



course of his submissions he has not necessarily indicated whether it was only his belief that the virus had impact or whether there was other material presented to the Stewards to suggest that the virus was relevant. Be that as it may, we note that at page 138 of the transcript the Stewards in announcing the determination have stated that they heard evidence from Mr O'Neill relating to the effect that a virus or stress may have on a horse's system. Mr O'Neill acknowledged he had little experience with horses and particularly the total carbon dioxide level in horses. Dr Rieusset, Dr Hilbert and Professor Rose also gave evidence. There was no evidence before the Stewards that the horse was suffering from a virus on the 11 June 1999, the day of the race. The Stewards then went on to say in their reasons for decision that they found that the possibility that the horse was affected by a virus as being a contributing factor to the total carbon dioxide level found in the sample was most unlikely.

In all the circumstances we are not persuaded that there is any merit in the virus argument in the light of those findings of the Stewards. Those findings were reasonably open to the Stewards on the evidence.

We are satisfied that the Stewards were entitled to come to the conclusion which they did on the evidence which was before them. The onus was on Mr Puglia to prove the defence under Rule 497(2). The appellant failed to convince the Stewards of that defence and tonight has failed to persuade the Tribunal that that defence was open to him on the evidence before the Stewards and on the material that has been presented to us.

For those reasons the appeal against conviction fails.

As to the penalty Mr Puglia made reference to the decision in Anderson. That is a decision of the Full Court of the Supreme Court of Western Australia. The matter of extenuating circumstances in the context of the penalty has to be decided on the basis of that authority. Nothing has been put forward in the course of argument tonight to persuade the Tribunal that there were any extenuating circumstances under which the offence was committed which justify anything other than the statutory penalty, which is the period of disqualification of 12 months. It was open to the Stewards to come to the same conclusion.

Accordingly the appeal also fails as to penalty.



DAN MOSSENSON, CHAIRPERSON

