

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR
(MEMBER)

APPELLANT: JAMES JOHN ENRIGHT

APPLICATION NO: A30/08/380

DATE OF HEARINGS: 17 SEPTEMBER 1997 &
23 OCTOBER 1997

DATE OF DETERMINATION
OF PENALTY 23 OCTOBER 1997

IN THE MATTER OF an appeal by Mr J J Enright against the penalty imposed by the Western Australian Turf Club Stewards on 19 August 1997 of 12 months disqualification for breach of Rule 178 of the Australian Rules of Racing.

Mr Enright represented himself.

Mr B Lewis appeared for the Western Australian Turf Club Stewards.

In this matter on 23 October 1997, the Tribunal handed down its reserved decision allowing the appeal against penalty and substituting a period of six months disqualification in lieu of the original penalty of twelve months disqualification imposed by the Stewards.

The facts in relation to this matter are covered adequately in the Tribunal's reasons for decision in dismissing the appeal against conviction handed down on 17 September 1997. In this decision, I will deal only with the question as to my reasons for allowing the appeal as to penalty and substituting a penalty of six months disqualification.

The particulars of the charge are set out at page two of the Tribunal's reasons for decision on 17 September 1997. This Appellant was convicted on the basis that he presented the horse *LONDON FLYER* for racing with the prohibited substance *caffeine* in its system, but there was no evidence whatsoever against the Appellant that in any way he was responsible for the administration of the drug, nor was any of the substance found in his possession or at his feeding area which would suggest he was in any way directly linked to the administration of the prohibited drug.

In my opinion, the only inference one can draw for the drug *caffeine* being present in a horse was that it was administered to the horse for the purpose of stimulating the horse and potentially enhancing its performance in racing. The Appellant concedes that there could be no legitimate reason for the drug to have been in the horse in question, *LONDON FLYER*.

The drug *caffeine* has been defined as a Category 1 drug in the Guidelines for the Classification of Prohibited Substances adopted by the Australian Conference of Principal Racing Clubs and is described as "*potent performance/behaviour affecting substance with no accepted therapeutic use in racing horses, or drugs which are prohibited by law*".

I am therefore satisfied that the presence of a drug of this nature in a horse's system is a serious matter and in most circumstances, would be met with the penalty of a disqualification. In those circumstances, I am not satisfied that the Stewards erred in imposing a disqualification.

The question still remains as to whether the twelve month period of disqualification was excessive in all of the circumstances, or beyond the tariff that exists for offences of this nature when considering the antecedents of the offender.

In sentencing the Appellant, the Stewards said the following at page 71 of the Transcript:

"Mr Enright, the Stewards have taken into account the seriousness of this offence, any conviction under the drug rules, the Stewards treat very seriously. We also take into account the nature of the prohibited substance, being that it is performance enhancing. Also that caffeine was detected in high levels and there was an inadequate level of security to prevent the administration. We also took into account that you have no previous offences under the drug rules. After taking all the matters into account, the decision of the Stewards is to disqualify you for a period of twelve months".

It was conceded by the representative of the Stewards at the hearing of this matter that the Appellant was a person of generally good character and had no previous record of this nature. It is clear that the Appellant had had a long distinguished record in both the trotting and thoroughbred racing industry, having held high positions of office in country clubs. Two references were tendered to this Tribunal, one from the President of the Broome Turf Club and another from the Chairman of the Bunbury Turf Club, which both clearly testified to the Appellant's good character.

Having considered the Stewards' reasons for decision in imposing the penalty of twelve months disqualification, I am satisfied that the Stewards erred in failing to give any weight, or sufficient weight, to the Appellant's good character even although they have stated the fact that they took into account that Mr Enright had no previous convictions for drug offences. In those circumstances, I am satisfied that an appropriate penalty was one of six months disqualification. The reduction in the level of disqualification gives specific recognition of the uncontradicted mitigating factor of the Appellant's previous good character.

I am satisfied that the disqualification of six months for the offence is a penalty which fits within the broader range of tariff for offences concerning the presentation of a horse with *caffeine* in its system in Western Australia. From the material that was provided to the Tribunal by the Appellant and the Stewards, it is clear that the penalties for these types of offences for first offenders ranges from a fine of \$5,000 to two years disqualification. However, each penalty must be considered in light of the circumstances pertaining to the individual offenders.

John Prior



JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)

APPELLANT: JAMES JOHN ENRIGHT

APPLICATION NO: A30/08/380

DATE OF HEARINGS: 17 SEPTEMBER 1997 &
23 OCTOBER 1997

DATE OF DETERMINATION
OF PENALTY: 23 OCTOBER 1997

IN THE MATTER OF an appeal by Mr J J Enright against the penalty imposed by the Western Australian Turf Club Stewards on 19 August 1997 of 12 months disqualification for breach of Rule 178 of the Australian Rules of Racing.

Mr Enright represented himself.

Mr B Lewis appeared for the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with the reasons and have nothing to add.

The fee paid on lodgement of the appeal is forfeited.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR J HEALY
(MEMBER)

APPELLANT: JAMES JOHN ENRIGHT
APPLICATION NO: A30/08/380
DATE OF HEARINGS: 17 SEPTEMBER 1997 &
23 OCTOBER 1997
DATE OF DETERMINATION
OF PENALTY: 23 OCTOBER 1997

IN THE MATTER OF an appeal by Mr J J Enright against the penalty imposed by the Western Australian Turf Club Stewards on 19 August 1997 of 12 months disqualification for breach of Rule 178 of the Australian Rules of Racing.

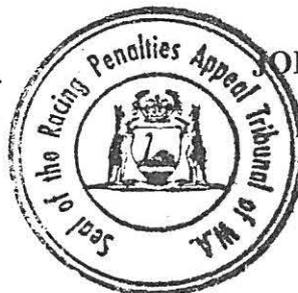
Mr Enright represented himself.

Mr B Lewis appeared for the Western Australian Turf Club Stewards.

I have read the draft reasons of Mr J Prior, Member. I agree with the reasons and have nothing to add.

Healy

12.12.97



JOHN HEALY, MEMBER

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JAMES JOHN ENRIGHT
APPLICATION NO: A30/08/380
PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J HEALY (MEMBER)
MR J PRIOR (MEMBER)
DATE OF HEARING: 17 SEPTEMBER 1997
DATE OF DETERMINATION: 17 SEPTEMBER 1997

IN THE MATTER OF an appeal by Mr J J Enright against the determination made by Western Australian Turf Club Stewards on 19 August 1997 imposing 12 months disqualification for breach of Rule 178 of the Australian Rules of Racing.

Mr Enright represented himself.

Mr B Lewis appeared for the Western Australian Turf Club Stewards.

In this matter Mr Enright appeals against the Stewards' finding of guilt on the basis that it is against all the evidence and also against the penalty imposed by the Stewards on the basis that it is too severe.

The conviction arises as a result of a Stewards' inquiry which was conducted into a report received from the Australian Jockey Club Laboratory that the blood sample taken from LONDON FLYER after it won Race 7, the Broome Seashells Resort Class Five Handicap, run over 1800 metres at the Broome Racecourse on Saturday, 26 July 1997 was found to contain caffeine.

Mr Enright is a registered trainer with the Western Australian Turf Club. He is the trainer and part owner, and therefore managing owner, of LONDON FLYER.

The evidence before the Stewards included a report from the Australian Jockey Club Laboratory of the detection of caffeine as well as a confirmatory report from the Queensland Government Racing Science Centre where the blood sample was shown to contain caffeine and theobromine, the latter being a metabolite of caffeine.

The evidence before the Stewards was that the level of caffeine detected was high. Mr Enright did not dispute the findings of the analyst. Dr Symons gave evidence of the fact that caffeine has a stimulating action on the central nervous system and an action on the metabolism of energy within

the muscles. That action increases the efficiency of the use of glycogen and fatty acids within the muscle. He further gave evidence of the performance enhancing nature of caffeine and its historic role in racing as a stimulant.

The evidence before the Stewards was that there was an improvement of form of LONDON FLYER in the race in question. In the course of the inquiry the Stewards referred to the Guidelines for the Classification of Prohibited Substances which shows that caffeine is classified as a Category 1 drug being one of the "Scheduled, potent performance/behaviour affecting substances which have no accepted therapeutic use in racing horses, or drugs which are prohibited by law."

After a fairly lengthy inquiry into the matter the Stewards charged Mr Enright with a breach of Rule 178 of the Australian Rules of Racing. The particulars of the charge were:

"... Mr Enright ... brought LONDON FLYER to the Broome Racecourse on Saturday 26th July, 1997 for the purpose of engaging in Race 7 the Broome Seashells Resort Class Five Handicap and following a post race blood sample taken from LONDON FLYER, the prohibited substance caffeine was detected."

Mr Enright pleaded not guilty. After receiving some further evidence the Stewards deliberated and then concluded that they found Mr Enright guilty of the charge. They then went on to consider the penalty and ultimately disqualified Mr Enright for a period of 12 months.

Rule 178 of the Australian Rules of Racing states:

"When any horse which has been brought to a race- course 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."

Rule 1 defines "Prohibited Substance" to mean:

"any substance declared by these Rules to be a prohibited substance, or which falls within any of the groups of substances declared by these Rules to be prohibited substances unless it is specifically excepted."

Rule 178B declares various classes or categories of substances to be prohibited substances.

There is no requirement in relation to proving a breach of Rule 178 of establishing that there was any knowledge or intent on behalf of the trainer in question. The relevant underlying factors to the particular offence under that Rule relate to the condition of the horse which has been brought to the racecourse for the purposes of competing in a race and the relationship of the person in question to the animal, being in charge of the animal. The Rule does contain within it a possible defence to the charge. For the defence to be available the trainer in question must establish on the evidence that he took all proper precautions to prevent the administration of the prohibited substance.

We are satisfied that there was no evidence before the Stewards upon which they could have arrived at the conclusion that Mr Enright took all proper precautions to prevent the administration of caffeine to this particular horse on this occasion. On the appellant's own evidence and admissions there were limited security arrangements for his horses both on and off the course in Broome. This fact has partly been explained on the basis of Mr Enright being a visiting trainer making use of

another person's premises, but this fact on its own cannot exonerate in the circumstances of this matter.

For this reason the appeal as to conviction is dismissed.

In relation to the penalty, before we can arrive at a decision we do require some further information to be provided by the Stewards.

Firstly, we require proof of the actual status of the Guidelines for the Classification of Prohibited Substances and in particular, clarification in relation to the wording of the introductory part to paragraph five of the preamble.

Secondly, we require more detailed information as to the circumstances of the penalties which are set out in the schedule headed CAFFEINE (Exhibit 2). In particular we require the following matters:

1. whether any or all of the persons mentioned in the schedule are first offenders or otherwise;
2. the levels of the drug found;
3. other relevant circumstances relating to the administration of the caffeine in each case where known; and
4. any other specific circumstances relating to each of the particular offences that may have some relevance or bearing on the particular facts of Mr Enright's matter.

A copy of this further information shall be provided to Mr Enright who shall have the opportunity of providing further feed back to the Tribunal before we proceed to finalise our thinking on the matter and announce our determination on penalty. Mr Enright, in response to the further information supplied by the Stewards, will be offered the opportunity of coming back to the Tribunal to make further submissions if he thinks it appropriate.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

