

### STEWARDS INQUIRY DECISION

**Date of Decision:** 28<sup>th</sup> August 2019

**Stewards Panel:** Racing Integrity Stewards Manager, T. Latham and Stipendiary Steward, B. Plunkett

**Name:** Ms Bianca Heenan

**Track/Race:** Launceston, Race 4

**Date:** 28<sup>th</sup> April 2019

**Rule no:** AHR Rule 190(1)

**Charge(s):** That you were the trainer of record of *Twenty Two Karat* which was presented to compete in race number 4 the Jubilee Bakery Pace over 2200m at the Launceston Pacing Club on the 28<sup>th</sup> of April 2019, from which a post-race urine sample taken from *Twenty Two Karat* was found to contain the substances Benzoyllecgonine (BZE) and Ecgonine Methyl Ester (EME), with BZE being the major urinary metabolite of cocaine, a prohibited substance under AHRR 188A(1)(b) which reads; *substances falling within, but not limited to, the following categories* and those categories being a central nervous system stimulant and a narcotic analgesic.

**Prohibited Substance:** Benzoyllecgonine (BZE) and Ecgonine Methyl Ester (EME)

**Inquiry Decision:** Fine of \$1000.00, wholly suspended for a period of 12 months on the condition that, within that 12 month period Ms Heenan does not breach any prohibited substance rules.

#### FACTS:

Ms Bianca Heenan is a licenced Grade B Trainer and fifty percent owner of 'Twenty Two Karat'. On 28<sup>th</sup> April 2019, 'Twenty Two Karat' entered race 4, 'Jubilee Bakery Pace', at Launceston Pacing Club. "Twenty Two Karat won the race.

Race 4, 'Jubilee Bakery Pace', first place prize money was \$3,685.

A post-race urine sample was collected with Racing Analytical Services Ltd (RASL) and Australian Racing Forensic Laboratory certificates of analysis both confirming the presence of Benzoyllecgonine and Ecgonine methyl ester in 'Twenty Two Karat' urine sample.

Benzoyllecgonine (BZE) and Ecgonine Methyl Ester (EME), with BZE being the major urinary metabolite of cocaine, a prohibited substance under AHR 188A(1)(b)

#### INQUIRY:

On 22<sup>nd</sup> August 2019, Office of racing Integrity (ORI) Stewards opened an inquiry into the analyst's results.

Submissions were made by Ms Bianca Heenan and her representative, Mr Anthony O'Connell. After considering all the evidence presented, Stewards issued a charge under Australian Harness Racing Rule 190:

- (1) *A horse shall be presented for a race free of prohibited substances.*
- (2) *If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence.*

It was particularised as follows:

That you were the trainer of record of *Twenty Two Karat* which was presented to compete in race number 4 the Jubilee Bakery Pace over 2200m at the Launceston Pacing Club on the 28<sup>th</sup> of April 2019, from which a post-race urine sample taken from *Twenty Two Karat* was found to contain the substances Benzoyllecgonine (BZE) and Ecgonine Methyl Ester (EME), with BZE being the major urinary metabolite of cocaine, a prohibited substance under AHRR 188A(1)(b) which reads; *substances falling within, but not limited to, the following categories and those categories being a central nervous system stimulant and a narcotic analgesic.*

Ms Bianca Heenan pleaded guilty to the charge at the earliest opportunity.

## **DECISION:**

In making a decision in regards to penalty Stewards considered the following factors:

1. The purpose of the Rules;
2. The nature and gravity of the contravention, including but not limited to, the level of culpability and the prohibited substance detected;
3. Evidence and submissions from Ms Heenan during the inquiry;
4. Ms Heenan character and antecedents;
5. Other penalties imposed for contraventions of AHRR 190 and similar;
6. Public confidence and deterrence

Racing Rules are necessary to ensure a fair and open competition, maintain the health and wellbeing of horses, ensures the integrity of racing by providing a level playing field and maintain public confidence.

The offence against Rule 190 is a strict liability offence. If a horse is presented to race other than free of the prohibited substances, the offence is committed, proof of fault is not required and no defences are available. Rule 190(4), states that 'the offence is committed regardless of the circumstances in which the prohibited substance came to be present in or on the horse'.

Two approved laboratories provided a certificate of analyses confirming the presence of Benzoyllecgonine and Ecgonine methyl ester.

RASL provided the approximate readings:

- Benzoyllecgonine at approximately 5ng/mL
- ecgonine methyl ester at approximately 0.5 - 1ng/mL

Due to the 'trace' reading of BZE, the panel were mindful of a well-recognised report entitled: "*Trace Benzoyllecgonine Identifications in Post-Race Urines: Probable Sources and Regulatory Significance of Such Identification*", a paper in the American Association of Equine Practitioners (AAEP) Proceedings, Volume 52, 2006 at 331, the authors being Camargo, Lehner and Tobin. Some of the keys findings from the report are:

*Benzoyllecgonine (BZE), the major urinary metabolite of cocaine in horses, is often identified and "called" at "trace"-level concentrations in post-race urines. This report sets forth the relationship between such trace level identifications of BZE and the status of cocaine as a significant environmental contaminant.*

*A trace-level identification is identification at a concentration below those associated with pharmacological or performance effects. In this regard, a finding of BZE in a post-race urine creates the presumption that the horse was exposed to cocaine; what is not generally appreciated is how little cocaine is needed to produce such a BZE identification and how widely these small amounts of cocaine are distributed.*

*Spread of cocaine by casual contact is consistent with the fact that it is readily absorbed through human skin. Dermal and mucosal exposures of horses may result in the presence of cocaine metabolites in urine. This is important, because, if any handler of a horse is exposed to cocaine, he/she may inadvertently expose the horse to the small amounts of cocaine that readily yield detectable BZE levels in the horse's urine.*

In regard to pharmacological and/or performance effects of cocaine, the report provided some key points:

*There are two ways in which cocaine can influence racing performance. The first is by means of its well-known central nervous system stimulant effects, and the second mechanism is through its local anaesthetic properties. We have studied the local anaesthetic properties of cocaine in some detail. Cocaine is the least potent local anaesthetic that we investigated, requiring a dose of >5 mg per site for a significant local anaesthetic effect such a dose of cocaine can give rise to urinary concentrations of BZE of ~500 ng/ml, a concentration far exceeding many of the reported concentrations of BZE on which regulatory action has been taken in some jurisdictions.*

*The effects of IV cocaine administration in horses running on a treadmill, and they have come up with more conservative estimates of the dose of cocaine required to produce a performance effect. In their hands, a dose of 50 mg/horse of cocaine was considered a no-effect dose in terms of possible performance-enhancing effects. A dose of 50 mg/horse, a dose that did not produce an effect, would yield a urinary concentration of cocaine metabolites in micrograms or thousands of nanograms. Reviewing these results, "cocaine doses >100 mg administered intravenously 5 min before exercise are necessary to produce an effect on exercise" and he noted that after such doses "urine concentrations of BZE would be expected to be several micrograms (several thousand nanograms) per millilitre.*

From the evidence provided regarding the approximate reading of BZE, the level detected wasn't performance-enhancing and it was a level playing field for others in the race. Stewards are also reasonably satisfied that due to the 'trace' level of BZE this a contamination case.

Ms Heenan submitted during her evidence the following:

1. She has no knowledge of how 'Twenty Two Karat' was exposed to cocaine.
2. She presented the names of those who handled the horse on the day and the day prior to the race.
3. Ms Taylor Ford transported 'Twenty Two Karat' to the races and signed the horse in.
4. Mrs Melanie Szczypka was the stable hand for the day
5. She is not aware of any of those mentioned people having a drug habit.
6. She has instructed her horse handlers to wash their hands prior touching any of her horses.
7. She cannot guarantee the hand washing practice is being adhered to when she is not there.
8. Nobody resides on her training property (implying that someone could enter without her knowledge)
9. On the day of the race, there were numerous participants around the 'birdcage' area who were standing near 'Twenty Two Karat'.

After considering Ms Heenan's evidence, I refer to a number of cases, Wallace v Queensland Racing where McGill DCJ discussed cases where there is evidence of specific mitigating circumstances when considering penalty.

*He said: "In my opinion, however, there is a difference between a case where there is evidence to show a specific mitigating circumstance, and simply an absence of evidence of an explanation, either mitigating or aggravating depending on the extent to which it shows an absence or presence of blameworthiness on the part of the trainer. Cases where the trainer was able to show a specific explanation which did not involve any blameworthiness on his part are really examples of the situation where the trainer has for the purpose of penalty been able to show a mitigating circumstance. It may well be appropriate for such cases to be treated more leniently than what might be described as the ordinary case, where there is no explanation for the elevated reading, and therefore no indication as to whether or not there is any personal blameworthiness on the part of the trainer. Obviously the third category of the case would be one where there was some explanation which did show moral blameworthiness on the part of the trainer, which I would expect would justify a more severe penalty.*

Kavanagh and O'Brien rely on the decision of the Racing Appeals Tribunal in *McDonough v Harness Racing Victoria*, where Judge Williams said:

*... from the point of view of penalty the ability of a trainer to demonstrate to a Tribunal, and the onus is on the trainer, that he lacks culpability because he did not administer the substance himself or is not otherwise responsible in any way, that is still of course a significant factor in terms of penalty. But I emphasise the evidentiary onus remains in my view, on the trainer, to avail himself of the benefits of proof of reduced or absent culpability. That conclusion, from a legal point of view, is consistent with the criminal law, in the case of Storey and it is also referred to in a thoroughbred case that I was reading of the New South Wales Authority v Graeme Rogerson ... a case in which His Honour Mr Barry Thorley presided...:*

Ms Heenan was unable to provide an explanation on how 'Twenty Two Karat' was exposed to cocaine and Stewards are left in a position of having inconclusive evidence as to how the prohibited substance came to get into the horse. As mentioned, in the *Tasmania Racing Appeal Board, Appeal No 22 of 2017/18 Appellant Ken Rattray and New South Wales Authority v Graeme Rogerson*, a case in which His Honour Mr Barry Thorley presided said:

*"The common experience is of course that the Stewards have no idea as to how it is in the case of any racehorse that the prohibited substance came to be in it. They immediately, as is required, opened an inquiry. It is very seldom indeed that that inquiry demonstrates the actual culprit. Why is that? For the obvious reason that the sole knowledge of what transpires is within the stable and its staff and its professional advisors. No doubt one can speculate that there are many ways in which a horse may present with a prohibited substance. One can contemplate the act of some intruder by stealth of night entering the stable and administering some drug. One can contemplate the consumption by the animal accidentally of some substance left lying around negligently or the ingestion of some grasses which produce adverse results. One can contemplate that there was an actual, albeit mistaken administration within the stable of some product which was really intended for the horse in the adjoining stall, but mistakenly administered to the horse in question. One can even imagine that the horse might lick a rail or some place which had previously been contaminated. The number of examples one can contemplate is manifold."*

*"And of course there could be various other factual scenarios where the horse could somehow be the subject of the administration or ingestion of a prohibited substance without any culpability either directly or indirectly on the part of the trainer. This category represents cases where the trainer does establish to the Tribunal's satisfaction, the onus being on him, that he is free of blame, that he himself was not instrumental in the administration of the prohibited substance and that he has done all he could be expected to do to prevent same."*

The issue that the panel needed to consider in relation to penalty, was to what extent Ms Heenan could have minimised or eliminated the risk of contamination and whether she had taken all reasonable steps to do so. This too would determine her level of culpability and the appropriateness of the penalty.

During submissions by Mr Anthony O'Connell it was mentioned that if a reprimand penalty was handed down then conditions could be made that Ms Heenan increase security of her property to minimise the risk of this re-occurring. Ms Heenan by her own admissions did not question her horse handlers, change husbandry practises or improve security after being informed by stewards of the positive sample.

*Ms Heenan has no prior convictions relating to the prohibited substance rule. She is a successful harness trainer and currently the leading female trainer for the state.*

Stewards have a broad discretion in relation to penalty however consideration must be given to precedents and refer to parity cases:

1. 2017, Licensed trainer and driver Nathan Turnbull appealed against a decision of the stewards to impose upon him a period of disqualification of two years and six months for a breach of Rule 190. The prohibited substance detected was Benzoylecgonine, and ecgonine methyl ester. The severity appeal was upheld and disqualified for a period of three months. Briefly the facts were that an unlicensed person snorted cocaine with a \$20 note which he handed to a Mr Nathan Turnbull who he accompanied to the harness meeting resulting in that trainer's horse returning a positive swab by coming into contact with the contaminated note containing traces of cocaine.

2. 2016, Chris Waller a licensed trainer in NSW appealed against a decision on of the stewards who imposed a fine of \$30,000 for breach of AR178. The horse's urine sample, when tested, revealed a level of 4 to 5 micrograms per litre of methyl amphetamine in that sample. The breach here involved no intent. It also involved no apparent carelessness. Some message of general deterrence must be factored into the penalty however, as must Mr Waller's prior record of breaches of AR 178. In the Panel's majority view (Beasley and Fletcher), the appropriate penalty is a fine of \$5,000.

Cocaine is an illegal substance and for a message to be given to other trainers, to other industry participants, the betting public and the community that, when a prohibited substance such as this illegal drug is detected, general deterrence as well as specific deterrence must be factored into the penalty. As mentioned, Stewards considered the culpability and blameworthiness was at the lower end of the scale.

The appropriate penalty is a fine of \$1000.00, wholly suspended for a period of 12 months on the condition that, within that 12 month period Ms Heenan does not breach any prohibited substance rules.

The horse, 'Twenty Two Karat' is disqualified from race number 4 the Jubilee Bakery Pace at the Launceston Pacing Club on the 28<sup>th</sup> of April 2019 with the placings amended accordingly and the prize money foregone.

Ms Heenan has the right to an appeal.

-----END-----