

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANTS: STEPHEN LITTON, NOEL WILSON &
GRAEME WEBSTER

APPLICATION NO: A30/08/394

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MR J PRIOR (MEMBER)

DATE OF HEARING: 8 SEPTEMBER 1998

DATE OF DETERMINATION: 8 SEPTEMBER 1998

IN THE MATTER OF an appeal by Messrs S Litton, N Wilson and G Webster against the determination made by Western Australian Turf Club Stewards on 11 November 1997 in disqualifying LAURELAINE as the winner of the Burgess Queen Stakes at Belmont Park on 11 October 1997 under Rule 177 of the Australian Rules of Racing.

Mr T F Percy QC, assisted by Ms C White, instructed by D G Price & Co, represented the appellants.

Mr R J Davies QC represented the Western Australian Turf Club Stewards.

This is the unanimous decision of the Tribunal. This is an appeal by the owners of LAURELAINE in relation to Race 4 conducted at Belmont Park on 11 October 1997, in which LAURELAINE was the winner of the race. A post race swab revealed the presence of heptaminol in a urine sample taken from the horse.

The Stewards conducted an inquiry into the matter on 11 November 1997 which resulted in LAURELAINE being disqualified from the race. Mr G Webster Snr, who was both the managing owner and trainer of the horse, was present at the inquiry. The disqualification of the horse was ordered pursuant to Australian Rule of Racing 177 which states:

“Any horse which has been brought to a race-course and which 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 may be disqualified for any race in which it has started on that day.”

The evidence was not in dispute by the appellants' representative or their veterinary surgeon, Dr Rose, who was also present at the inquiry. Both Mr Webster Snr and Dr Rose were given ample opportunity at the inquiry to raise relevant issues.

Senior Counsel for the appellants presented both written and oral submissions both to the effect that the decision of the Stewards to disqualify the horse as winner of the race was not “... a proper exercise of their discretion”.

A number of issues were raised including:

- The quantity of the substance that had been present in the horse had not been ascertained, but there was nothing to suggest that it was other than a small dosage.
- The substance was not seen as being “potent” and at normal therapeutic levels (100 mg intramuscular) would not have any effect on the horse.
- The trainer took no issue with the evidence of the presence of the substance, and was frank and fully co-operative throughout the inquiry. The owners of the horse appear not to have been invited to attend the inquiry or to make any submissions.
- The Stewards appear to have made no specific finding as to how the substance came to be in the horse’s system.
- The Stewards were obviously of the view that the offence was at the lowest end of the scale as the penalty imposed on the trainer Webster was one of the lowest ever imposed in this State for an offence under ARR 177.

A complicating factor in this appeal is the fact that as the Stewards were announcing the disqualification of the horse a tape malfunction prevented that announcement from being transcribed. A summary of that section of the evidence not taped (estimated to be a maximum of four minutes) is stated in the transcript at page 27 as follows:

“In this period, Stewards advised Mr. Webster:-

- *that they were satisfied that hepataminol (sic) was a prohibited substance as defined by the rules.*
- *that after considering the evidence, they believed LAURELAINE should be disqualified as the winner of the Burgess Queen Stakes over 1400m at Belmont Park on Saturday 11th October, 1997 under the provisions of ARR.177 which was read:- ‘Any horse which has been brought to a racecourse and which is found by the Committee of the Club or the Stewards to have had administered to it any prohibited substance as defined in AR.1 may be disqualified for any race in which it has started on that day.’*
- *the placings were subsequently amended.*
- *that he had the right of Appeal against this decision.”*

No issue was taken as to the accuracy of the summary.

The Stewards also dealt with Mr Webster following the disqualification of the horse and convicted him of a breach of the Rules of Racing. In so doing the Stewards articulated the relevant factors that they took into account when dealing with him. It is reasonable to infer that those factors were clearly in the minds of the Stewards when dealing with the disqualification of the horse.

In the New South Wales case of THE OWNERS OF THE HORSE "RED POCO" (Racing Appeals Reports Issue 2 at p178) Judge Goran stated:

"Yet it is the natural consequence of the definition of prohibited substances in the rules, which not only describes the nature of the substances, but also their prohibition in actual racing, as part of that same definition.

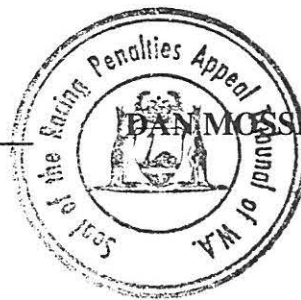
What the racing legislators were doing was setting up a method of controlling drugs in racing. They made no attempt to control the use of therapeutic substances. They simply forbade their use in races. In doing so they threw the onus upon trainers to ensure that when horses came to race they were completely free of such substances, even though they had been used in therapy. In this context the question of whether, or to what extent, the substance affected the performance of the horse becomes completely irrelevant and misleading.

It may, however, be of some relevance in assessing penalty, providing there is firm veterinary or pharmaceutical evidence – not speculation – to found any opinion in this regard. I do not believe it is relevant, however, in deciding whether or not a horse with a positive finding to a prohibited substance should be disqualified. The Rules make it clear that all horses in the race are subject to the same necessarily stringent drug rules, and they all enter a race on level terms within the Rules. A failure to disqualify a horse which is in breach of this fundamental condition of its entry is an official condonation of this breach, whatever sympathy one may have for the connections."

The Tribunal is satisfied that there are no unusual or exceptional features of this case which supports the argument that the Stewards were in error in the exercise of their discretion to disqualify LAURELAINE. This matter is distinguishable from GARDINER v WATA (Appeal 361) (heard May 1997).

For these reasons the appeal is dismissed.

Dan Mossenson



DAN MOSSENSON, CHAIRPERSON