APPEAL 276

DETERMINATION AND REASONS FOR DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**DAVID WILLIAM MILLER**	
APPLICATION NO:	**A03/08/276**	
PANEL:	**MR D MOSSENSON**	**(CHAIRPERSON)**
	MR J PRIOR	**(MEMBER)**
	MS P HOGAN	**(MEMBER)**
DATE OF HEARING:	**21 NOVEMBER 1995**	

IN THE MATTER OF an appeal by Mr D W Miller against the determination made by Western Australian Turf Club Stewards on 3 November 1995 imposing a six month disqualification under Rule 178.

Mr D W Miller represented himself.

Mr J A Zucal represented the WA Turf Club Stewards.

Australian Rule of Racing 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 the Stewards' inquiry the appellant was charged as follows:

> "*...with bringing VIN JOSE to Belmont Park Racecourse on the 16th September, 1995 for the purpose of engaging in a race which had had administered to it the prohibited substance ketorolac.*"

AS TO CONVICTION

The Tribunal has arrived at a unanimous decision on the question of the conviction for the following reasons. In the course of Mr Zucal's opening address to us he has succinctly summarised all of the relevant facts and circumstances as follows:

"The Stewards' inquired into a report received from the AJC Laboratory into the presence of ketorolac being found in a urine sample taken from VIN JOSE after it won on September 16, 1995. From the two inquiries held, it is clear that the relevant facts are:

1. David Miller is a trainer and owner of racehorse VIN JOSE;

2. VIN JOSE is stabled at Mr Miller's mothers place at Lot 20 Eleventh Road, Armadale. Mr Miller lives at 58 Townley Street, Armadale. David Miller brought VIN JOSE to Belmont Park on 16 September for the purpose of engaging in a race which it duly won. Ketorolac was found in a post race urine sample."

Mr Zucal explained that "... if Miller could prove to the Stewards that he had taken all proper precautions to prevent the administration of the prohibited substance he could escape penalty. From the transcript and what Mr Miller said to the Stewards, at the end of the day the Stewards believed that he didn't satisfy us."

The Tribunal is impressed with Mr Miller's sincerity and the fact that there is no apparent reason for him to have been party to the administration of the drug in question. We have had the opportunity not only of studying the transcript of the Stewards' inquiry but also of receiving further information regarding the circumstances surrounding this offence. The Tribunal is satisfied that Mr Miller and his family are heavily committed to the racing industry.

The onus is squarely on the appellant to prove that all proper precautions have been taken to prevent the administration of the prohibited substance. Whilst it is not known how the substance entered the horse's system, this fact on its own is not a relevant consideration in view of the strict wording of the rule in question.

Mr Miller has not demonstrated that he qualifies for the defence that is available under the Rule. Accordingly, the Tribunal dismisses the appeal in relation to the conviction and the decision of the Stewards is confirmed.

AS TO PENALTY

The Tribunal notes that at page 35 of the transcript , the Stewards' state that "After considering all factors the Stewards are disqualifying you for a period of six months."

No explanation is offered or any reasons stated to inform Mr Miller of the basis for arriving at the penalty. This is despite the fact that Mr Miller, during the course of the hearing, argued that a fine was appropriate. The Tribunal notes that Mr Zucal sought to convince the Tribunal that the six months disqualification was consistent with the five past cases to which he referred.

The Tribunal is unanimous in its decision that the Stewards have erred in imposing the penalty of six months disqualification in all of the circumstances.

The Tribunal is satisfied that the penalty cannot stand in the light of the Daly decision which was one of the cases, which Mr Zucal referred to. The relevant facts of the Daly decision are virtually on all fours with Mr Miller's including the 1979 caffeine conviction and the fact that the recent conviction was in respect of an anti-inflammatory drug.

By a majority, with Mr J Prior dissenting, the Tribunal considers that a disqualification of three months is appropriate in view of Mr Miller's personal circumstances and the severe impact not only on himself but also his family.

Accordingly, the decision of the Stewards in regard to the penalty is amended by substituting a disqualification of three months.

The fee paid on lodgement of the appeal is forfeited.

DAN MOSSENSON, CHAIRPERSON
14/12/95

DISSENTING REASONS FOR DETERMINATION AS TO PENALTY

As to the penalty for the reasons set out in appeal 208 in the matter of McPherson handed down on the 1 May 1995, I would allow the appeal against penalty and substitute a fine of $3 000 in lieu of any disqualification. I cannot see any significant facts which make the circumstances of this offence more serious than the circumstances of the McPherson matter."

JOHN PRIOR, MEMBER
18/12/95

Seal of the Racing Penalties Appeal Tribunal of W.A.