

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CAREY JONES

APPLICATION NO: A30/08/273

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR F ROBINS (MEMBER)
MR J SYME (MEMBER)

DATE OF HEARING: 19 DECEMBER 1995

IN THE MATTER OF an appeal by Mr C Jones against the determination made by Western Australian Trotting Association Stewards on 3 October 1995 imposing a twelve month disqualification under Rule 497(1) of the Rules of Trotting.

Mr T F Percy assisted by Mr A Jenshel, instructed by J F O'Halloran Solicitor, represented the appellant.

Mr R J Davies QC represented the WA Trotting Association Stewards.

At the Stewards' inquiry the appellant was charged with a breach of Rule 497 of the Rules of Trotting. That Rule states:

“(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.”

The specifics of the charge are:

“...as the trainer of the pacer GOLDEN FLIGHT you presented the horse to race in Race 2 at the Gloucester Park meeting on Friday the 15th of September 1995 where the pre race blood sample taken from the pacer was found upon analyse (sic), analysis to contain a total carbon dioxide level of 35.2 millimoles per litre of plasma, which is above the allowed level under Rule 498(b) of 35.0. It is therefore deemed that a drug capable of producing carbon dioxide has been administered.”

The amended grounds of appeal are as follows:

1. *The Stewards were under a duty to act in accordance with the principles of natural justice and procedural fairness and failed to so act in that they:*
 - (a) *failed to advise or correctly advise the Appellant of the nature or purpose of the inquiry*
 - (b) *failed to give the Appellant any or any sufficient notice of their inquiry and the charges in order that he might consider his position, consult appropriate witnesses and formulate his submissions;*
 - (c) *failed to advise the Appellant that he was entitled to call witnesses on his behalf;*
 - (d) *expected the Appellant to produce witnesses immediately; and*
 - (e) *failed to adjourn the inquiry of their own motion when it became apparent that the witness Burton was not immediately available and that his evidence was likely to be critical.*
2. *The Stewards erred in convicting the Appellant in that they incorrectly took into consideration the following matters in their assessment of the merits of the Appellant's defence under Rule 497(2):*
 - (a) *that Alfa Green ("the Substance") was administered on the day of the race;*
 - (b) *that the Appellant did not notify the Stewards of the Substance having been administered;*
 - (c) *that the Appellant did not seek a pre-race test;*
 - (d) *that the Appellant did not seek veterinary advice in relation to the Substance;*
 - (e) *the Appellant's knowledge that the Substance had the effect of preventing the accumulation of lactic acid;*
 - (f) *that the Appellant administered a particular quantity of the Substance;*
 - (g) *that the Appellant did not administer the Substance to other horses that were racing; and*
 - (h) *Golden Flight's previous performance.*
3. *The Stewards erred in their conclusion that all reasonable precautions were not taken by the Appellant pursuant to Rule 497(2) in that:*
 - (a) *there was ample undisputed material before them to establish that the Appellant was not possessed of any intention to cause an elevated TCO₂ level;*
 - (b) *the Substance was not a prohibited substance;*
 - (c) *the Substance had never been the subject of any official warning; and*
 - (d) *they knew of the tendency of the Substance to raise TCO₂ levels and did not take any steps to bring this to the attention of relevant parties.*

4. *The Stewards failed to consider ranges of penalties for such offences and erred in imposing a penalty which was excessive in all the circumstances and having regard to:*
- (a) *the appropriateness of a fine;*
 - (b) *the fact the Appellant had no prior convictions; and*
 - (c) *the mitigating factors mentioned at paragraph 3 hereof.*

The first ground alleges a denial of natural justice and procedural unfairness. The Tribunal is satisfied firstly that Mr Jones did know the nature of the accusation made against him in the charge, secondly that he was given a reasonable opportunity to state his case, and thirdly that the Stewards acted in good faith at all stages during the course of the inquiry. The first ground therefore fails.

The second ground alleges irrelevant considerations were taken into account including the fact that the substance was administered on the day of the race and that the appellant did not seek veterinary advice. The Tribunal is satisfied that all of the numerous matters which are particularised in the amended grounds of appeal are in fact relevant and proper matters to be taken into account by the Stewards in relation to this particular offence. This ground also fails.

The third ground addresses the issue of the defence available to the appellant under Rule 497(2). It is submitted on behalf of the appellant that the Stewards erred in concluding all reasonable precautions were not taken by the appellant. The relevant sub-rule requires proof of taking reasonable and proper precautions. The Tribunal is not persuaded that the Stewards in any way were in error in relation to the conclusion which they came to as to the defence. The Tribunal is satisfied that on the facts and in regard to all of the circumstances this defence could not be made out.

The grounds of appeal read with the supporting particulars collectively amount to an assertion of a reckless disregard to the obligations cast on the Stewards in the conduct of their inquiry which led to the charging and the conviction of the appellant. The inquiry involved a serious breach of the Rules of Trotting resulting in the imposition of the compulsory minimum penalty of 12 months disqualification in the absence of extenuating circumstances having been demonstrated.

The Tribunal is satisfied, rather than this being a case of any reckless disregard, that in all of the circumstances the Stewards quite properly, fairly and diligently conducted their inquiry, charged the appellant, enquired as to his guilt or innocence and ultimately arrived at their conclusion to convict him. The Tribunal agrees with the observations made by Senior Counsel for the respondent that this appeal against conviction is lacking any merit and is pedantic.

As to the penalty the Tribunal is satisfied that it has not been shown that the Stewards were in error in the exercise of their discretion. Accordingly the penalty is also confirmed.

The appeal is dismissed and suspension of operation of a penalty now ceases to operate.

The Tribunal has come to the unanimous conclusion that it is not appropriate in all of the circumstances to make any recommendations to the Stewards with respect to the remaining period of disqualification. The appellant has served only two days of the twelve month disqualification period.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

31/1/96

