

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPLICANT: IAN D SWAIN  
APPLICATION NO: A30/08/365  
PANEL: MR D MOSSENSON (CHAIRPERSON)  
DATE OF HEARING: 25 JUNE 1997  
DATE OF DETERMINATION: 25 JUNE 1997

---

**IN THE MATTER OF** an application for leave to appeal by Mr I D Swain against the determination made by Western Australian Trotting Association Stewards on 24 April 1997 imposing a 12 month disqualification under Rule 55A for breach of Rule 497(1) of the Rules of Trotting.

---

Mr I D Swain represented himself.

Mr M J Skipper represented the Western Australian Trotting Association Stewards.

---

Mr Swain was convicted at a Stewards' inquiry held on 24 April 1997 into an analyst's report of a total carbon dioxide level of 36.1 millimoles per litre of plasma in the blood sample taken from *BOW BRIDGE* prior to competing in Race 3, the Atkinson's Store Denmark Stakes at Albany on Friday 4 April 1997. Under Rule 498(b) the permitted level of total carbon dioxide per litre of plasma is 35.0 millimoles.

The application for leave to appeal dated 30 May 1997 was lodged at the Office of Racing, Gaming and Liquor on 5 June 1997. The statutory time limit for lodging a notice of appeal had expired by approximately one month.

In the notice of application for leave to appeal the grounds which are numbered one to four address the substantive question but do not set out the explanation or grounds for the application for leave being made. It is clear from the statements made to me by Mr Swain that, if leave is granted, he does wish to appeal against both the conviction and the penalty.

In seeking an explanation for the delay from Mr Swain it is obvious that he justifies the passage of time on the basis that he did not appreciate what he was told by the Chairman of the Stewards at the inquiry in relation to the time limit imposed for appealing to this Tribunal. The transcript reveals that, in accordance with the usual practice, the Stewards did notify Mr Swain at the end of their inquiry of the opportunity to take the matter further to this Tribunal. In doing so they made it quite clear to him of the 14 day statutory time that is imposed.

S17 of the Racing Penalties (Appeals) Act does empower the Chairperson of this Tribunal to extend time at the discretion of the Chairperson. In order for that discretion to be exercised good reasons have to be advanced and it must be demonstrated that there is an arguable case in relation to the merits of the matter. Even if I were satisfied that Mr Swain had offered a satisfactory explanation for his delay, based upon the propositions which he has put in support of the merits of his appeal, I am not persuaded that he would have any prospects of success.

It is clear from what has been said to me that Mr Swain is relying on a number of different facts and circumstances most of which appear to have been raised and considered by the Stewards in the course of the Stewards' inquiry.

Mr Swain clearly fails to appreciate the proper application of the Rules of Trotting in the context of drugs generally and in the context of this particular drug. He fails to appreciate that the Rules do not outlaw the particular substance occurring naturally in a horse or being in a horse up to a specified level, but that there is deemed to be an administration of a drug to a horse in breach of the Rules if the level exceeds 35.0 millimoles of total carbon dioxide per litre of plasma in the blood sample.

The suggestion that the Stewards have deliberately entrapped Mr Swain and got under his guard compared to their treatment of others in the industry finds no favour with me whatsoever. Part of the duties of the Stewards are to ensure that the racing industry proceeds on a drug free basis. In order to do that it is incumbent on the Stewards to carry out spot checks, to make investigations, to randomly drug test animals and to take other actions without necessarily foreshadowing or putting all parties on notice of those particular actions. Without that element of surprise many potential breaches of the Rules may go undetected.

I am satisfied from what has been said to me and after having carefully read the transcript that there are no merits to the appeal. In those circumstances the application for leave to appeal is refused.

The fee paid on lodgement of the application is forfeited.



DAN MOSSENSON, CHAIRPERSON

