base penalty of a nine-month full suspension. However, from today (2 November 2018) we would vary the suspension such that the suspension only prevents the appellant from riding in races, but allows her to return to ride in trackwork and trials.

12. Taking into account her high level of cooperation and her recent drug education course, we also alter the date of expiration of the appellant's suspension to 2 December 2018 (one month from now), on which date she may resume riding.

The Panel orders as follows;

1. Appeal against penalty allowed.
2. Panel notes the suspension in full of the appellant's licence commenced on 3 July 2018, but from today, 2 November 2018, that suspension is varied to only suspend the appellant from riding in races, but she is otherwise free to ride trackwork and trials.
3. The appellant's suspension is varied to end on 2 December 2018, on which day she may return to riding.
4. Appeal deposit refunded.