

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CHRISTOPHER WILLIAM INNES
APPLICATION NO: A30/08/399
PANEL: MR J PRIOR (PRESIDING MEMBER)
DATE OF HEARING: 3 DECEMBER 1997
DATE OF DETERMINATION: 3 DECEMBER 1997

IN THE MATTER OF an appeal by Mr C W Innes against the determination made by the Western Australian Turf Club Stewards on 17 November 1997 imposing a 3 month suspension for a breach of Rule 81A(ii) of the Australian Rules of Racing.

Mr Innes represented himself.

Mr S J Carvosso appeared for the Western Australian Turf Club Stewards.

The Appellant in this matter has been convicted of a breach of Rule 81A(ii). That rule states as follows:

“Any Jockey, Apprentice or Rider who:

- (ii) *has delivered a sample of his urine or otherwise taken as directed by the Stewards prior to, during, or after fulfilling his riding engagements in any race or trial or at riding trackwork which upon analysis has detected in it alcohol, or any drug or its metabolites or artifacts may be punished.”*

The Appellant was convicted of a breach of this rule on the return of a positive urine sample for cannabis. He pleaded guilty to that charge at the hearing before the Stewards and received a three month suspension as penalty. The Appellant is a trackwork rider. The Appellant has appealed against penalty only.

The Appellant in his submissions has conceded that suspension was the appropriate penalty for a breach of the rule. His main submissions are that:

- the penalty he received is inconsistent with other penalties for convictions of similar nature handed down recently, in particular, in the last few months; and
- the penalty he received was excessive in all of the circumstances of his particular matter.

The Stewards in their submissions have said the range of penalties for such offences, in particular in Western Australia, has been suspension for up to three months for a first offender.

What is clear from the evidence that was before the Stewards and from what I have heard in the submissions, and it is not in dispute, are two things:

Firstly, this Appellant's livelihood is in jeopardy and was in jeopardy by the suspension. By that I mean, it is clear that at the time of the incident and at the present time, trackwork riding was his sole source of income; and

Secondly, the high level of the Appellant's co-operation. I say this because, in this particular case, this case is distinguishable from other cases because of the refreshing candour of the Appellant when he appeared before the Stewards. The Appellant pleaded guilty, but also told the Stewards his level of cannabis use, including when he had used it and how long he had been using it for. Most importantly, when the urine sample was taken from the Appellant before it was even declared a positive sample, the Appellant said that he had smoked cannabis the night before.

The reasons for the Stewards imposing the penalty appear at page 7 and 8 of the Transcript and they are as follows:

"...Mr. Innes in arriving at a penalty the Stewards have taken into consideration your plea of guilty and the way you have conducted yourself today. Of course we've taken into consideration your, your good record. You tell us that you've been in Industry 25 years without a problem. However, the Stewards believe this to be a serious matter and believe that you have blatantly disregarded the rules under your own admission, that you smoke three or four times a week and that you'd had a joint the night before you rode Trackwork at Ascot on the 11th and that marijuana substances would be in your system when you were riding Trackwork. ..."

I have no dispute and I am of the opinion that to ride a horse, whether it be in races, trials or trackwork, under the influence of cannabis is certainly a serious matter and puts the safety of the rider and other riders in jeopardy. But having said that, it is clear that the way these matters are normally disposed of is by way of a suspension and that is a significant penalty whatever the length of time period imposed. The question then remains is have the Stewards in imposing the penalty erred.

I am satisfied in this case that the Stewards have erred in failing to give sufficient weight or any weight at all to the two factors I have previously highlighted. Firstly, the fact that the Appellant's livelihood was jeopardised by the loss of his income and secondly, the nature of the Appellant's co-operation, and not just his plea of guilty but the other factors that I have already highlighted.

In those circumstances, I am satisfied that the Stewards erred in imposing a penalty of three months suspension. Considering all the circumstances of the case and the unique nature of the circumstances of this particular case, in particular the appellant's co-operation, I would substitute a penalty of six weeks suspension.

For those reasons the appeal against penalty is allowed.

The fee paid on lodgement of the appeal is forfeited.

John Prior



JOHN PRIOR, PRESIDING MEMBER