

DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DEAN RONALD NAZZARI

APPLICATION NO: A30/08/697

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MS K FARLEY (MEMBER)

DATE OF HEARING: 18 December 2008

DATE OF DETERMINATION: 23 January 2009

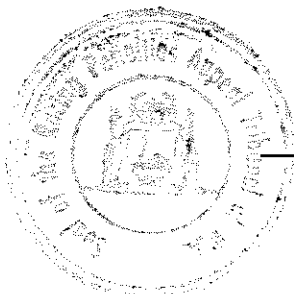
IN THE MATTER OF an appeal by Mr Dean Ronald NAZZARI against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 24 October 2008 imposing a six month disqualification for breach of Rule 178 of the Rules of Thoroughbred Racing.

Mr D R Nazzari appeared in person.

Mr B Lewis represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

This is a unanimous decision of the Tribunal.

The appeal is upheld. The penalty imposed by the Stewards is reduced from six months disqualification to four months disqualification.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

**REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)**

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DEAN RONALD NAZZARI

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Mr D R Nazzari appeared in person.

Mr B Lewis represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

BACKGROUND

Mr D R Nazzari is a licensed trainer. Mr Nazzari was called to an inquiry conducted by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 24 October 2008 in respect to a report received from the Racing Chemistry Laboratory that the pre-race blood sample taken from GLASTONBURY TOR prior to competing in Race 5 at Northam on 15 October 2008 had a level of TCO₂ in excess of 36 millimoles per litre in plasma. The total carbon dioxide content of the sample was measured at greater than 39 millimoles per litre. The expanded measurement of uncertainty at the threshold concentration of 36 millimoles per litre is 1 millimole per litre at greater than 99.99%

confidence. The control sample was despatched to the Racing Analytical Services Ltd Laboratory which recorded a measurement of 38.7 millimoles per litre.

Dr Peter Symons, the RWWA industry veterinarian, gave the usual evidence that alkalising agents are prohibited substances which have an effect on three systems in a horse. The main system is the musculo-skeletal system where they neutralise the lactic acid produced by exercise. They also have an effect on both the gastrointestinal system and the urogenital system. A level exceeding 36 in a racing animal is capable of enhancing performance.

When the Stewards advised Mr Nazzari of the irregularity of the sample the trainer was at a loss to explain the high readings. Mr Nazzari did advise that he had floated the gelding from Kalgoorlie leaving midnight, arriving at the stables at Northam at around seven. When questioned regarding the feeding regime he identified various additives given to GLASTONBURY TOR which Dr Symons subsequently informed the Stewards in the course of the inquiry would certainly contribute to but could not completely explain the 39 level. Dr Symons identified the three sources of alkalising agents namely bicarbonate powder, potassium citrate and neutraliser. Dr Symons gave evidence that he had seen plenty of horses which had been given three additives containing alkalising agents whose readings rose to near the 36 millimole threshold specified in the Rules but had never seen such a horse's level reach 39 millimoles per litre in plasma.

In the course of the inquiry reference was briefly made of Mr Nazzari having telephoned Mr B Lewis, Chief Steward, to query why he had been sampled. More importantly there was also some discussion regarding Mr Nazzari's telephone conversation with Dr Symons, but it emerged Mr Nazzari had not spoken about the three alkalising substances in question to the veterinarian. Mr Nazzari did tell the Stewards that he had understood Dr Symons to have told him he had '*... nothing to fear ...*' in terms of his feeding procedure of the horse and that he '*...was doing it right, carry on ...*' (pp 13 and 14 of the transcript).

Dr Symons also gave evidence that he is always concerned if a horse obtained alkalising agents from three different sources. Mr Nazzari explained to the Stewards why he had administered the three alkalising substances to this horse, namely due to the horse's history of colic, it was a bad windsucker and was experiencing urinary problems. The colic had been virtually cured by feeding bicarb. After experimenting Mr Nazzari had found neutraliser potassium citrate assisted with urinary problems. The feeding regime and dose rates were basically arrived at by Mr Nazzari himself. The added neutraliser was given because the horse had travelled.

The print outs of the last two pre-race samples of GLASTONBURY TOR were produced at the hearing by the Stewards. Although high, both results were below the threshold. Trainers are advised of the testing results by the Stewards only if they exceed 36 millimoles. The list of print swabs which was produced showed numerous much lower readings.

Mr Nazzari did not refute the findings of the analysts but refuted that he had done something knowingly outside the law. His integrity had not been in question before this incident.

The Stewards charged Mr Nazzari under Australian Rule of Racing 178 which reads:

'When any horse that has been bought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be punished.'

The particulars of the charge in summary were that:

'... a Licensed Thoroughbred Trainer, brought GLASTONBURY TOR to Northam Racecourse on Wednesday, 15th October 2008 for the purpose of engaging in Race 5 ... over 1600m, with a level of TCO₂ in excess of 36.0 millimoles per litre in plasma being detected in a pre-race blood sample taken from the gelding.'

Mr Nazzari pleaded guilty to the charge. When it came to addressing penalty Mr Nazzari gave evidence that he had been a trainer for approximately two and a half years and that he had never previously been before the Stewards. There was no other source of work available to him as he had been seriously injured in a car accident. Mr Nazzari was awaiting a medical clearance to return to work but the prospect of this eventuating was unlikely. The only other potential source of income was from a small accommodation facility in Kalgoorlie. On his training fees Mr Nazzari roughly broke even and managed financially due to his accident insurance policy. He was a hobby trainer. Mr Nazzari had five children who were mainly dependent on him.

The Stewards concluded on penalty in the following terms:

'Mr Nazzari, Stewards have considered the matter of penalty and taken into consideration your submissions. The detection of a prohibited substance in a racehorse has the potential to bring racing into disrepute and tarnish the image of the industry. Stewards believe any breach of the drugs rules is serious. The prohibited substance in question is an elevated level of TCO₂. The legal limit is 36.0 millimoles per litre in plasma. It is an endogenous substance and a level in excess of 36 millimoles is deemed to be a positive swab. This level is significantly high. The nature of the prohibited substance is performance enhancing and the high levels suggest a significant amount of alkalisating agents were administered. Your feeding practise has indicated an excessive amount of alkalisating agents in various forms and you did not sort (sic) any veterinary advice as to how levels can be affected. You have failed to comply with the rules and presented GLASTONBURY TOR to race with a prohibited substances in its system. Recent penalties handed down by Stewards are; on the 7th of November 2005, Trainer Ben Owen was disqualified for a period of six months, April 2006 R Harvey was disqualified for a period of twelve months, third offence reduced to twelve months on appeal and on the 18th of April 2008, reduced to six months on appeal and on the 18th of April Ascot Trainer Warren Radford was disqualified for a period of five months reduced to three months on appeal. Stewards do acknowledged (sic) your guilty plea and the forthright manner in which you have addressed this matter. They've taken into consideration your personal and financial circumstances also. The Stewards have considered the options of a fine, suspension or disqualification. Stewards do not believe that a suspension would reflect the seriousness of the charge. Also a fine is considered inappropriate when taking into account past cases. Given past cases Stewards believe that a disqualification to be appropriate. Given your guilty plea and the reasons mentioned Stewards are disqualifying you for a period of six months.'

The appeal notice contains the following grounds of appeal:

'1st offence. Pled guilty and fully co-operated with The Enquiry. Unintentionally committed the offence after querying Stewards & RWWA Vet Peter Symmonds (sic). The Horse wasn't supported financially for my personal gain. Other persons have had penalties reduced by 50%.'

THE APPEAL

At the hearing of the appeal Mr Nazzari argued his own cause, and, amongst other things claimed:

- 1 He was harshly penalised.
- 2 The horse was a chronic sufferer for which he administered treatments.
- 3 He had rang both Mr Lewis and Dr Symons regarding his feeding.
- 4 Factors such as stress, seasonal change and a combination of alkalising agents can affect TCO2 levels.
- 5 Higher readings were caused due to the fact the horse had travelled from Kalgoorlie to Northam.
- 6 The Stewards failed to make appropriate allowance for the mitigating circumstances.

As to the first proposition, I consider on the evidence before them, the Stewards were justified in imposing the penalty which they did. To help clarify previous penalties imposed the Stewards produced two most helpful tables at the appeal. One table is headed 'Racing and Wagering WA Primary Inquiry Register'. This table sets out all presentation offences since RWWA was established. A copy is attached to my reasons marked 'A'. The other table which is attached marked 'B' is simply headed 'TCO2.' I understand attachment 'B' was compiled by the Stewards from the National Drug Register NSW being an extract of all TCO2 drug offences in Western Australia since October 1993, both for administration and presentation offences. On the basis of the relevant information in these tables and the evidence presented at the Stewards inquiry I believe the penalty imposed was justified.

As to the second submission, in answer to a question from me on this aspect, Nr Nazzari admitted he failed to obtain professional advice regarding this horse, its indisposition and the substances he was administering. In view of that answer the second proposition put forward by the appellant is not a valid or helpful argument.

As to the third argument, the Stewards were entitled, on the evidence before them, to conclude any conversations with or queries put by Mr Nazzari to the two officials were at best oblique and insufficiently direct for any feedback which he may or may not have received to have any impact or consequence on penalty.

As to the next two points, I consider there is no merit in these arguments. This type of approach has been raised many times before in TCO2 cases and has always failed to justify very high readings. There was no cogent evidence presented by Mr Nazzari to the Stewards or the Tribunal to support a proposition that a combination of stress, seasonal change and several alkalising agents could cause the levels in question to be reached.

I find nothing wrong with the way the Stewards made allowances for mitigation as spelt out in their reasons. I believe the Stewards did not inappropriately treat the mitigating factors, including the fact this was Mr Nazzari's first offence, his admission of guilt, the co-operation he displayed and the lack of both support and financial gain.

Had these been the only matters raised in the appeal I would have endorsed the decision of the Stewards and dismissed the appeal as I was satisfied the penalty imposed was appropriate based on the evidence before the Stewards. I reiterate the outcome could not be said to be harsh because of the very high reading in the light of all the circumstances of this case and the penalties previously imposed for this type of offence. This conclusion was fortified by the information contained in the two tables attached. The Stewards elected to deal with the matter as the lesser offence of presenting not administering. Interestingly, in the appeal grounds Mr Nazzari virtually acknowledged administration. Had he been charged with an administration offence under Rule 175(h) then he would have been exposed to a larger period of disqualification as table 'B' reflects.

These observations do not, however, dispose of the matter. In the course of the appeal hearing Mr Nazzari produced a report from Jeff Devine, a registered psychologist with Goldfields Psychology Practice. The report revealed that Mr Nazzari had been a patient of for some two years subsequent to his motor vehicle accident. Mr Nazzari suffers from depression, anxiety and post traumatic stress disorder as a direct result of the accident. The report states Mr Nazzari's only interest was training race horses. Mr Devine was concerned for his patient upon learning of the disqualification because:

'... one the consequences, particularly of Post Traumatic Stress Disorder, is that the patient becomes increasingly socially isolated and of course one of the consequences of this disorder as well, and depression, is that the client loses motivation and self-esteem. Essentially in Mr Nazzari's life at the moment his only avenue for gaining in terms of the above-mentioned attributes is through his horseracing and consequently I believe that should the decision be to uphold Mr Nazzari's disqualification for six months I believe that it will certainly have a negative impact upon his psychological wellbeing. I believe that it will also lessen his ability to recover and therefore I believe affect his prognosis.

Given the above I would urge that the Tribunal reconsider the situation and possibly impose a lighter disqualification on Mr Nazzari. I also believe that the situation that occurred could well be to some degree attributed to Mr Nazzari's depression and anxiety as it appears to me that he has overlooked a situation. This is quite common in these conditions.'

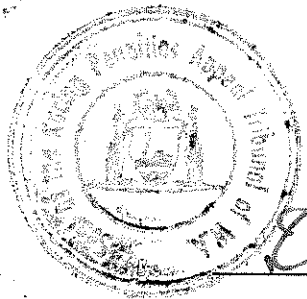
Mr Lewis did not object to the Tribunal receiving the report. Further, Mr Lewis readily, and quite appropriately, acknowledged that the report contained information that had not been presented before the Stewards.

It is also relevant to acknowledge there is a possibility that Mr Nazzari's condition may have influenced how he approached and inquired of Mr Lewis and Dr Symons and, in particular how he interpreted and reacted to the information and response which he had received from Dr Symons.

Had the Stewards had the benefit of the information contained in the report they would have been duty bound to give Mr Nazzari a further substantial concession in the sentencing process. A more moderate than the usual approach would have been in order. If the

report had been produced at the Stewards' inquiry, without it being in any way challenged or refuted, the Stewards would have had to arrive at a different conclusion as to the length of the disqualification than what they did. As already emphasised, without the report I was satisfied that the six months disqualification which had been imposed was appropriate in all the circumstances. The Stewards in my opinion correctly arrived at their decision after making due allowances for all of the mitigating factors they were aware of.

Because of the new and compelling evidence which came to light at the appeal hearing I do consider the appeal has merit for the medical reasons but no other. Accordingly, I would reduce the disqualification from six months to four months. This conclusion has only been arrived at because of the significant new evidence which came to light in the appeal and was not before the Stewards. My reasons for determination should not be interpreted to mean that I was persuaded that, on the basis of the evidence before them which the Stewards were required to rely on to reach their conclusion, the Stewards in any way erred. To conclude that the Stewards were in error in imposing a six month disqualification would in my assessment send the wrong message to the industry. Six months was warranted in view of the seriousness and consequences of a very high reading of TCO2 in circumstances where the trainer was clearly cavalier and negligent in his treatment regime and at fault in administering on race day.



Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

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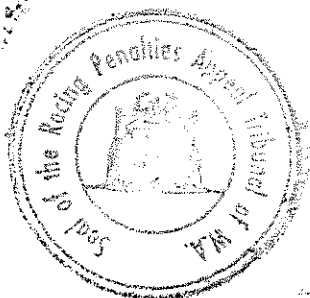
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Mr B Lewis represented Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr D Mossenson, Chairperson.

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



John Prior

JOHN PRIOR, MEMBER

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MS K FARLEY (MEMBER)

APPELLANT: DEAN RONALD NAZZARI

APPLICATION NO: A30/08/697

PANEL: MR D MOSSENSON (CHAIRPERSON)
JOHN PRIOR (MEMBER)
KAREN FARLEY (MEMBER)

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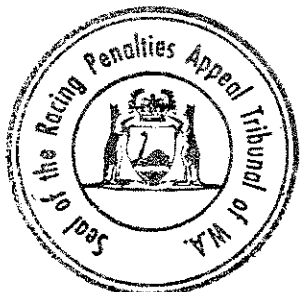
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Karen Farley

KAREN FARLEY, MEMBER