

TASMANIAN RACING APPEAL BOARD

Appeal No 22 of 2024-25

Panel:	Ms Amber Cohen (Chair) Ms Philippa Morgan (Deputy Chair) Ms Wendy Kennedy (Member)	Appellant:	Mr Nathan Ford
Adviser:	N/A	Rules:	AHRR 250(1)(a) Positive Urine Sample
Appearances:	Mr Michael Flanagan on behalf of Stewards		Mr Adrian Hall on behalf of the appellant
Heard at:	Conference Room Prospect Government Offices 171 Westbury Road Prospect TAS	Penalty:	Suspension of drivers licence for 12 months
Date:	6 June 2025	Result:	Dismissed

REASONS FOR DECISION

1. On 6 June 2025, the Board heard this appeal.
2. This appeal involves the analytical findings of the urine sample taken from the appellant, Mr Ford on 23 March 2025. The appellant drove in 8 harness races that day.
3. Stewards held an inquiry on 18 April 2025 (the Inquiry), at which Stewards reviewed the evidence in respect to the urine sample and heard from the appellant, Mr Ford, who was self-represented at the Inquiry.
4. At the Inquiry, Stewards charged Mr Ford under Australian Harness Racing Rules 250(1)(a), which provides:

A driver commits an offence if:-

 - (a) A sample taken from him is found upon analysis to contain a substance banned by Rule 251, or...
5. Rule 251 lists the substances and/or their metabolites, artifacts, and isomers declared as banned substances in drivers when present in a sample. Cocaine is included under rule 251(d) and the threshold level is stated to be 100ug/L.
6. Stewards presented evidence that Mr Ford produced a sample that was positive for cocaine metabolites and that the level found in Mr Ford's sample was 246ug/L, which Stewards noted to be approximately two and a half times above the threshold.

Evidence at Stewards Inquiry

7. Stewards considered the following items at the Inquiry:
 - (a) Racing Industry Human Drug Testing Custody Control Form;
 - (b) Sample Collection Custody Authority Form;
 - (c) Sample Log In;
 - (d) Consignment Note, addressed to Racing Analytical Services, Epsom Road, Flemington;
 - (e) Letter of 8 April 2025 from Racing Analytical Services to Ms Heidi Lester, Chief Racing Integrity Officer, Tasmania (confirming the presence of benzoylecgonine);
 - (f) Urine Drug Screening Certificate;
 - (g) Confirmatory Portion;
 - (h) Letter of 8 April 2025 from Tasracing Integrity Unit to Mr Ford advising the positive result;
 - (i) Declaration by Mr Ford that private analyst is not required for testing of reserve portion;
 - (j) Letter of 14 April 2025 from Tasracing Integrity Unit to Mr Ford advising the reserve portion was positive for benzoylecgonine, a cocaine metabolite; and
 - (k) Offence Report for Nathan Ford.
8. Stewards asked Mr Ford whether he wished to raise any questions in respect to the findings. He declined, other than to seek clarification that the threshold amount was 100ug/L, which was confirmed. Stewards then asked Mr Ford to address them as to the reason for the findings. Mr Ford said:

...it was the night after the Tas, Tasmanian Cup. A few of us went to a place, had a few drinks. I had probably three drinks, went to bed pretty early because I knew we had races the next day. Got up about 6, 6.30 went to the stables. There was a few people from the mainland, a few other people. A person come up to me, handed me something, like pretty secretly, and a substance fell on to my, went in to my hand. Obviously because the bag wasn't done up. And I said oh what's that. And he explained and I said no, no, no, I don't want that cobber. And then, yeah, he walked away and nothing more was said of it and I went to the races that night and obviously come back with a positive swab.
9. When asked to confirm he was alleging it was contamination, Mr Ford said "yes, hundred and ten percent." He went on to say "I am not, I'm silly, but I'm not that silly to consume something like that after a Tassie Cup knowing that I've got races that day." Mr Ford declined to give the name of the person who he alleged put the substance on his hand but he confirmed that the person was known to him. Mr Ford therefore did not seek to have the person verify his version of events at the Inquiry. When asked whether he washed his hands straight away, he responded that he hadn't thought anything of it but that he would have washed a horse throughout the day or "washed, done something, washed waters".
10. When Stewards suggested it was a "bit hard... to accept" that a sample two and a half times the level of the threshold would come from brushing the substance on to his hand, Mr Ford responded "well, that's the only way I can see it happening".
11. As to Mr Ford's comment about the Tasmanian Cup, he clarified that his family had won the cup the night before and he was expecting a lot of testing the next day, inferring that he would not have used the substance given the expectation of testing. He also spoke of having given the sample freely, rather than trying to avoid testing as he did not expect to have anything in his system. He said because he "felt normal" he did not consider there to be any need to stand himself down. He also said that the reading was a "very, very, very small reading".

12. Stewards adjourned the hearing and during the adjournment called Dr David Batty from Racing Analytical Services Limited and asked him about the possibility of contamination from the powder being on Mr Ford's hand approximately ten or eleven hours prior to the test. Stewards then called Dr Batty during the hearing so that he could give evidence in Mr Ford's presence. On behalf of Stewards, Ms Lester asked Dr Batty his opinion on whether the powder on Mr Ford's hand would, ten to eleven hours later, cause a positive result. Dr Batty said:

Yeah. Its, well, its hard to say definitely. I, my gut feeling is, I would have thought it was unlikely given number one the level that we saw. It actually exceeds the threshold and, and also the timeframe as well, because a normal dose of cocaine disappears from the body in about two to three days...

And we're only talking, talking probably inadvertent exposure of a very small amount going through the skin so its not getting into the system straight away. So while I can't rule it out definitely my opinion would be I would think it unlikely, but, you know, that's about all I can say because I don't have any other information to (inaudible)... to support that unfortunately.

13. Stewards charged Mr Ford under Rule 250(1)(a), alleging that he drove in eight races on the day of the sample, being Sunday 23 March at the Launceston Pacing Club.
14. Mr Ford entered a plea of not guilty. Nothing further was put forward that had not already been put by Mr Ford. Stewards found Mr Ford guilty of the charge and invited submissions in respect to penalty. Mr Ford said "just previous cases obviously", clarifying when asked, that he meant previous precedents. He spoke briefly of his previous charge, for which he mentioned he had been disqualified for three and a half years. He spoke of how he had been "stuck in a dark place" at that time and "stuffed up". He mentioned also that he has been

going through enough in the last twelve to eighteen months and this, this obviously came along, its just the icing on the cake for everyone in the outside world. Like, its something I've got to deal with.

15. Mr Ford went on to briefly raise his awareness of other cases in which a person left the races to avoid getting swabbed, received a \$500 fine, another person who did not do the test, got a positive the next day, another person who refused to give Stewards a sample.
16. In announcing the penalty, Stewards said, as to its considerations

...to be honest with you Stewards did consider a disqualification. That obviously would take away your livelihood, take away connections with your family and with the harness racing industry. There are a lot of other embargos that would go, you wouldn't be able to go to race meetings. We felt that was a little bit tough. But we do think that a suspension is warranted and also a significant suspension. We do have some historic issues going on. You told us you were in a dark place, we do accept that, but still none the less that it did happen. The new Tasracing Integrity Unit has been on record that penalties will be tough and strong. And as that, in a nutshell, Stewards believe the correct penalty on this occasion is a suspension of your driver's licence for a period of twelve months...

17. Following some discussion of the penalty, Mr Ford asked "am I allowed to do track work?"
18. The Chairman of Stewards responded "you can do track work, yes. You can continue to participate in the industry but you cannot drive in trials or races."

Appeal Against Penalty

19. The appellant has appealed against the penalty, and in his notice of appeal says the following:

I feel the severity of the penalty is much harsher than previous penalties that have been handed down for the same rule.

20. The Board considered the transcript of the Stewards Inquiry and noted the matters outlined above at paragraphs 7 to 18.
21. Mr Hall represented the appellant at the hearing of the appeal. Mr Hall raised, as a preliminary point, further evidence that he said is relevant to the “harshness” of the penalty. Mr Hall said that Ms Lester, who had been present at, and the Board notes, participated in, the Stewards Inquiry, sent a letter to Mr Ford, three days after the Stewards Inquiry, advising that given the suspension of his driver’s licence, Mr Ford could not perform stablehand duties. The letter from Ms Heidi Lester, in her capacity as Chief Racing Integrity Officer, Tasracing Integrity Unit, to Mr Ford, dated 21 April 2025 (the letter), was produced to the Board and admitted pursuant to section 81(3) of the *Racing Regulation and Integrity Act 2024* (the Act).
22. In the letter, Ms Lester confirmed that Mr Ford’s harness driver’s licence was suspended by Stewards on Friday 18 April 2025. The definition of “suspension” provided that

- (i) In relation to a licensed person means the temporary or permanent withdrawal of all rights provided by any licence issued by a Controlling Body.

The letter went on to state it has been brought to the attention of the Tasracing Integrity Unit that Mr Ford attended the Launceston harness race meeting on 19 April 2025 and undertook duties consistent with those of a stablehand. Ms Lester went on to confirm that Mr Ford does not hold a stablehand licence and therefore is not permitted to perform stablehand duties. Mr Ford was invited to show cause why he should be permitted to act in the capacity of a stablehand in addition to other information considered relevant by 28 April 2025. Tasracing would then “determine the matter”.

23. A further letter was also produced at the hearing, and admitted under section 81(3), from Ms Lester of the Tasracing Integrity Unit to Mr Ford of 2 May 2025 (the second letter). The second letter acknowledged that Mr Ford had provided written submissions in response to the letter dated 27 April 2025, which had been considered. The letter referred to Australian Harness Racing Rule 204, which provides

A person shall not carry out the duties of a stablehand unless that person holds a trainer’s, driver’s or stablehand’s licence.

The letter goes on to express that a holder of a driver’s licence may undertake duties ancillary to that licence, which may include some stablehand duties. However, given Mr Ford’s driver’s licence is suspended, he is not permitted to perform stablehand duties. He does not hold a stablehand licence and therefore, does not currently hold a relevant licence to perform stablehand duties. It is then stated, for clarification:

you are not permitted to perform stablehand duties and you are not permitted to assist with horses at race meetings or trials for the above reasons...

As indicated to you at the conclusion of the Inquiry on 18 April 2025 and again in my email to you on 21 April 2025, you are permitted to drive track work at home during your suspension.

24. Mr Hall submitted that this correspondence was inconsistent with what Mr Ford had been advised at the hearing of the Inquiry and as a consequence, it demonstrated that the penalty the Stewards had intended to impose on Mr Ford was actually significantly less than what had

actually been imposed. He argued that had Mr Ford been able to continue to do stablehand duties, this would have ameliorated the effects of the suspension on Mr Ford so that the impact on his livelihood was less. He said that Ms Lester was present and did not clarify that Mr Ford would not be able to do stablehand duties, inferring that Stewards did not appreciate the broader impact of the suspension when they imposed it.

25. Mr Hall acknowledged Mr Ford's previous offences in 2015, which the Board notes were two charges under Rule 243, which provides "A person ... in the Harness Racing Industry shall not behave in a way that is prejudicial or detrimental to the industry". On that occasion, Mr Ford was found to have substituted two urine samples from two separate donors. Mr Ford was disqualified for a period of 3 years and 10 months. Mr Hall said there has been a significant gap in offending since late 2019, when that disqualification ended, and this new related offending in 2025, despite Mr Ford being one of the most tested members of the harness racing community. Mr Hall said Mr Ford has a lot of drives and is regularly tested, with all samples being clean during that period. He submitted that the prior matter, which resulted in disqualification in 2015, had less significance now that there has been a significant gap between breaches.
26. As to the length of the suspension and previous cases, Mr Hall submitted that the usual starting point for matters of this nature was 3-5 months, noting this was referred to by Stewards in their decision in respect to Mitchell Ford in March 2024. In that case, Mr Mitchell Ford was charged with a breach of Rule 250(1)(a) following a sample detection of a "cocktail of substances". He noted Mr Mitchell Ford to have been suspended for 6 months with 2 months of the penalty suspended. Mr Hall also referred to two other cases presented by Stewards as relevant:
 - the Tasmanian Stewards' decision in respect to Mr Jakob White in which he was suspended, for a breach of the same rule, for 6 months, with 3 months of the penalty suspended on the condition of no further breaches occurring for 24 months; and
 - a Harness Racing NSW Stewards decision in respect to Mr Doug Hewitt in May 2021 in which he was suspended for 12 months, but that 3 months of the penalty would be suspended upon the completion of a drug and alcohol program. Mr Hewitt was also advised that Stewards would consider an application for him to return to track work one month prior to the expiration of the suspension period. Mr Hall acknowledged this to be closer to the penalty given to Mr Ford on this occasion, particularly given it was a second offence for Mr Hewitt.
27. Mr Hall said Mr Ford's case is the only case which refers to restrictions on the driver, other than the Hewitt case, which inferred track work was not allowed before a further application one month prior to the end of the suspension.
28. Mr Flanagan on behalf of Stewards said that the letters from Ms Lester on behalf of the Tasracing Integrity Unit do not change the penalty, the letters simply outline the legal effect of the penalty imposed by Stewards. He submitted that the letters should not have any bearing on the Board's consideration of the penalty imposed by Stewards. He said further that the Board should reject the explanation for the positive result provided by Mr Ford. He said that Mr Ford's evidence was misleading at the Inquiry and that Dr Batty's evidence reflected the unlikelihood of Mr Ford's statements. He noted that Mr Ford refused to provide any evidence corroborating his position and that ultimately, his explanation was "against all objective probability". Mr Flanagan submitted that the penalty given should be considered in the context of the new Act. He said that one of the objects of the Act is specifically to ensure the integrity of persons in the racing industry, which is different from the object of the repealed *Racing Regulation Act 2004*, the purpose of which was to provide for the "better regulation of... racing..." Mr Flanagan said that in that context, any person jeopardising the integrity of the industry ought to have a significant penalty imposed upon them.
29. Further, as to Mr Ford's evidence, history and the cases presented by Stewards and discussed by Mr Hall, Mr Flanagan said that in this case, Mr Ford had been a driver in 8 races on the night he was found to have had a positive result, which put each of the other drivers in every race at risk. He said that regardless of the analytical findings, Mr Ford chose to plead not guilty, which

was a factor that set him apart from the other cases referred to (in which all the drivers had pleaded guilty). He said Mr Ford's plea indicated a lack of any remorse. He also noted that each of the previous cases referred to were determined before the introduction of the new Act in Tasmania and it was noted that some of those cases related to first offences. He also noted that Mr Ford also has prior offending in respect to urine samples prior to the 2015 disqualification. He referred the Board to two other prior offences: failure to comply with a direction or interference with a test in 2013, for which Mr Ford was fined \$2,000 and failure to present a horse free of substance in 2012, for which Mr Ford was disqualified for 4 months. Mr Flanagan submitted that Mr Ford has demonstrated a cavalier attitude to racing regulation. Finally, he addressed the factors in mitigation referred to in the Stewards' decision, which he said perhaps should have been referred to as aggravating factors. That is, Mr Ford's admission in respect to handling the substance ought not to be given any weight, and Mr Ford's previous record should have been viewed as demonstrating a long history of offending, rather than as a mitigating factor.

30. In response, Mr Hall said that it is "untrue and unfair" to say that the letter and second letter from Ms Lester of the Tasracing Integrity Unit did not materially change the decision. He submitted that Stewards said he could do track work at the Inquiry and three days later, wrote to him to say he could not. That is a significant difference in the nature of the penalty. He also referred the Board to the evidence given by Dr Batty at the Inquiry, in which he said "I'm not saying its not possible. But if I was asked my opinion I would have thought it unlikely". As to the submission of Mr Flanagan that the penalty given should be considered in light of the purpose of the new Act, Mr Hall said that integrity has always been at the forefront of decisions made in the racing industry. He submitted that it did not matter what the long title to the Act is, the fact of the matter is that the penalty is far in excess of the norm, which makes it far in excess. Mr Hall argued that the not guilty plea should not been considered aggravating as it was the result of a misunderstanding only. If he had understood the charge in the same way a legally trained person did, he may have pleaded differently.
31. At the hearing, the Board sought to understand what the Stewards had intended when they advised Mr Ford at the Inquiry that he could continue to do track work and "you can continue to participate in the industry but you cannot drive in trials or races". Mr Flanagan clarified that there was no intention to offer any variation of Mr Ford's rights, for example, to allow him to continue any rights which would otherwise be suspended by the suspension of his driver's licence. Mr Ford held a category B licence, which allowed him to do stable and other work as it was ancillary to his duties as a driver. He said the words of Stewards were simply that he could continue to undertake track work at his property, which he does not need a licence to do.
32. The Board notes the standard of proof in these matters was outlined in the Victorian Racing Appeals and Disciplinary Board case of Oliver (30 October 2017), page 2, as follows:

The Standard of Proof is that laid down in the well-known case of Briginshaw v Briginshaw. We must be comfortably satisfied that the charge has been proved, taking into account inter alia, the gravity of the charge and the consequences which flow from the conviction.

Determination of Appeal against Conviction

33. The appellant contends that the penalty imposed by Stewards was excessive.
34. The Board has carefully considered the submissions of each of the parties to this appeal and all of the evidence available.
35. In summary, the uncontroversial facts are that Mr Ford gave a sample which produced a positive result for benzoylecgonine, a cocaine metabolite. The level was approximately two and a half times the threshold amount. Mr Ford was charged under Rule 250(1)(a) and pleaded not guilty to the charge. Mr Ford has a history of related offending, including a significant matter for which

he was disqualified for 3 years and 10 months in 2015. He has no record of related offending since he returned to the industry in late 2019. Mr Ford was found guilty and a 12 month suspension of his licence was imposed by Stewards.

36. Mr Ford offered an explanation for the positive reading which was difficult to accept. Whilst Dr Batty expressed the view that Mr Ford's version of events was "not impossible", he considered it unlikely on the known facts. Stewards suggested to Mr Ford that he corroborate his story with evidence from the person said to have caused the contamination but Mr Ford chose not to do so. Stewards quite reasonably rejected the story at the Inquiry and found him guilty of the offence and in the circumstances, suspended his licence for 12 months.
37. The Board was asked to consider whether the letter and second letter from Ms Lester of the Tasracing Integrity Unit changed the nature of the penalty, or demonstrated that the penalty was harsher than what was intended by Stewards. The Board has considered the content of those letters and agrees with the position put by Mr Flanagan – the letters do not change the penalty. The purpose of the letters was to clarify the effect of the penalty in response to conduct of Mr Ford following the suspension. The letters simply make clear what can and cannot be done by Mr Ford following the penalty imposed.
38. The Board has considered whether the words of Stewards at the Inquiry, in confirming that Mr Ford can continue to do "track work" and "participate in the industry", indicate that Stewards intended the penalty to have a lesser impact on him than it actually does, and therefore the penalty is excessive for that reason. The Board accepts that the letters do not change the penalty Stewards intended to impose but does observe that in its response to Mr Ford's question about whether he could continue to do track work, Stewards should have been more clear – that he could only do track work *at home*, where he does not need a licence, and that he could participate in the racing industry by being in attendance at races, not by undertaking duties for which he requires a licence, such as stablehand duties. However, not clearly explaining the effect of a penalty imposed does not make the penalty itself wrong or excessive.
39. The Board otherwise considers that the factors taken into consideration by, and ultimately the decision of, Stewards was reasonable and having regard to all the matters referred to above, the Board are not minded to disturb the penalty imposed by Stewards. A licensed participant in the racing industry with a history of relevant prior offences must expect significant penalties for breach of any rule which brings into question the integrity of the participants and the safety of other participants.
40. The period of suspension may represent a more severe penalty than participants have received in the past but bearing in mind the previous cases to which the Board were referred, the objects of the new Act, which the Board accepts is more focused on the integrity of participants, the circumstances of this matter including Mr Ford's explanation, plea of not guilty and history of offending, the Board does not consider it was unjustly harsh or excessive.
41. The decision of Stewards is affirmed and the appeal against penalty is dismissed.
42. In accordance with section 99(4) of the Act, 50% of the appellant's prescribed deposit is to be forfeited to the Secretary of the Department. The appellant is also ordered to pay 50% of the cost incurred in the preparation of the transcript in accordance with section 99(8) of the Act.

DATED: 1 JULY 2025