

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: Warren Lee RADFORD
APPLICATION NO: A30/08/685
PANEL: MR J PRIOR (PRESIDING MEMBER)
MR A MONISSE (MEMBER)
MR W CHESNUTT (MEMBER)
DATE OF HEARING: 1 MAY 2008
DATE OF DETERMINATION: 6 JUNE 2008

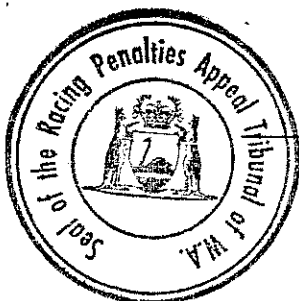
IN THE MATTER OF an appeal by Warren Lee Radford against the determination made by the Racing and Wagering Western Australian Stewards of Thoroughbred Racing on 18 April 2008 imposing 5 months disqualification for breach of rule 178 of The Australian Rules of Racing.

Mr W Radford appeared for himself.

Mr J Zucal appeared for the Racing and Wagering Stewards of Thoroughbred Racing.

This is a unanimous decision of the Tribunal.

The appeal against penalty is upheld. The penalty imposed by the Stewards be varied from five months disqualification to three months disqualification.



John Prior

JOHN PRIOR, PRESIDING MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF
MR J PRIOR (PRESIDING MEMBER)

APPELLANT: Warren Lee RADFORD

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This is an appeal by Mr Warren Radford, a licensed Thoroughbred Trainer with Racing and Wagering Western Australia ("RWWA"), against a 5 month disqualification imposed by the RWWA Stewards on 18 April 2008. Following an Inquiry by the Stewards on that date, Mr Radford was charged with a breach of ARR.178 for presenting a horse to race with a prohibited substance in it. The prohibited substance was an alkalinising agent when evidenced by total carbon dioxide in excess of 36 millimols per litre in plasma, as defined by ARR.178(1)(a). Mr Radford pleaded guilty to that charge and there has been no appeal against conviction, only against the penalty imposed by the Stewards.

The Stewards inquiry was held over 2 dates, the 14th and 18th of April 2008. An adjournment was allowed by the Stewards at the first hearing to allow Mr Radford to consider the evidence presented against him.

After hearing submissions from Mr Radford as to what he could say in mitigation of penalty on 18 April 2008, the Stewards imposed a penalty of five months disqualification for the breach of ARR.178 and they gave the following reasons for the penalty they imposed:

"The Stewards have considered the matter of penalty taking into consideration your submissions. Whenever a horse returns a positive swab the integrity and probity of racing is brought into question. Punters and indeed, the racing public, expect the races to be fairly on a level playing field. There is no place in racing for prohibited substances of any kind. The detection of a prohibited substance in racehorses has the potential to bring racing into disrepute and tarnish the image of the industry.

Further, the financial support of the betting public is the life blood of this industry and anything that has the potential to negatively impact on that support is a most serious matter. The Stewards place any breach of drug rules in this serious category. The prohibited substance in question is an elevated TC02 level. The legal limit is 36.0 millimols per litre in plasma. It is an endogenous substance and a level in excess of 36.0 millimols is deemed to be a positive swab. Elevated levels of TC02 are categorised as alkalinising agents, in simple terms, alkalinising agents neutralise the effects of lactic acid on muscles and consequently artificially delay the onset of fatigue, potentially improving the horse's performance. This places such a breach in the serious category.

The evidence has revealed that it was common practice for horses in your stables to receive Neutradex regularly through the week, further VEROSSI received 40mls of Neutradex on the day of the race. This was given to the gelding by your sixteen year old son Rhyce. He extracted the Neutradex by syringe from the container. He did this unsupervised. Whilst Rhyce Radford stated he administered 40mls of Neutradex. There is no record of this treatment and this was done unsupervised. There is no guarantee that only 40mls was administered. ARR.178E states:

'(1) Notwithstanding the provisions ARR.178C(2) no person without the permission of the Stewards may administer or cause to be administered any medication to a horse on race day prior to such horse running in a race.'

Section 2 of that – '(2) The Stewards may order the withdrawal from a race engagement any horse that has received medication in contravention of sub rule (1) of this rule.' The administration of Neutradex on race day is against the rules. Trainers are not permitted to administer any medication which by definition means any substance without the permission of the Stewards. An administration of 40mls on a race day of Neutradex in addition to 40mls administered daily through the week would account for an increase in the reading of TC02 but according to Dr Symons, not necessarily the sole reason for the elevated level.

In most cases the reason for the high reading might never be known but this highlights the onerous task the trainers have ensuring that horses are presented drug free. The unsupervised treatment by a junior person is a risky practice.

Any penalty must encompass a deterrent component both specific and general. Specifically, you have failed to comply with the rules and presented VEROSSI to race with a prohibited substance in its system. In evidence, your stable routine was seen to be lacking. Generally, a clear message needs to be sent to ensure that trainers at all times are aware their heavy responsibilities in relation to prohibited substances.

In considering a penalty it is important to consider past TC02 penalties handed down by RWWA Stewards. A list of those penalties of recent times are:

24 November 2001, Ascot, J.J. Miller, ARR.175(h)(2) - 12 months disqualification. It was dismissed on appeal.

7 November 2005, Ascot, B Owen, ARR.178 – 6 months disqualification. No appeal.

8 April 2006, Ascot, R.N. Harvey, ARR.178 – 12 months disqualification, reduced to 6 months on appeal.

You have one prior breach of the drug rules. In 1996 you were disqualified for three months for having a positive swab to the drug methandriol. The Stewards have also taken into account that VEROSSI finished third in this race. The Stewards acknowledge your guilty plea and the forthright manner in which you have addressed this matter. Your personal circumstances have been taken into consideration. The Stewards have considered the options of a fine, suspension or disqualification. The Stewards do not believe a suspension would reflect the seriousness of the charge. Also a fine is considered inappropriate when taking into account past cases. In normal cases a disqualification of six months would be appropriate. However, given your guilty plea and the reasons mentioned, Stewards are disqualifying you for a period of five months, Mr Radford."

The Stewards in imposing the penalty have set out in detail, what this Tribunal has said on a number of occasions about the serious nature of a breach of ARR.178.

In my view, there would be very few incidents where imposing a penalty for a breach of ARR.178 where a penalty other than disqualification could be imposed.

On the material before the Stewards and on considering the submissions made on the hearing of this appeal, I am not satisfied that there was any error by the Stewards in imposing a disqualification penalty on Mr Radford, in particular when one considers the substance which may have caused the elevated TCO₂ reading of the horse VEROSSI was given to it by syringe on race day in breach of ARR.178E(1).

The breach of ARR.178E(1) is an aggravating factor in this case. Exhibit A indicates that members of the racing industry are regularly reminded of this rule.

The only matter left to consider is whether the length of disqualification imposed on Mr Radford of 5 months was manifestly excessive in the circumstances, or any error has been demonstrated by the Stewards in imposing this length of disqualification.

In my view, an error has been demonstrated. The Stewards have given no weight, or proper weight, to some important mitigating circumstances in Mr Radford's case when imposing the penalty.

The only comment the Stewards made in their reasons for imposing the penalty dealing with Mr Radford's particular personal circumstances, was: "*your personal circumstances have been taken into consideration*".

At the hearing before the Stewards, it was clear to them that Mr Radford was a full time trainer. Mr Radford's personal circumstances and in particular his work history were further amplified in Mr Radford's submissions before this Tribunal.

Mr Radford advised this Tribunal that he previously had worked full time as a foreman on the wharfs and was only a part time trainer when in that employment. He was injured in the work place in March 2003 and has been unable to return to that form of work since. The injury is of such a nature he explained to this Tribunal that he cannot even drive a motor vehicle. As a result of the injury, Mr Radford indicated to this Tribunal that he took up full time training and is in the process of making a significant investment to upgrade his facilities used for training.

I am satisfied that this material relating to Mr Radford's personal circumstances was mitigating material that the Stewards were required at first instance to place considerable weight on.

Mr Radford did have a previous conviction for a similar breach of the rules, but that offence was in 1996, approximately 12 years ago, when he was working as a part time trainer.

I am not satisfied that the Stewards gave any weight, or at least proper weight to Mr Radford's personal circumstances, in their reasons for imposing the penalty they did and in particular, in relation to the 5 month length of disqualification for breach of the rule.

My view that the Stewards have fallen into error in imposing the 5 month length of disqualification has further been confirmed when I considered the 3 penalties referred to in the Stewards' reasons for imposing Mr Radford's penalty and the circumstances of those matters.

My analysis of those 3 matters referred to in the Stewards' reasons indicates to me that there were more significant aggravating factors and less mitigating factors than there were in Mr Radford's. (See John James Miller Jnr Appeal 575 and Robert Harvey Appeal 652).

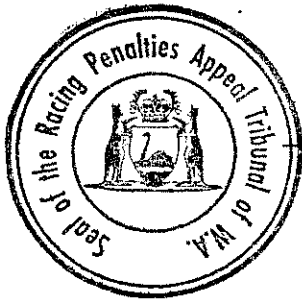
In the disqualification of B Owen which was not the subject of an appeal to this Tribunal, the Chief Steward advised that penalty was imposed after a not guilty plea was entered and the excessive TCO reading found in the horse in question was much greater than in Mr Radford's case.

The 1 month deduction from 6 months disqualification made by the Stewards gave appropriate weight to Mr Radford's plea of guilty and the fact that the elevated reading being 36.3 and 36.2 millimols per litre in plasma on each sample after allowing 1 millimole of uncertainty, was not substantially over the permitted limit of 36.0 millimols per litre in plasma.

A further discount of 2 months should have been applied by the Stewards to give proper weight to Mr Radford's personal circumstances and the effect a disqualification would have on him in his ability to maintain his livelihood.

A 3 month disqualification period, in the particular circumstances of this Appeal, adequately reflects the principals of general and specific deterrence.

For the reasons I have set out above, I therefore would allow the appeal against penalty and set aside the 5 month disqualification penalty and substitute a 3 month disqualification penalty.



John Prior

JOHN PRIOR, PRESIDING MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR A MONISSE (MEMBER)

APPELLANT: Warren Lee RADFORD

APPLICATION NO: A30/08/685

PANEL: MR J PRIOR (PRESIDING MEMBER)
MR A MONISSE (MEMBER)
MR W CHESNUTT (MEMBER)

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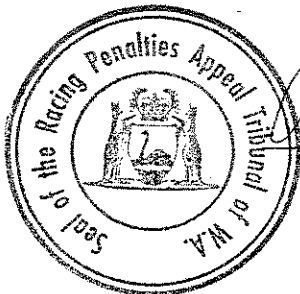
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Mr W Radford appeared for himself.

Mr J Zucal appeared for the Racing and Wagering Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr J Prior, Presiding Member.

I agree with those reasons and conclusions and have nothing further to add.



A Monisse

ANDREW MONISSE, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR W CHESNUTT (MEMBER)

APPELLANT: Warren Lee RADFORD

APPLICATION NO: A30/08/685

PANEL: MR J PRIOR (PRESIDING MEMBER)
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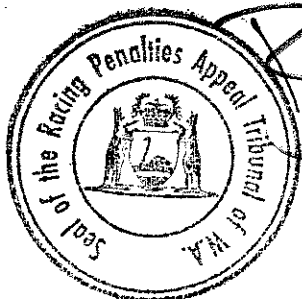
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I have read the draft reasons of Mr J Prior, Presiding Member.

I agree with those reasons and conclusions and have nothing further to add.



WILLIAM CHESNUTT, MEMBER