

DETERMINATION AND REASONS FOR DETERMINATION
OF THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT : DAVID HARRISON
APPLICATION NO. : A30/08/209
PANEL : MR D MOSSENSON (CHAIRPERSON)
MR L ROBBINS (MEMBER)
MR P HOGAN (MEMBER)
DATE OF HEARING : 22 AUGUST 1994

IN THE MATTER OF an appeal by Mr David Harrison against the determination of the Western Australian Turf Club Stewards on 15 July 1994 imposing a 12 months disqualification under Rule 175(h)(ii).

Rule 175 states:

"The Committee of any Club or the Stewards may punish:

- (h) Any person who at the time administers, or causes to be administered, any prohibited substance as defined in AR1:
- (ii) which is detected in any pre- or post-race sample taken on the day of any race."

At the hearing before the Stewards, the appellant was charged as follows:

"...in that sometime prior to SAMMY THE BULL running in Race 1, the Eat More Fruit 'N' Veg. Handicap second division over 1200 metres on the 11th of the 6th, 1994, you administered Butasyl to SAMMY THE BULL resulting in the prohibited substance oxyphenbutazone being detected in the post-race urine sample taken from SAMMY THE BULL."

The Tribunal rejects the ground of appeal as to the alleged contaminated sample for the reasons which were raised by Mr Zucal in the course of his submission.

The appellant raises as the principal ground of appeal that the stewards did not properly consider the defence put forward by Mr Harrison at the inquiry that he had an honest and reasonable but mistaken belief that the horse "Sammy the Bull" did not have in it a prohibited substance as defined by Australian Racing Rule 1. It is clear from the numerous passages in the transcript, many of which have been referred to us in the written submission that was presented on behalf of the appellant, that this was the major thrust of the defence which the appellant raised at the stewards inquiry.

Mr Zucal, the steward who chaired the inquiry, has told us that the stewards did in fact consider this defence. Mr Zucal claims it is made manifest at page 90 of the transcript of the inquiry where the stewards announce the outcome in these terms:

"Mr Harrison, the stewards have considered what has been placed before us today and we find you guilty of the charge."

In *Frank Henry Maynard v Racing Penalties Appeal Tribunal of Western Australia and Ian Paterson, John Anthony Zucal, Graeme Eric Bennier, Lindsay Arthur Wagener* (No 1686 of 1993) the Full Court of the Supreme Court by a majority decision held that there can be no finding that the infringement of Rule 175(h)(ii) has been committed unless there has been negation of an honest and reasonable but mistaken belief that the prohibited substance administered to the horse had been excreted by race day and, therefore, would not be present in the blood or urine.

It is not clear from an examination of the transcript of the inquiry which led to Mr Harrison's conviction that the stewards have in fact considered that they were required to negate the defence raised by the appellant. Nowhere have they expressed the fact that they were required to do so or that they were conducting any aspect of the inquiry on the basis that they were actually addressing that issue.

Further, in stating the basis for their decision, the stewards clearly have failed to address this defence. The appellant is justified in his assertion that in no way have the stewards apparently given due and proper consideration to it.

The transcript at the point of the decision being announced is silent as to the various components of the defence. The stewards may have been entitled to hold the view that no such belief was held or, that if held, that it was not honest and reasonable. Their failure to express it in their written findings leaves this Tribunal with no alternative but to refer the matter back for proper consideration by them of this issue based upon the evidence.

In these circumstances, it is not necessary for the Tribunal to consider the remaining two defences which were raised dealing with the questions of the prohibited substance and de minimus.

Accordingly, the appeal is upheld. The conviction is quashed. The matter is referred back to the stewards for re-hearing in accordance with these reasons.

The lodgement fee that was paid will be refunded.



DAN MOSSENSON, CHAIRMAN

