

**DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: CAREY KATE WARD

APPLICATION NO: A30/08/489

PANEL: MS P HOGAN (PRESIDING MEMBER)
MS K FARLEY (MEMBER)
MR S PYNT (MEMBER)

DATE OF HEARING: 10 MARCH 2000

DATE OF DETERMINATION: 10 MARCH 2000

IN THE MATTER OF an appeal by Ms C K Ward against the determinations made by the Western Australian Turf Club Stewards as follows:

1. On 21 January 2000 disqualifying SUNDANCE KID pursuant to Rule 177 of the Australian Rules of Racing.
 2. On 1 February 2000 imposing a six month disqualification on the appellant for breach of Rule 178 of the Australian Rules of Racing.
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Mr T F Percy QC assisted by Ms C Apthorp, instructed by Arnold Bloch Leibler, appeared for the appellant.

Mr B W Willis appeared for the Western Australian Turf Club Stewards.

This commenced as an appeal by Carey Kate Ward against the conviction and a penalty of disqualification for six months by the Stewards of the Western Australian Turf Club for breach of Rule 178 of the Australian Rules of Racing. Ms Ward was also appealing against the disqualification of SUNDANCE KID.

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.”

Following the running of Race 5, the Hahn Premium Light Anniversary Cup run over 1800m at Ascot on 16 October, 1999, a post race urine sample taken from SUNDANCE KID, which was placed first, was found to contain the prohibited substance *diclofenac*. The Stewards of the Western Australian Turf Club opened an inquiry on 23 November 1999 into the matter. The inquiry resumed on 21 January 2000 and after hearing further evidence, the Chairman of Stewards announced firstly, that it was the decision of the Stewards to disqualify SUNDANCE KID and secondly, to charge the appellant in the following terms:

"...you as the Trainer of SUNDANCE KID, brought that gelding to Ascot Racecourse on Saturday, the 16th October, 1999 for the purpose of engaging in the Hahn Premium Light Anniversary Cup and following a post race urine sample taken from SUNDANCE KID, the prohibited substance diclofenac was found to have been administered."

Ms Ward pleaded not guilty. After hearing further evidence from Ms Ward the Stewards announced a finding of guilt.

After hearing further submissions the Stewards imposed a penalty of six months disqualification.

The appellant lodged a Notice of Appeal against conviction, penalty and the disqualification of the horse on 1 February 2000 and was granted a suspension of operation of the penalty to midnight 10 March 2000.

Amended grounds of appeal were filed on 9 March 2000 withdrawing the appeal against conviction. At the hearing, counsel for the Appellant advised that the appeal against the disqualification of the horse was also withdrawn. The matter proceeded as an appeal against penalty.

The amended grounds of appeal against penalty were:

2. *A penalty of disqualification was excessive in all the circumstances having regard to:-*
 - (i) *The non-performance enhancing nature of the drug;*
 - (ii) *The level of the drug detected in the horse;*
 - (iii) *The absence of any evidence or finding as to deliberate administration or presentation;*
 - (iv) *The personal circumstances of the Appellant including:*
 - (a) *her limited financial means;*
 - (b) *the loss of the prize money for the race; and*
 - (c) *the effect of a period of disqualification.*
3. *The Stewards erred in holding that special circumstances needed to be shown before a penalty other than disqualification could be imposed.*
4. (i) *In the event that a period of disqualification was appropriate, the period of six months was excessive for the reasons set out in Ground 2 above.*
 - (ii) *The penalty imposed was outside a broad discretionary range for the type of offence in question when considered in the light of:-*
 - (a) *penalties imposed by the Stewards for similar offences in the past, and*

(b) *penalties reviewed and upheld on appeal in this Tribunal.*"

The imposition of a penalty is a matter of discretion and penalty will not be interfered with unless it can be shown that some error of fact was made, some relevant consideration was not taken into account, an irrelevant consideration was taken into account or the penalty itself may be so out of the range as to indicate error.

In relation to amended ground of appeal 2, the Tribunal is of the opinion that the Stewards did indicate that they had taken into account the matters referred to in points (i) to (iv) together with the fact that the Appellant had a previous offence under the same Rule.

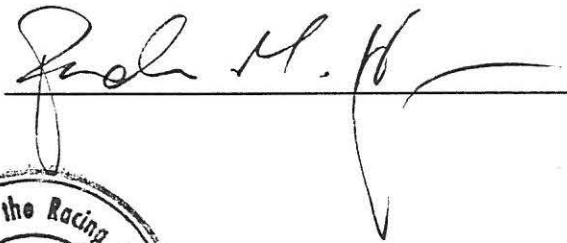
In relation to amended ground of appeal 3, the Tribunal is of the opinion that the Stewards were not in error to make reference to there being no special circumstances in this particular case that warrant the imposition of a lesser penalty such as a fine or a suspension, given that the Appellant had a previous conviction for an offence under the same Rule.

In the circumstances the Tribunal is not satisfied that a period of disqualification is not inappropriate.

In relation to amended ground of appeal 4, the Tribunal agrees that the period of six months disqualification was excessive and is of the opinion that the appropriate period of disqualification is three months having regard to the matters referred to in points (i), (ii) and (iv) of amended ground of appeal 2, which in accordance with Graham's case (Appeal 426), are factors which should be taken into account.

Accordingly, the appeal against penalty is upheld in that the penalty is reduced from six months disqualification to three months disqualification.

The suspension of operation of the penalty automatically ceases.



PAMELA HOGAN, PRESIDING MEMBER

