

**Non Raceday Inquiry RIU v D M Crozier - Penalty Decision dated 23 August 2019 - Chair, Mr S Ching**

**Rules:**

**Repondent(s)/Other parties:**

**Name(s):**

**Decisions:**

**BEFORE A JUDICIAL COMMITTEE**

**HELD AT CHRISTCHURCH**

**IN THE MATTER** of the New Zealand Rules of Thoroughbred Racing

**IN THE MATTER** of Information No. A11526

**BETWEEN**

**K R WILLIAMS**, Racing Investigator for the Racing Integrity Unit

**Applicant**

**AND**

**D M CROZIER**

Class A Licensed Trainer

**Respondent**

**Judicial Committee:** S C Ching (Chairman)

R G McKenzie (Member)

**Present:** K R Williams, Racing Investigator (for the Racing Integrity Unit)

D M Crozier, the Respondent

A McKerrow- Race Track Chaplin

K Duncan -Licensed Trainer

P Cormack- Owner

**Date of Hearing:** 10 August 2019

**Venue:** Riccarton Park, Christchurch

**Date of Decision:** 23 August 2019

**PENALTY DECISION OF JUDICIAL COMMITTEE**

**The Charges**

[1] That, on the 7th day of August 2019, D M Crozier, being the holder of a Class A Trainer's licence issued under the New Zealand Thoroughbred Racing Rules was alcohol tested at 4.47pm by Racing Investigator, Mrs K Williams, and recorded a breath alcohol level of 681 micrograms of alcohol per litre of breath. This is over the level of 400 micrograms of alcohol per litre of breath allowable under this rule. The respondent is alleged to have thereby committed a breach of Rule 656(5)(b) of the New Zealand Thoroughbred Racing Rules.

**The Plea**

[2] The information was served by Mrs Williams, Racing Investigator, on Mr Crozier at 9.39am, on 8 August 2019. Mr Crozier had signed the Statement by the Respondent on the information form indicating that he admitted the breach.

[3] At the hearing, Mr Crozier confirmed that he admitted the breach and he understood the Rule he was being charged with.

[4] The charge was found proved accordingly.

### **The Rule**

[5] Rule 656 (5) (b) provides as follows:

(5) Subject to Rule 656(4), any Licence holder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises must not have a breath alcohol level greater than: (a) 150 micrograms of alcohol per litre of breath, if that person is younger than 20 years of age; (b) 400 micrograms of alcohol per litre of breath, if that person is 20 years of age or older.

### **NZTR Safety Sensitive Positions Policy reads as follows;**

This policy supports the Rule of Racing – Definitions which reads; Safety Sensitive Activity means an activity associated with Races or racing which is of the type that is specified by NZTR in a published policy to be a safety sensitive activity. A Safety Sensitive position is a job or position where a person holding this position has the responsibility for his/her own safety and/or other people's safety and/or the welfare and safety of all horses affected by their actions. Safety Sensitive Positions include, but are not limited to;

- Trainers preparing and/or handling horses
- Licence holders preparing and/or handling horses
- Any other persons who are in direct control of a horse.

It would be particularly dangerous if such a trainer, license holder or other person is using drugs or alcohol while on job or attending to racehorses. All such people have to be with clear mind and diligent while occupying such positions.

### **Facts**

[6] Mrs Williams gave evidence that on Wednesday 7 August, at the Canterbury Racing Meeting at Riccarton Park, she was requested by the Stewards to alcohol test Mr Crozier after two runners in Race 9 were incorrectly saddled and presented to race. The resultant alcohol test was carried out with Mr Crozier's breath analysis being a reading of 681 micrograms of alcohol per litre of breath.

### **Informant's Penalty Submissions**

[7] Mr Crozier was alcohol tested at the request of the Stewards after incorrectly saddling two runners in Race 9 at the Canterbury JC meeting on Wednesday 7 August 2019.

Mr Crozier recorded a breath alcohol level of 681 micrograms at 4.47pm. This is over the level of 400 micrograms of alcohol per litre of breath in Breach of Rule 656 (5)(b).

Rule 656 (5)(b)

*Subject to Rule 656(4), any Licenceholder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises must not have a breath alcohol level greater than:*

*(b) 400 micrograms of alcohol per litre of breath, if that person is 20 years of age or older.*

A breach of Rule 656 (5)(b) is subject to the penalties imposed under Rule 803 (3).

*Subject to Rule 803(2)(b), where any Licenceholder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises commits or is deemed to have committed a breach of these Rules related to drugs or alcohol and a penalty is not provided elsewhere in these Rules for that breach, that Licenceholder committing the breach may: (a) be disqualified for a period not exceeding 5 years; and/or (b) be suspended from holding or obtaining a Licence for a period not exceeding 12 months; and/or (c) be fined a sum not exceeding \$50,000, provided that if the Licenceholder committing an alcohol related breach is a Trainer and it is that Trainer's first offence under these Rules in relation to drugs or alcohol from the date Rule 803(3) came into effect, then that Trainer may be fined a sum not exceeding \$50,000 but shall not be suspended or disqualified for committing that first breach.*

An Information was lodged on the day with the Judicial Control Authority Committee and the matter was opened and adjourned without Mr Crozier entering a plea due to his recorded alcohol level.

On Thursday 8 August 2019 at 9.39am Mr Crozier pleaded guilty to the charge and was advised that the hearing would be heard at Riccarton on Saturday 10 August at 10.00am.

The purpose of the alcohol and drug testing rules is to ensure that people that are conducting safety sensitive activities are doing so without being unduly under the influence. Thus, ensuring that they are not putting themselves, their horses or other people and horses at risk. The safety and welfare of all parties is paramount especially on race day where there is potentially a greater risk with the congestion of horses and the increased pressure on horses and people.

Sentencing Principles -

The four principals of sentencing can be summarised briefly

- Penalties are designed to punish the offender for his / her wrongdoing. They are not retributive in the sense that the punishment is disproportionate to the offence but the offender must be met with a punishment.
- In a racing context it is extremely important that a penalty has the effect of deterring others from committing like offences.
- A penalty should also reflect the disapproval of the JCA for the type of behaviour in question.
- The need to rehabilitate the offender should be taken into account.

In addition to the sentencing principles, the Judicial Committee should have regard to the relevant precedents in Thoroughbred Racing.

Licensed trainer Mr Allan Smith was charged for Misconduct on 15 November 2002 when being the holder of a permit to train licence and being the trainer or and person in charge of the horse MARI CALLAS he proceeded to saddle that horse for Race 10 while under the influence of alcohol and that in so doing Mr Smith would and could have been a danger to other persons or horses.

Mr Smith had been observed by race day officials to be grossly intoxicated resulting in the Racecourse Investigator intervening and getting another trainer to saddle the horse.

In the decision it states "Mr Smith is not in the position of the ordinary citizen. He is the holder of a permit to train, the granting and holding of which carry clear duties and obligations. One of those is to behave especially on a racecourse and in view of the public in a manner consistent with behaviour expected of a licensed person. One of the major duties is in handling horses, not to put at risk jockeys or horses. Care has to be taken to minimise risk. It is self-evident that any lack of care in the saddling of a horse about to race is likely to risk causing injury to rider or to other riders and horses. That cannot be permitted. Additionally, there is the issue of the image of racing..." It then goes on to state: "All these factors indicate that this is a matter more serious than a simple case of someone drinking in a public place."

Mr Smith was charged under this rule because there were no alcohol rules at that time.

This case is very similar to Mr Crozier's in that there was an error in saddling horses which gave rise to question the amount of alcohol Mr Crozier had consumed. The level of alcohol permitted is clear in the Rules. Trainers cannot have a breath alcohol level of greater than 400 micrograms per litre. Mr Crozier's level was well over this at 681.

Mr Smith had his trainers licence suspended for three months and was fined \$750 with costs of \$600 being imposed.

#### **Mitigating Factors -**

It is acknowledged that Mr Crozier has admitted the breach and has no previous breaches of this rule.

#### **Aggravating Factors -**

Mr Crozier has been a licence holder for many years and should be more than aware of the Rules.

The RIU now use the resources provided by the Salvation Army to access drug and alcohol counselling and support programmes. In previous cases licenced trackwork riders and jockeys who have tested positive for illicit drugs have received a reduction in penalty after utilizing these services and completing a drug and alcohol course.

#### **Penalty:**

The RIU recommend that Mr Crozier's licence be suspended for one month. However, should Mr Crozier elect to complete a drug and alcohol rehabilitation programme we recommend a substantial fine in the vicinity of \$2,000 to \$3000.

Mr Andrew McKerrow, Racetrack Chaplin, was introduced to the hearing and stated that there were programmes available within the organisation to assist Mr Crozier. He said that his colleague Diana Young, would meet with Mr Crozier and assess his situation and make recommendations from there as to which programme would suit Mr Crozier.

#### **COSTS**

The RIU are not seeking costs in this matter.

#### **Submissions of the Respondent**

[8] Mr Crozier produced North Island Based Licensed Trainer Mr K Duncan who made a statement in support of Mr Crozier. Mr Duncan said that Mr Crozier looks after a couple of his horses at his stable at Riccarton. He said that Mr Crozier does a great job with these horses and that he fully trusts them in his care. Mr Duncan said that he feels some responsibility to what happened on the day in question, as he bought Mr Crozier a beer earlier in the day, as did one of the owners of his horses Mr Crozier had been looking after. He added that any camera footage would not show Mr Crozier buying a beer, only himself buying one and his owner buying a couple of beers. Mr Duncan stated that Mr Crozier was not swigging away on beer all day before saddling his horses.

[9] Mr Crozier also produced an owner of his, Mr P Cormack who resides in Melbourne and was in Christchurch for the meeting. Mr Cormack stated that he had purchased Mr Crozier a beer during the day but was not aware of the rule about the alcohol limit. Had he known, he said, he would not have bought him a beer.

[10] Mr Crozier stated that just before the Grand National Hurdles, Mr Cormack purchased him a Corona, which he said he had to drink quickly, as he had the two horses in the next race. He said that the alcohol from that drink would still be in his system when he was tested.

[11] In answer to a question from the Committee, Mr Crozier said that he only had two horses in on the day, both in Race 9, and had been at the course since 2.15pm when the horses had arrived at the track. He added that he did have staff with the horses and spent most of his time down at the saddling area.

[12] Mr Crozier stated that he would be willing to discuss and implement the services available through Mr McKerrow and Ms Young to complete an alcohol and drug rehabilitation course within a 6-month period.

### **Penalty submissions of the Respondent**

[13] Mr Crozier stated that he had 12 horses in work at the moment with one part time staff member and any suspension would mean the end of his career as a trainer. Mr Crozier again stated that he would be willing to discuss and implement the services available through Mr McKerrow and Ms Young to complete an alcohol and drug rehabilitation course within a 6-month period.

### **Reasons for Penalty**

[14] The relevant penalty Rule is 803(3) which provides:

#### **Rule 803 (3)**

(3) Subject to Rule 803(2)(b), where any Licence holder who has carried out, is carrying out, or is likely to carry out, a Safety Sensitive Activity at a Racecourse, Training Facility or Trainer's Premises commits or is deemed to have committed a breach of these Rules related to drugs or alcohol and a penalty is not provided elsewhere in these Rules for that breach, that Licence holder committing the breach may:

(a) be disqualified for a period not exceeding 5 years; and/or

(b) be suspended from holding or obtaining a Licence for a period not exceeding 12 months; and/or

(c) be fined a sum not exceeding \$50,000, provided that if the Licence holder committing an alcohol related breach is a Trainer and it is that Trainer's first offence under these Rules in relation to drugs or alcohol from the date Rule 803(3) came into effect, then that Trainer may be fined a sum not exceeding \$50,000 but shall not be suspended or disqualified for committing that first breach.

[Amended 1 August 2014] (4) Nothing in the preceding sub-Rules of this Rule shall apply to a Serious Racing Offence,

[15] The Committee have taken into account the four sentencing principles, as set out in Mrs Williams' submissions above, when considering the appropriate penalty.

[16] In determining penalty, the Committee took into consideration that the JCA Penalty Guide does not provide a starting point for a breach of this rule. There are no previous breaches of this particular rule since its amended inception in August 2014 to assist this Committee. Mrs Williams produced a similar case from 2002 where a trainer (Mr AJ Smith) was intoxicated and dealt with under the misconduct rule where a 3-month suspension and fine of \$750 was imposed with \$600 in costs being awarded. That breach was 17 years prior and since then NZTR have introduced the Safety Sensitive Positions Policy and Horse Welfare Policy to assist in the protection of both participants and horses in racing, which all licensees should be fully aware of.

[17] Of assistance to this Committee and we believe, of relevance with this breach are the following points from the Smith case:

- "Mr Smith is not in the position of the ordinary citizen. He is the holder of a permit to train, the granting and holding of which carry clear duties and obligations. One of those is to behave especially on a racecourse and in view of the public in a manner consistent with behaviour expected of a licensed person. One of the major duties is in handling horses, not to put at risk jockeys or horses. Care has to be taken to minimise risk. It is self-evident that any lack of care in the saddling of a horse about to race is likely to risk causing injury to rider or to other riders and horses. That cannot be permitted. Additionally, there is the issue of the image of racing..."

"It then goes on to state: "All these factors indicate that this is a matter more serious than a simple case of someone drinking in a public place."

[18] As with Mr Smith, Mr Crozier is not in the position of the ordinary citizen. He is the holder of a Class A Trainers licence, the granting and holding of which carry clear duties, obligations and responsibilities. One of his chief duties is in handling horses and not to put horses and jockeys at risk. Any lack of care in the saddling of a horse about to race is likely to risk causing injury to rider or other riders and horses, as well as the obvious issue that may have arisen if both these horses had raced with the incorrect saddles on.

[19] Mr Crozier, we believe, has partaken in far more alcohol on the day, than we are led to believe for him to return a reading of 681 micrograms per litre of breath. This level is over two times the legal limit for driving a car and it would not be difficult to assume that his functionality at this level would be impaired to an extent that could easily put other participants and horses at risk. This was proved by the incorrect saddling of RED MAGICIAN and STEELE CANYON.

[20] In mitigation Mr Crozier has admitted the breach at the first opportunity and has cooperated since the alcohol test was completed for which credit must be given.

[21] This Committee has determined that rehabilitation of Mr Crozier as part of penalty is required and necessary in this case. We believe that Mr Crozier has an alcohol issue and needs to undergo a programme approved by the relevant authorities and completed as part of his rehabilitation.

[22] The RIU has submitted that a 4-week suspension and a fine of between \$2000 and \$3000 be considered as penalty in this case. With the Smith case a suspension was imposed but as this is Mr Crozier's first offence of this rule, as per penalty Rule 803(3), we are in a position that a monetary penalty is the only form of penalty we can impose. We, as the Committee, believe we need to send a strong message to the racing industry that this level of offending is unacceptable and that a robust deterrent as well as a rehabilitative penalty is warranted. Combining that requirement with our decision to put a condition on Mr Crozier that he enrol and complete a drug and alcohol programme, we have determined, that a fine of \$5000 be imposed. We have however, determined that as part of Mr Crozier's rehabilitation that this fine is reduced by 50% to \$2500 with the remaining \$2500 be suspended for a period of 3 months, from the date of this decision, while he undertakes an alcohol rehabilitation programme as set down by Ms D Young in consultation with Race day Chaplin, Mr A McKerrow and approved by the RIU. If the programme is successfully completed to the satisfaction of Ms Young and Mr McKerrow within the 3-month time frame, the suspended fine will then be rescinded.

### **Penalty**

[23] Accordingly, Mr Crozier is fined the sum of \$5000. With the consent of both parties, 50% of the fine, being \$2500 is suspended for a period of 3 months and this monetary penalty will be rescinded on receipt of proof, to the relevant authorities, of a successfully completed alcohol rehabilitation programme within a 3-month period from the date of this decision. Failure to complete the programme within the said 3-month period set down, will result in the imposition of the suspended \$2500, on a date 3 months forward from the date of this decision.

### **Costs**

[24] Costs are not sought by the RIU and no costs are made in favour of the Judicial Control Authority as the hearing was held on a race day.

**S C Ching      R G McKenzie**

Chair            Member

**Penalty:**