

**DETERMINATION AND REASONS FOR DETERMINATION OF THE
RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT : JOHN MACMILLAN

APPLICATION NO.: A30/08/106

PANEL: Mr D. Mossenson (Chairman)
Mr T. Mulligan (Member)
Ms P. Hogan (Member)

DATE OF HEARING: 18 December 1992

IN THE MATTER OF an appeal by Mr J. MacMillan against the determination of the Western Australian Turf Club Stewards on 4 December 1992 against the three months' disqualification.

Rule 178 states:

"When any horse which has been brought to a racecourse for the purpose of engaging in a race is found by the Committee of the Club or the Stewards to have had administered to it any prohibited substance as defined in A.R. 1, the trainer and any other person who was in charge of such horse at any relevant time, may be punished unless he satisfy the Committee of the Club or the Stewards that he had taken all proper precautions to prevent the administration of the prohibited substance."

At a hearing before the Stewards, the Appellant was charged as follows:

"... that you were the trainer of BARANIC when it was brought to York races on Wednesday, the 30 September, 1992, for the purposes of engaging in the Mt. Franklin Still Water Maiden Handicap 1200 metres and that BARANIC has now been found by the Stewards to have had administered to it a prohibited substance as defined under Australian Rule of Racing 1. Such prohibited substance being a metabolite of promazine."

The Tribunal is not satisfied that the Appellant has discharged the onus of proof on him, to demonstrate that he had taken all proper precautions to prevent the administration of the prohibited substance in that:

1. the premises were penetrable by children;
2. with a lack of supervision prior to race day; and
3. the shelf upon which the veterinary products were stored, was freely accessible.

The fact that there appears to be no industry guidelines regarding supervision, particularly by part-time and hobby trainers was a factor which the Tribunal did consider carefully. Despite the lack of guidelines, the Tribunal has come to the conclusion that the appeal should fail.

In arriving at its determination on the question of the appropriate penalty to be imposed the Tribunal is satisfied that:

1. there was no evidence to suggest that the Appellant administered the drug;
2. the Appellant was completely forthright in assisting Mr Goddard and in giving evidence at the Stewards' inquiry;
3. the drug was not performance enhancing;
4. Mr MacMillan's background and record were positive factors in his favour; and
5. the fact that there are apparently no guidelines regarding the question of supervision was also a relevant consideration.

Given all of these matters the Tribunal concludes that the three months' disqualification which was imposed is an excessive penalty.

The Tribunal unanimously considers that the three months' disqualification should be varied to a disqualification of fourteen days together with a fine of \$500.

The prescribed fee paid upon the lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRMAN

