

RACING PENALTIES APPEAL TRIBUNAL DETERMINATION

APPELLANTS: MR JAYCE ARRON BUCKLEY

APPLICATION NO: 23/5025

PANEL: MR ROBERT NASH (CHAIRPERSON)
MS JOHANNA OVERMARS (MEMBER)

DATE OF HEARING: 27 NOVEMBER 2023

DATE OF DETERMINATION: 1 DECEMBER 2023

IN THE MATTER OF an appeal by JAYCE ARRON BUCKLEY against a determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing to impose a disqualification of three months for breach of Rule AR 240(2) of the Rules of Thoroughbred Racing

Mr Jayce Buckley self-represented.

Mr Denis Borovica and Mr John Zucal appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

Overview

1. On 1 December 2023, this Tribunal dismissed the Appellant's appeal against conviction for the breach of Rule AR 204(2) of the RWWA Rules of Thoroughbred Racing ("Rules").
2. Detailed oral reasons were given when the determination was announced on 1 December 2023. The following reasons are the Tribunal's written reasons.

Reasons

3. The Appellant, Mr Buckley, is a RWWA registered trainer in the thoroughbred racing industry.
4. On 27 October 2023, the Stewards imposed a three month disqualification on Mr Buckley following his plea of guilty to Australian Racing Rule 240(2) for presenting the horse REEL THEMOFF to race in Race 1 at Pinjarra on 19 January 2023 where it raced and finished first, when the horse was not free of the prohibited substance, namely Pregabalin.
5. Rule 240(2) provides that if a horse is brought to a racecourse for the purpose of participating in a race and a prohibited substance is detected in a sample taken from the horse, the trainer of the horse will be in breach of the Rules.

6. There is no issue that Pregabalin is a prohibited substance.
7. By a Notice of Appeal dated 30 October 2023, Mr Buckley contends that the penalty imposed should have been a fine and that the imposition of a three month disqualification was too severe.
8. In essence, Mr Buckley's appeal was that the penalty imposed on him was manifestly excessive.
9. The offence under Rule 240(2) is one of strict liability and the underlying policy behind the Rule is the need to maintain the integrity of racing.
10. The imposition of a penalty by the Stewards involves the exercise of a discretion that is entrusted to the Stewards by reason of their deep knowledge of the racing industry and experience.
11. The approach to reviewing discretionary judgments of the Stewards was the subject of analysis by Murray J in *Danagher v Racing Penalties Appeals Tribunal (1995) 13 WAR 531 at 554*.
12. There is a strong presumption in favour of the correctness of the Stewards' exercise of discretion and the Tribunal will be slow to interfere.
13. Where the Appellant asserts that the penalty is manifestly excessive, the Tribunal's role is not merely to substitute its own view. Before the Tribunal can interfere with the penalty imposed, the Appellant must satisfy the Tribunal that the penalty is so unreasonable or plainly unjust that the Tribunal can infer error.
14. In support of his appeal, Mr Buckley has emphasised that he had a clean record and that the presence of Pregabalin was due to an inadvertent contamination.
15. At the Stewards Inquiry on 17 October 2023, Mr Buckley said he did not know exactly how the Pregabalin had come to be in the horse's system, but argued it must have occurred via contamination. He presented evidence that he and his jockey Andrew Castle were prescribed Pregabalin and taking it on a daily basis. Mr Buckley was taking his medication at the stables each morning and he and his jockey were urinating in the horse's stall. Mr Buckley was also urinating in the horse float when he was taking the horse to the beach. He stated that when making up the horse's feed, a tablet could possibly have fallen into the feed bin.
16. The Stewards found that there was insufficient evidence to support environmental contamination.
17. In coming to that decision, the Stewards took into account the evidence of the RWWA veterinarian, Dr McMullen who doubted the likelihood that if the horse licked the wall of the stable which had been urinated on that this would account for the detected level of Pregabalin. Dr McMullen also thought it was unlikely a horse would consume contaminated bedding sand. The Stewards noted that not even the simplest of basic hygienic steps had been taken by Mr Buckley and in their view it is reasonable to expect that any person on medication would exercise rigorous precautions when handling horses.

18. The Stewards were not satisfied that Mr Buckley put forward a plausible explanation for the contamination which would justify mitigation of the penalty that would otherwise be imposed.
19. At the appeal, Mr Borovica on behalf of the Stewards contended that the penalty of three months disqualification imposed was reasonably within the range of discretion.
20. Exhibit "I" from the Stewards inquiry is a table of cases summarising similar WA presentation cases. There has only been one other WA case where Pregabalin was found in a horse's system, being that of Ross Oliveri (Appeal No 861, 2023).
21. Mr Oliveri was disqualified for six months for presenting his horse with a positive post-race swab for Pregabalin. On appeal, the Tribunal reduced the penalty to a disqualification of three months.
22. Mr Oliveri had been a licensed trainer for approximately 45 years. He was a very successful and prominent trainer within the harness racing industry. He had previous presentation convictions where he received a fine for Di-isopropylamine in 1991, a seven month disqualification for TCO2 in 1999 and a 12 month disqualification for TCO2 in 2011.
23. Like Mr Buckley, Mr Oliveri submitted that he did not know the horse had Pregabalin in its system and that the positive swab must have occurred due to contamination.
24. Unlike Mr Buckley, when the matter initially came before the Stewards, Mr Oliveri had never heard of Pregabalin and had no idea how the contamination could have occurred. He went through a rigorous investigation process, after which he became aware that one of his staff was taking a high dose of Pregabalin and urinating on the grass in the paddock in proximity to where the horse was being kept. As Mr Oliveri was not aware of this at the time, he was not on notice to take steps to prevent the potential contamination.
25. In contrast, Mr Buckley knew that he and his jockey were on medications containing Pregabalin, and despite that he did not adopt all the necessary practices and precautions to ensure there was no possibility of cross-contamination.
26. On the one hand, Mr Oliveri's case was more serious in that he did not have a clean record whereas Mr Buckley did.
27. On the other hand, Mr Oliveri's case was less serious because he was completely unaware that his staff member was on Pregabalin or was urinating in a paddock area where there was a possibility of cross-contamination.
28. In the Tribunal's view, it has not been demonstrated that the penalty imposed was manifestly excessive. Therefore, it is not open for this Tribunal to infer error.
29. Accordingly, the appeal is dismissed.


ROBERT NASH
CHAIRPERSON


JOHANNA OVERMARS
MEMBER

