

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

APPELLANT: PETER ROBERT BAMFORD

APPLICATION NO: A30/08/290

PANEL: MR P HOGAN (ACTING CHAIRPERSON)
MR F ROBINS (MEMBER)
MR J SYME (MEMBER)

DATE OF HEARING: 22 FEBRUARY 1996

IN THE MATTER OF an appeal by Mr P R Bamford against the determination made by Western Australian Turf Club Stewards on 8 January 1996 imposing a 12 month disqualification under Australian Rule of Racing 178.

Mr G K Paull, instructed by Butcher Paull & Calder, Barristers and Solicitors, represented the appellant.

Mr R J Davies QC 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 of 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:

"... as you the trainer of Smooth Sailing, we are charging you with bringing Smooth Sailing to the Meekatharra Racecourse on the 2nd October 1995 for the purpose of running in the Dominion Mining Cup and following a post race urine sample taken from the (sic) Smooth Sailing the prohibited substances dexamethasone and fluoroprednisolone were detected."

The appellant was the trainer of the horse SMOOTH SAILING which won Race 5, the Dominion Mining Cup at Meekatharra on 2 October 1995. A urine sample was taken from the horse. The AJC Laboratory and the Chemistry Centre of WA recorded the presence of prohibited substances fluoroprednisolone and dexamethasone.

The Stewards' inquiry was held on three different days being 6 November 1995, 12 December 1995 and 8 January 1996. At the conclusion of the inquiry, the appellant was charged with an offence against Australian Rule of Racing 178. The appellant pleaded not guilty. He was convicted based on all the evidence given at the inquiry.

The appellant now appeals against this conviction relying on his amended grounds of appeal. The appeal as argued on behalf of the appellant primarily focused on three areas.

Firstly, it was argued that the Stewards declined to provide information as to the swabbing and testing procedures when that was requested by the appellant. In particular, the Stewards declined to provide the information sought in Dr Tobin's interrogatory. It was argued that this failure amounted to a breach of natural justice.

We are not persuaded by that argument. We regard the provisions in Local Rule of Racing 84AA as being conclusive of the whole issue of the analysis of the swab. So far as the information sought was for the purpose of challenging the correctness of the result, such information would have been totally irrelevant. Local Rule 84AA is clear in its terms. So far as the information sought was for the purpose of challenging any steps in the process leading up to the analysis, we are of the view that the information sought was in the nature of a fishing expedition. There was no evidence at all of any defect in the sampling or handling procedures. In fact the evidence points to the contrary.

Secondly, it was argued that there was no, or lack of sufficient evidence that the appellant failed to take all proper precautions to prevent the administration of the prohibited substances. As to this ground of appeal, we note that it was the appellant's responsibility to demonstrate to the Stewards that he taken all proper precautions. The Stewards questioned the appellant on the stabling arrangements at the Meekatharra Racecourse. It has not been demonstrated that the Stewards failed to take into account any relevant matter, or take into account any irrelevant matter. That being so, the Stewards were entitled to come to the conclusion which they did on the evidence before them. We do not accept the proposition put that proper precautions vary according to circumstances.

Thirdly, it was argued that the finding of guilty was contrary to the preponderance of circumstantial evidence presented at the inquiry. The circumstantial evidence pointed to by the appellant in this case could only be relevant to the question whether or not the appellant administered the drugs himself. The question of who administered the drugs is not relevant to the charge under consideration.

For the above reasons the appeal against conviction is dismissed.

AS TO PENALTY

The appellant appeals against his penalty of 12 month disqualification.

He appeals firstly on the ground that the penalty was outside the range of penalties commonly imposed as summarised in *McPherson's* case. As to that ground of appeal, it is clear that disqualification is a penalty which is imposed in this State as pointed out in the *O'Donnell* case (Appeals 263 and 264). Therefore, the penalty imposed in this case is not outside the range. We do not accept that ground of appeal.

The appellant's further grounds of appeal as summarised are:

- that there is no evidence to suggest that the appellant administered the drug;
- that he was forthright in assisting the investigation;
- the fact that the drugs were not performance enhancing;
- the fact that the amount detected was towards the lower end of the scale;
- the appellant's antecedents;
- the facilities or lack thereof available to trainers visiting remote country tracks; and
- the fact that the appellant is a hobby trainer and there are no distinct guidelines on proper precautions.

As to each of these, it is clear that all the matters were taken into account by the Stewards in assessing the penalty. Furthermore, it has not been demonstrated that any irrelevant factor was taken into account.

For these reasons the appeal against penalty is dismissed.

The fee paid on lodgement of the appeal is forfeited.

P. J. Hogan

PATRICK HOGAN, ACTING CHAIRPERSON

11/13/96

