

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: **DAVID ANTHONY SHEEHY**

APPLICATION NO: **A30/08/295**

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

DATE OF HEARING: **29 MAY 1996**

IN THE MATTER OF an appeal by Mr D A Sheehy against the severity of the penalties imposed by the Western Australian Trotting Association Stewards on 27 February 1996 imposing two penalties both of twelve months disqualification under Trotting Rules 501 and 501(A) to be served concurrently.

Mr B Whiteman was granted leave to represent the appellant.

Mr M Skipper represented the WA Trotting Association Stewards.

Part 42 of the Rules of Trotting deals with administration of and detection of drugs. Mr Whiteman relies on the fact that there was no drug actually administered by Mr Sheehy to VIKING HANOVER N.Z. He argues that these offences are therefore at the lowest end of the scale so far as this part of the Rules of Trotting is concerned.

This argument fails to recognise the fact that Part 42 does not discriminate between the various different types of offences contained within that part. Rules 501 and 501A are not the only provisions of Part 42 creating offences which do not involve actual administration.

Rule 55A deals specifically with penalties to be imposed in relation to Part 42 offences. It sets out the minimum penalties which, in the case of a first offence, shall be not less than a period of twelve months disqualification unless the Stewards decide to the contrary, "... *having regard to the extenuating circumstances under which the offence was committed ...*"

It is clear that the exception provision can only be called in aid of an offender in relation to the facts directly relevant to the actual offence itself. Mr Whiteman has raised many general factors which are not directly applicable to the circumstances under which these offences were committed including:

1. the fact that no drug was actually administered or detected;
2. the fact that this was an honest mistake;

3. this is the first occasion when a charge has been laid under these provisions;
4. the previous penalty incorrectly imposed by the Stewards at the original inquiry; and
5. the impeccable record and age of the appellant.

We are satisfied that none of these factors are circumstances under which the offence was committed for the purposes of Rule 55A.

The Tribunal is also satisfied that there is no assistance to be gained by the appellant in this appeal to draw any comparison with the Cornwell case which was decided pursuant to the totally different rules which regulate the conduct of thoroughbred racing.

For these reasons the appeal fails as to penalty and is dismissed.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON

2016/96

