

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

APPELLANT : RARDI ARTHUR CHARLES BARBER

APPLICATION NO. : A30/08/257

AGEPANEL : MR D MOSSENSON (CHAIRPERSON)
MS P HOGAN (MEMBER)
MR F ROBINS (MEMBER)

DATE OF HEARING : 12 JULY 1995

IN THE MATTER OF an appeal by Mr R Barber against the decision of the Western Australian Trotting Association Stewards on 13 June 1995 imposing a disqualification of 12 months under Rules of Trotting 497.

Mr B Whiteman was granted leave and represented the appellant.

Mr T Styles represented the WATA Stewards.

In Part 42 of the Rules of Trotting Rule 497 states that:

- "(1) *When any horse which has been presented to race is found to have had administered to it a drug:*
- (a) any person who administered the drug to the horse;*
 - (b) the trainer; and*
 - (c) any other person who was in charge of the horse at any relevant time,*
- is deemed to have committed an offence.*
- (2) *It shall be a defence to a charge under sub-clause (1) for the trainer and any other person who was in charge of the horse at any relevant time to prove that he took reasonable and proper precautions to prevent the administration of the drug."*

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

"... that the urine sample taken from FRENCH CUT subsequent to it's winning performance in Race 6, the Beryl Dennis Stakes run at Cunderdin on Saturday 6 May has upon analysis been found to contain Promazine which is the metabolite of Acepromazine. Therefore as trainer of FRENCH CUT for the race you are deemed to have presented the horse for racing not free of drugs. ..."

Rule 55A of the Rules of Trotting states:

"A person who is convicted of an offence under Part 42 of these Rules, or under Part XXXII of the Rules of Trotting repealed by these rules, is liable to a penalty which is not less than-

- (a) in the case of a first such offence, a period of 12 months disqualification;*
- (b) in the case of a second such offence, a period of 2 years disqualification;*
- (c) in the case of a third such offence, a period of 5 years disqualification;*
- (d) in case of a fourth or subsequent such offence, disqualification for life;*

unless, having regard to the extenuating circumstances under which the offence was committed the Controlling Body or the Stewards decide otherwise."

The Stewards, after conducting a hearing, convicted Mr Barber and imposed the penalty of 12 months disqualification.

Mr Barber appealed against both conviction and penalty but at the hearing abandoned the first part of his appeal.

It was submitted on behalf of the appellant that there were a number of extenuating circumstances in this matter which were overlooked by the Stewards in their having imposed on Mr Barber a 12 month disqualification for breach of Rule 497. The circumstances include:

- the nature of the drug;
- the fact that Mr Barber acted on his veterinary's advice;
- the fact that allegedly he was looking after the horses welfare;
- his prior good record; and
- the fact that he did not seek to defraud or profit from the administration.

The Tribunal considered all of these factors carefully and was satisfied in the circumstances that none amounted to an "extenuating circumstance" as contemplated by Rule 55A. So far as the submission that Mr Barber acted on professional advice is concerned the Tribunal is not persuaded in Mr Barber's favour in view of the fact that the Stewards found, at page 24 of the transcript, *"We find you guilty in that you have not satisfied us that you took reasonable and proper precautions to prevent the administration of a drug to FRENCH CUT. In your own words its very lax around your stables ..."*.

Further, Mr Barber was specifically invited during the course of the inquiry by the Stewards to raise any extenuating circumstances but he declined to do so. It is clear to

the Tribunal that the administration of any drug as defined by the rules without more must result in the mandatory minimum sentence in Rule 55A being applied.

The reference in the Rule to "extenuating circumstances" contemplates something in the nature of an exceptional or unusual occurrence, event or circumstance.

We are satisfied that the Stewards have not erred and the appeal is therefore dismissed. The fee paid on lodgement is forfeited.



DAN MOSSENSON, CHAIRPERSON

8 / 9 / 1995

