

DETERMINATION AND REASONS FOR DETERMINATION OF  
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: KELVIN LINDSAY MOORE

APPLICATION NO: A30/08/383

PANEL: MR J PRIOR (PRESIDING MEMBER)  
MR J HEALY (MEMBER)  
MR S PYNT (MEMBER)

DATE OF HEARING: 23 APRIL 1998 -

DATE OF DETERMINATION: 23 APRIL 1998

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IN THE MATTER OF an appeal by Mr K L Moore against the determination made by Western Australian Turf Club Stewards on 31 August 1997 imposing a 15 month disqualification for breach of Rule 178 of the Australian Rules of Racing.

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Mr B J Singleton QC represented the appellant.

Mr J Zucal appeared for the Western Australian Turf Club Stewards.

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This is a unanimous decision of the Tribunal.

In this matter, Mr Moore appeals against the severity of the penalty of a 15 month disqualification.

At page 28 of the transcript of the inquiry before the Stewards, the rule under which the appellant was convicted, Australian Rule of Racing 178 was read to the appellant. The rule states as follows:

*“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.”*

Following the citing of the rule the appellant was charged as follows:

*“... Mr. Moore you're charged under that rule for bringing POMPEII'S GEM to the Wyndham Racecourse on the 9th of August, 1997 for the purpose of racing in Race 6 the Kimberley Distributors - Halls Creek Cup with the prohibited substances caffeine and theophylline being detected in the post race blood sample.”*

In response to the charge the appellant pleaded guilty.

At the hearing before this Tribunal, there has been some concessions made on behalf of the appellant by his Counsel that considering the appellant was a second offender for an offence of this nature where a prohibited drug has been detected in a horse, that the appropriate penalty was one of disqualification and the appropriate penalty was a disqualification of at least 9 months.

These type of offences unfortunately are not uncommon and regularly appear before the Stewards and this Tribunal. In the matter of Enright v WATC Appeal 380, an appeal concerning caffeine in a horse, I had this to say:

*"... 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 disqualification."*

It is noted that caffeine is classified as a Category 1 drug in the Guidelines for the Classification of Prohibited Substances as adopted by the Australian Conference of Principal Racing Clubs.

The Tribunal must now determine whether the Stewards fell into error in imposing a 15 month disqualification. The crucial questions are whether the penalty was excessive in all of the circumstances, whether there was a failure by the Stewards to take into account relevant considerations or whether too much weight was placed on certain matters.

In handing down the penalty the Chairman of the inquiry stated:

*"Mr. Moore in considering penalty, the Stewards have considered all that you've placed before us, further Stewards believe the following to also be pertinent to penalty:-*

- 1. Your plea of guilty.*
- 2. The position of you and your wife in the Racing Fraternity in Derby.*
- 3. Your forthright manner in dealing with this matter.*

*However, the Stewards believe that:-*

- 1. Any breach of drug rules to be serious as it has the ability to bring racing into disrepute.*
- 2. The nature of the prohibited substance being a category one drug.*
- 3. The level of prohibited substance that being light.*
- 4. The Stewards have grave concern that an unlicensed person was in control of your stable, albeit your elderly father.*
- 5. For negligence in not seeking Vet advice about an unlabelled product you had purchased and after being instructed by the Supplier to stop administering that substance three days prior to racing.*
- 6. Your record which shows you were disqualified for three months under ARR. 175(h)(ii) for administering a prohibited substance to a Racehorse."*

The Tribunal is satisfied that there was an error by the Stewards in handing down the penalty of 15 months disqualification. The Tribunal is satisfied that insufficient weight was given to the following mitigating factors:

1. that the livestock products company was not aware at the time the product which was supplied to the appellant contained caffeine;
2. that it was clearly accepted by the Stewards that the detection of caffeine in the horse resulted from a feed mix up which was against the instructions of the appellant and obviously not a deliberate act; and
3. that the betting on the horse was of an insignificant nature and tended to also corroborate the fact that it was a feed mix up that resulted in the drug being administered to the horse.

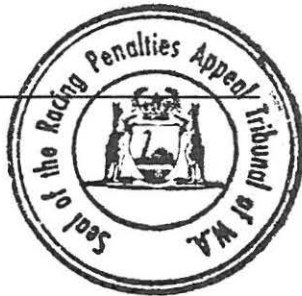
In those circumstances, having also considered the tariff of penalties imposed for this type of offence and the particular circumstances of this case, the Tribunal considers an appropriate penalty should have been 12 months disqualification.

For these reasons, the Tribunal upholds the appeal against penalty and substitutes a 12 month disqualification.

We take the view that as this is an appeal against penalty only and the appeal has therefore been wholly successful, the lodgement fee should be refunded.

Accordingly, the fee paid on lodgement of the appeal will be refunded.

*John Prior*



JOHN PRIOR, PRESIDING MEMBER