

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

**APPELLANT :**                      **ROBERT NEIL HARVEY**

**APPLICATION NO. :**              **A30/08/243**

**PANEL :**                              **MR D MOSSENSON (CHAIRPERSON)**  
   **MR P HOGAN            (MEMBER)**  
   **MR J PRIOR             (MEMBER)**

**DATE OF HEARING :**              **23 FEBRUARY 1995**

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**IN THE MATTER OF an appeal by Mr R Harvey against the determination of the Western Australian Turf Club Stewards on 13 February 1995 imposing a 4 month disqualification under Australian Rule of Racing 175(h)(ii).**

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Mr T Kavenagh, instructed by Kavenagh & Co, appeared for the appellant.

Mr R J Davies QC appeared for the WA Turf Club Stewards.

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Rule 175 states:

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

(h) Any person who at any time administers, or causes to be administered, any (prohibited substance as defined in A.R. 1:

(ii) which is detected in any pre- or post-race sample taken on the day of any race."

At the Stewards' inquiry, the appellant was charged as follows:

"... in that sometime prior to the running of NOBLE BARONESS in the Eastern Temple Handicap, 1400 metres at Ascot on the 7th of the 1st, 1995, you administered flunixin to NOBLE BARONESS, which resulted in that prohibited substance being detected in the post-race urine sample. ..."

The appeal against conviction was not pursued by the appellant and is dismissed.

After a reasonably lengthy hearing concerning a serious matter the Stewards in handing down their penalty have given very brief reasons or explanation of the basis upon which they arrived at the four month disqualification. It is not easy to discern the factors which actually influenced the Stewards to arrive at the penalty of disqualification as opposed to alternative penalties.

The transcript reveals that prior to handing down their decision, the Stewards discussed with Mr Harvey some of the considerations which they intended to take into account in arriving at a penalty. At the point of announcing the penalty the Stewards do not make it clear what the actual reasons were for choosing that type of penalty and for that particular period.

Despite that, we are satisfied that the Stewards have not fallen into error and were entitled to impose this sanction for reasons which included:

1. the fact the appellant on his own omission had not taken specific veterinary advice regarding the drug;
2. the appellant was imprecise as to the time of administration; and
3. the appellant failed to keep records of his treatment regime.

Accordingly, the appeal fails as to penalty and we confirm the decision of the Stewards.

The fee that was paid on lodgement of the appeal is forfeited.



DAN MOSSENSON, CHAIRPERSON

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