

**SOUTH AUSTRALIAN RACING APPEALS TRIBUNAL**

RAT 3/2022

DATE OF HEARING: TUESDAY 15 FEBRUARY 2022

TRIBUNAL: PRESIDENT: MR T ANDERSON, QC

IN ATTENDANCE:

MR SIMON WARD, REPRESENTING RACING SA

MR J PETZER, CHAIR OF STEWARDS, RACING SA LTD

MS FRANCES NELSON, QC, REPRESENTING THE APPELLANT

IN THE MATTER of an Appeal by **MR JASON HOLDER** against a decision of Racing SA Ltd Stewards.

BREACH OF RULE AR139(1)(a)  
Rider's use of a banned substance.

the particulars of the charge being; "That a urine sample taken from him on Thursday 9 December 2021 at the offices of Racing SA, after he rode trackwork that morning at the Morphettville training facility, was found by Racing Analytical Services Ltd, an accredited laboratory, to contain the presence of a banned substance."

**DETERMINATION**

Mr Jason Holder is a senior licensed jockey in South Australia.

He was randomly breath and urine tested following trackwork on 9 December 2021.

The breath test for alcohol was clear.

A saliva sample disclosed an irregularity to a banned substance.

As a result of the urine test he was charged with two offences under the Australian Rules of Racing.

He was charged with a breach of AR139(1)(a) because a sample taken from him revealed the presence of metabolites of a substance banned under AR136(1).

Mr Holder was also charged with a breach of AR139(1)(b) for delivering a urine sample which he had substituted.

A set of agreed facts was presented to the Stewards, and for convenience I set out that statement below.

*INQUIRY – SAMPLE NUMBERS 202891 & 203005 – JASON HOLDER*

**27 January 2022**

**AGREED FACTS**

*Whereas Jason Holder, a licensed Jockey with Racing SA for the current racing season 2021/22 agree to the following facts as they pertain to sample numbers 202891 and 203005;*

- 1. On the morning of 9/12/2021 at the Morphettville training facility, you rode track work at Morphettville and was asked to attend the hut near the swimming pool to provide a breath and saliva sample.*
- 2. At approximately 7:25 am that morning you attended as required and provided a breath sample for alcohol analysis which was clear, and also provided a saliva sample which disclosed an irregularity to a banned substance.*
- 3. At the time of providing the saliva sample you declared that you had “Nurofen” as medication.*
- 4. The saliva sample – was “unconfirmed” and disclosed an irregularity to the banned substance referred to in (2) above.*
- 5. You were then advised by Johan Petzer – the General Manager Integrity & Chairman of Stewards with Racing SA, to return to the hut, however you did not return to the hut and consequently Mr Santoro – the Deputy Chairman of Stewards with Racing SA, had to call you to advise you of the result of the saliva sample, and request your attendance at the offices of Racing SA that morning so that you could provide a urine sample for analysis.*
- 6. Sample number 203005 was provided by you at the offices of Racing SA at approximately 10:15 am. When preparing to provide that sample the parties present with you in the room were Johan Petzer – General Manager Integrity & Chairman of Stewards with Racing SA, and Mr Tony Hehir from WorksafeSA Pty Ltd the contractor used by Racing SA from time to time to assist in the collection of and testing of samples.*
- 7. When present in the room, referred to in (6) above, you expressed a view that with two parties observing you provide a urine sample, you may feel a little uncomfortable. Johan Petzer offered to remain present but to turn away from you, which would allow only Mr Hehir to observe you providing a urine sample.*

8. *While Johan Petzer did not witness the provision of the sample visually, he had audible range. You flushed the toilet immediately after you said that the sample had been provided.*
9. *After providing the sample, Mr Hehir proceeded to split the contents of the collection vessel into two parts in the sample containers provided for this purpose.*
10. *Mr Hehir however also poured part of that sample into another separate container which was purpose specific – i.e., it had the ability to provide a screening result for a range of substances.*
11. *Mr Hehir advised that this screening result was “all good” and Johan Petzer asked him what that meant. Mr Hehir advised that meant the sample was clear of any banned substance.*
12. *Johan Petzer was surprised and asked how that was possible. Mr Hehir then made two comments – one; that he had not witnessed the sample being provided by you directly as he was busy with the sample packaging and two; that the temperature recording in the collection vessel did not record a temperature consistent with a urine sample that has been provided by a person from their body as it was below the normal range.*
13. *Johan Petzer then advised you, in the presence of Mr Hehir, that you would be required to provide another urine sample and that he (Johan Petzer) would personally watch the provision of the sample on this occasion to ensure it was provided by you from your body.*
14. *Johan Petzer also asked you if you had provided that sample (sample number 203005) from your body and you indicated that you did.*
15. *You and Mr Hehir and Johan Petzer returned to Johan Petzer’s office and Johan Petzer called Mr Santoro back to his office. Johan Petzer advised Mr Santoro of what had occurred.*
16. *You, Johan Petzer and Mr Santoro agreed that you would submit to another saliva test, which you did, and which returned an irregularity for the same banned substance.*
17. *You then advised that you would need to consume some fluid (water or a soft drink) to assist in you providing a further urine sample. Mr Santoro provided you with a sealed soft drink of your choice, which you consumed in the presence of Johan Petzer and Mr Hehir.*
18. *A little while later you indicated that you were ready to provide a urine sample and you, Mr Hehir and Johan Petzer returned to the same facility/room where the pervious sample had been provided, for this purpose.*
19. *On this occasion Johan Petzer personally witnessed you provide the urine sample.*
20. *Mr Hehir went through the same process as with the previous sample and advised that a valid temperature had been recorded on this occasion, and that the screening test disclosed an irregularity to the said banned substance.*
21. *This sample was numbered 202891.*
22. *You, Mr Hehir and Johan Petzer returned to Johan Petzer’s office and Johan Petzer called Mr Santoro to his office. Upon Mr Santoro’s arrival Johan Petzer asked Mr Hehir to excuse himself.*
23. *With the three parties present, you, Johan Petzer and Mr Santoro, Johan Petzer had both sealed urine samples (202891 & 203005) on his desk and pointed to them and advised*

*you of the obvious inconsistencies in them, i.e., the colour, the temperature variance on collection and the screening result.*

- 24. Johan Petzer then advised you that the three parties present had known each other for a long time and that he would give you the opportunity to speak to him and Mr Santoro and be forthright about the two samples provided.*
- 25. You advised that the first sample (203005) was not one provided from your body on the day, but was urine of yours collected at an earlier date and kept in your home.*
- 26. You advised that you provided this urine (for sample 203005) by means of a “balloon” as a vessel which was concealed in your trousers at the time of providing that sample.*
- 27. You then asked if this fact – that you provided this sample (203005) in that manner would be a part of any inquiry and Johan Petzer advised you that it would be.*
- 28. You further advised, and admitted that you had used the said banned substance in the days, or on a particular day leading up to 9/12/2021.*
- 29. Sample number 202891 was analysed by Racing Analytical Services Ltd and the presence of the metabolites of the said banned substance was detected in a preliminary analysis of that sample.*
- 30. The reserve portion of Sample number 202891 was analysed by Racing Analytical Services Ltd and the presence of the metabolites of the said banned substance was confirmed in that sample.*
- 31. Sample number 203005 was analysed by Racing Analytical Services Ltd and returned no irregularities.*

Mr Holder pleaded guilty to both charges. He was disqualified for his breach of AR139(1)(b) for a period of two months, reduced from 4 months after taking into account mitigating circumstances.

He was suspended from riding in races on the charge under AR139(1)(a) for five months, reduced from 9 months after taking into account mitigating circumstances.

Both sentences were made concurrent to commence at midnight on Thursday 27 January 2022.

Before the Tribunal, Mr Holder did not contest the disqualification but appealed only against the suspension and on the basis that the five-month period imposed upon him was manifestly excessive.

At the hearing before the Tribunal, Ms E. F. Nelson QC appeared for Mr Holder, and Mr Simon Ward appeared for the Stewards.

Mr Ward emphasised the seriousness of the offences and that when looked at overall, the penalty was reasonable and not so harsh as to be crushing. He submitted that Mr Holder was lucky to get only a two-month disqualification for his premeditated action in presenting a substituted sample of urine.

Mr Ward further submitted that all relevant matters were taken into account by the Stewards. He pointed to Mr Holder's good riding record, that it was a one-off incident, and that he was suffering from depression prior to the incident in question.

He submitted that the Stewards did all that they could do to make the combined sentences appropriate. He emphasised that the financial loss for a senior leading jockey was also a matter that was taken into account by the Stewards.

Mr Ward provided a table of "similar penalties" both in South Australia and interstate.

As I have said before on many occasions, these penalties can only be used as some rough guide because each case is so different on its own facts. Mr Ward submitted that looking at these "similar penalties", the five-month suspension was reasonable in all the circumstances.

Ms Nelson QC submitted that it was not a case of a failure by the Stewards to take into account any relevant matter but that there was not sufficient weight given to some of these matters. Ms Nelson emphasised the fact that Mr Holder was being treated for depression following the death of his father in early October 2021. Medical reports tendered before the Stewards confirmed this.

Ms Nelson went on to say that Mr Holder had a long and successful history as a leading rider and this was spread over a period of 29 years of riding both in Australia and overseas.

She submitted that Mr Holder had an excellent record which is not in dispute.

Ms Nelson pointed out that Mr Holder would naturally miss many race meetings and, in particular, major Group 1 rides, which she submitted only added to the severity of the penalty.

Ms Nelson emphasised that the disqualification had been dealt with as a separate matter and that his behaviour in relation to that offence should not be further penalised by taking it into account in any way in considering what was the appropriate period of suspension for the substance offence.

At the time of the consumption of the banned substance, Mr Holder had been drinking at a social function and took the substance when someone offered it to him. Ms Nelson submitted

that this was not a case where personal deterrence should play any significant part because it was highly unlikely that he would offend again.

I have taken into account the submissions that were presented by both counsel. I have also taken into account, although to a limited extent, the table of "similar penalties" presented to me.

I have come to the conclusion that Ms Nelson was right in her submission that the starting point of nine months which the Stewards used in determining the suspension was too high.

I should say that for any jockey to take any banned substance before riding in a race, trial or trackwork is fraught with danger. It is a very serious matter. Perceptions and judgment are clouded. It is also dangerous to other riders and horses. It is likewise not something which owners or trainers would condone. Finally, it is not something that the public should be faced with. It is not good for the image of racing.

I have had regard to the way in which the Stewards went about determining penalty. In my view, they took into account all relevant matters. They also attempted to find a result which was not crushing.

However, I consider that the starting point of nine months was too high. It was too high because I believe that the Stewards did not sufficiently take into account the mental state of Mr Holder at the time of offending.

At the time of his offending, he was under medication and in a pretty low place. He had had too much to drink and then self-medicated when the banned substance was offered to him. In my view, it was truly a one-off incident.

Coupled with his excellent record and his plea of guilty, I consider that the reduction should have been 50 per cent, consistent with the discount allowed on the offence which brought about the disqualification.

I am of the view that the appropriate starting point was seven months and that that then should be reduced by 50 per cent to three and a half months.

The orders of the Tribunal, therefore, are: -

- (1) Appeal allowed.
- (2) The five-month suspension be reduced to three and a half months.
- (3) The suspension to commence on 27 January 2022 and to finish at midnight on 11 May 2022.

- (4) The refundable portion of the bond lodged with the appeal should be repaid to Mr Holder.