

**DETERMINATION OF THE
RACING PENALTIES APPEAL TRIBUNAL**

APPELLANT: ANTHONY JOHN YUJNOVICH

APPLICATION NO: A30/08/784

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MS K FARLEY SC (MEMBER)

DATE OF HEARING: 19 JANUARY 2016

DATE OF DETERMINATION: 24 FEBRUARY 2016

IN THE MATTER OF an appeal by Mr Anthony John YUJNOVICH against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 3 December 2015 imposing a disqualification of six months for breach of Rule 178 of the Rules of Thoroughbred Racing.

Mr Craig Yujnovich appeared for the Appellant.

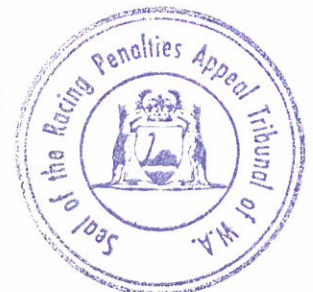
Mr Denis Borovica appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

By a unanimous decision of the members of the Tribunal the appeal against penalty under Rule 178 is upheld.

The penalty of six months disqualification imposed on the appellant is varied to a penalty of three months disqualification.



DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR D MOSSENSON
(CHAIRPERSON)

APPELLANT: ANTHONY JOHN YUJNOVICH

APPLICATION NO: A30/08/784

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MS K FARLEY SC (MEMBER)

DATE OF HEARING: 19 JANUARY 2016

DATE OF DETERMINATION: 24 FEBRUARY 2016

IN THE MATTER OF an appeal by Mr Anthony John YUJNOVICH against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 3 December 2015 imposing a disqualification of six months for breach of Rule 178 of the Rules of Thoroughbred Racing.

Mr Craig Yujnovich appeared for the Appellant.

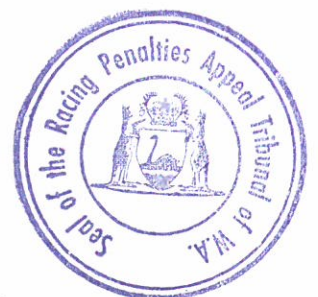
Mr Denis Borovica appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr P Hogan, Member.

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



DAN MOSSENSON, CHAIRPERSON



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MS KAREN FARLEY SC
(MEMBER)

APPELLANT: ANTHONY JOHN YUJNOVICH

APPLICATION NO: A30/08/784

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MS K FARLEY SC (MEMBER)

DATE OF HEARING: 19 JANUARY 2016

DATE OF DETERMINATION: 24 FEBRUARY 2016

IN THE MATTER OF an appeal by Mr Anthony John YUJNOVICH against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 3 December 2015 imposing a disqualification of six months for breach of Rule 178 of the Rules of Thoroughbred Racing.

Mr Craig Yujnovich appeared for the Appellant.

Mr Denis Borovica appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr P Hogan, Member.

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

Karen Farley

KAREN FARLEY SC, MEMBER



THE RACING PENALTIES APPEAL TRIBUNAL
REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT: ANTHONY JOHN YUJNOVICH

APPLICATION NO: A30/08/784

PANEL: MR D MOSSENSON (CHAIRPERSON)
MR P HOGAN (MEMBER)
MS K FARLEY SC (MEMBER)

DATE OF HEARING: 19 JANUARY 2016

DATE OF DETERMINATION: 24 FEBRUARY 2016

IN THE MATTER OF an appeal by Mr Anthony John YUJNOVICH against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 3 December 2015 imposing a disqualification of six months for breach of Rule 178 of the Rules of Thoroughbred Racing.

Mr Craig Yujnovich appeared for the Appellant.

Mr Denis Borovica appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

INTRODUCTION

This is an appeal against penalty.

On 3 December 2015, the Racing and Wagering Western Australia Stewards of Thoroughbred Racing disqualified the Appellant for six months for a breach of Rule 178 (AR 178) of the Rules of Thoroughbred Racing

Rule 178 is in the following terms:

"AR.178. Subject to AR.178G when any horse that has been brought 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 penalised."

BACKGROUND FACTS

The Appellant was the trainer of MR OLYMPIA, which ran in the Avon Waste Maiden over 1290m at York on Friday, 20 November 2015. A pre-race blood sample was taken. The sample was later analysed at the Racing Chemistry Laboratory (Chemcentre WA), and was reported to contain total carbon dioxide (TCO₂) at a level greater than 39.0 millimoles per litre (mmol/L) with a measurement of uncertainty of 1.0 mmol/L. Confirmatory analysis was then undertaken by Racing Analytical Services in Victoria where the level detected was 38.7 mmol/L, again with a measurement of uncertainty of 1.0 mmol/L.

The Stewards held an inquiry on 2 December 2015. The Appellant was charged with the offence against AR 178, and two other offences not the subject of an appeal. The particulars of the AR 178 offence were set out at T50. The Chairman said:

"Now the particulars of the charge are: That you Mr Yujnovich, as the trainer of MR OLYMPIA, brought that gelding to York Racecourse on Friday, 20 November 2015, for the purposes of engaging in race 1 the Avon Waste Maiden, with the prohibited substance TCO₂ in excess of 36.0 millimoles per litre in plasma being detected in a pre-race blood sample taken from it."

The Appellant pleaded guilty to each of the three offences. He was disqualified for six months

for the offence against AR178, and he was fined on the other two offences. The Stewards communicated their decision by letter to the Appellant dated 3 December 2015. They provided written reasons for their decision.

THE RULES.

Rules 178B(2) and 178C(1)(a) operate so that a TCO₂ level above 36.0 mmol/L is a prohibited substance. In this case, both laboratories reported the level to be greater than 36.0.

THE APPELLANT'S EVIDENCE

Mr Yujnovich attended the inquiry and answered the Stewards' questions. He had no explanation for the elevated TCO₂ level. The Stewards did not make any findings against him on credibility.

At T26 there was the following exchange:

"CRIDDLE So there's nothing you can add, there's nothing..."

YUJNOVICH Not really I'm, no I can't, you know this has got me puzzled because I've been doing nothing different for the last 15 years so I, and of course I've just, I've trained a lot of horses for 49 years and I've never had, had a problem ever...

CRIDDLE Yes.

YUJNOVICH ...you know it's interesting that's all I can say."

And further at T41:

"CHAIRMAN So have you got any other...?"

YUJNOVICH Not really.

CHAIRMAN thing that might help explain why the...

YUJNOVICH No I haven't.

CHAIRMAN *horse has got to that level?*

YUJNOVICH *The way I see it, I'll cop it sweet, whatever the establishment says I'll go with it, I'll say "okay I put my hands up and surrender" that's it, I have no other questions or anything else. I realise these people are experts."*

As to his personal circumstances, Mr Yunjovich explained that he is retired from the workforce. He had five horses in training. He has been licensed for 48 years, with no previous relevant convictions. He explained at the hearing of this appeal that he lives at the premises from which he trains, which he described as a hobby farm. He is now 68 years of age.

THE STEWARDS' REASONS

The Stewards' reasons in respect of the offence against AR 178 were as follows:

"The Stewards have carefully considered all submissions and relevant matters with respect to penalty for all three charges that you have pleaded guilty to, We are aware of your personal circumstances in that you are a person that has had a long involvement in Thoroughbred Racing and have not had any major breaches of the rules. You are certainly a first time offender in regards to all three breaches of the rules that we need to consider.

We note that you are now retired and that you do rely on income from Racing and that you have cooperated and behaved professionally and respectfully during the course of these matters including the visit to your premises by Mr Criddle, We also note your acceptance of the evidence of the experts who gave evidence at this inquiry and your immediate acknowledgement of all the offences in that you pleaded guilty to all charges.

In considering penalty we have taken into consideration the question of the totality of penalties.

With regard to offence under AR178

We have heard that the elevated level of greater than 39.0 is considered be a high level especially when you consider that the Laboratory's highest calibrator is 39.0. Given Dr Medd's evidence that the normal level is 30.77, a level of greater than 39 is a concern, The probabilities of a horse reaching such a level on its own are indicative that an administration of alkalinising agents must have occurred. You have described that MR OLYMPIA had been given 50 grams of Bi-Carb and 50mls of Neutraliser daily in its evening feed and that you had not used any Bi Carb on the evening before the 20 November 2015 and had only added the 50mls of Neutraliser at this time. Dr Medd's evidence was to the effect that it is unlikely that the alkalinising agent administrations, you described, explained the presence of TCO₂ over the limit especially at such a high level we are therefore left with no cogent explanation for the appearance of this prohibited substance.

AR178 can be summarised as being a presentation offence as distinct from an offence of administration. It is not uncommon in such cases for there to be a lack of cogent evidence that explains the detection of a prohibited substance. It would be an almost impossible task if Stewards were required to determine as fact matters of administration in order to discharge our important role in the matters.

Dr Medd has given detailed evidence as to the effects of TCO₂ and the reasons why it has the potential to be performance enhancing. The neutralisation of lactic acid in a racehorse is easily understood as being potentially performance enhancing. Clearly on the day in question that did not translate to a prominent finishing position, as the horse finished last, however many factors determine a horses finishing position and therefore little value can be attributed to this aspect. In our view it is the nature of the substances and its potential performance enhancing effect that is critical in determining a suitable penalty. Any detection of a prohibited substance in a horse that has competed in an

event is a concern to the Stewards and is a serious matter.

Rule AR178 operates by way of strict liability for very good reason. These can be readily understood from the principals (sic) referred to in past cases such as the decision of Nicholson reported in the 1994 Racing Appeal Reports where it was stated at (945)

"There is nothing more likely to bring down the integrity of the racing industry generally than the fact that horses perform at meetings when they have been administered, whether innocently or for some ulterior motive, a prohibited substance. It is our obligation to deter that practice, and in this respect our remarks are not only addressed to the harness racing industry, but to all racing codes within the industry. It is well known that the circumstances, which surround the administration of a prohibited substance, are not and cannot easily be determined accurately even by intensive inquiry. The present rules are so drawn as to take account of that fact. There is an increased public media and political expectation that the use of drugs in sport be responded to by code authorities in an uncompromising, determined and credible manner. Those who fail to meet these expectations face loss of public support and confidence, risk flight of sponsors and financial backers and erosion of participation. In racing's case it is not just loss of public betting support which is at risk but the integrity of its breeding products and the livelihoods of those employed in the industry, quite apart from the need to protect those who follow the rules and suffer as a consequence from the actions those who do not"

Despite these comments being made in 1994, they remain true and valid and if anything are even more appropriate today.

In an industry reliant on the income generated on the outcome of wagering for its wellbeing there is very little likely to detract more negatively from that than when a

horse is found to have competed in and won a race not free of a prohibited substance. The confidence of those wagering on the outcome of races is inextricably linked to the industry maintaining a level playing field and that all runners are competing on equal terms. The detection of prohibited substances in runners has the real potential to erode public confidence in racing which then follows that they will be less likely to place such wagers.

A clear message must be maintained and portrayed to those within and outside of the industry that we do not accept horses being presented to compete in races not free of prohibited substances. In that respect matters of both general and specific deterrence apply.

We note that there appears to be no significant betting activity on the race in question.

A number of penalties were read out to you in regards to what were in the main first time offenders in relation to TCO2 matters. These penalties ranged from 6 - 8 months disqualification.

It would be difficult to imagine any circumstance where a positive swab to TCO2 would not lead to the imposition of disqualification as there have never been one since RWWA assumed control as the Controlling Body. In considering penalty the Stewards have factored in your early plea of guilt mindful that rule AR178 is one of strict liability.

It has regularly been acknowledged by the Stewards and indeed the Racing Penalty Appeals Tribunal that, unless exceptional circumstances prevail that disqualification is likely to be the most appropriate penalty in cases where the substance involved is classified as potentially performance enhancing. We can see no exceptional circumstances in this case that would support a penalty other than disqualification.

In all of the circumstances we believe that the appropriate penalty is that you be

disqualified for a period of six months applicable forthwith."

THE GROUNDS OF APPEAL

The grounds are set out in the Appellant's notice dated 10 December 2105:

- "1. First offence in approximately 48 years as a Trainer.*
- 2. Have never appeared before Stewards previously in relation to any breach of the rules whatsoever.*
- 3. Penalty based on a TCO2 reading of greater than 39.0 but the Victorian Laboratory reported that the reading was only 38.7.*
- 4. The horse in question has never been tested on any previous occasion during its racing career and therefore a normal level of TCO2 for this particular animal has not been established.*
- 5. TCO2 is described as potentially performance enhancing but the penalty handed down was equal to or greater than penalties handed down to other Trainers for substances that are definitely performance enhancing.*
- 6. There are several precedents where RPAT has ruled that a 6 month disqualification for high TCO2 was excessive and they have been reduced.*
- 7. Sufficient weight was not given to my personal circumstances and I wish to present further evidence in relation to this issue."*

CONSIDERATION OF THE APPEAL

Grounds 3, 4, and 5 are without merit. The confirmatory result being different from the Chemcentre result simply reflects the fact that a different blood tube was analysed at each laboratory. It was the same sample. The performance enhancing capabilities were explained in evidence from Dr Medd.

Ground 6 is also without merit. The Stewards produced a table at the hearing of the appeal. It is headed "Table of TCO2 Offences". The table sets out all presentation offences since RWWA was established. A consideration of the range of penalties imposed shows anything between

three months and five years disqualification. The most common penalty imposed has been six months. The penalty imposed on Mr Yujnovich was therefore within the range of penalties commonly imposed.

Grounds 1, 2 and 7 can be considered together.

There is no factual dispute in this case. In simple terms, the level was over 36.0 and the Appellant is a first offender. More specifically, the level was high, being in excess of 39.0. Mr Yujnovich has been licensed for 48 years with no previous relevant convictions. Mr Yujnovich's record, provided by the Stewards at the Tribunal's request, discloses fines in 1994 and 2008 for minor regulatory infractions.

Had these matters been the only basis on which the penalty was imposed, I would have dismissed the appeal on the basis that the Stewards made no error of fact or principle, and the penalty imposed was within the range. However, during the course of the appeal, Mr Yujnovich produced a report from Dr Manners, a Consultant Psychiatrist. The report reveals that Mr Yujnovich suffers from Generalised Anxiety Disorder, and a Major Depressive Disorder. Both disorders are in partial remission. Mr Yujnovich explained that this information was not made known to the Stewards at the inquiry because he was not expecting the result which ultimately came about.

In my view, the explanation is a reasonable one bearing in mind that the proceedings before the Stewards are not legal in nature and Mr Yujnovich might not be expected to appreciate the relevance of the information. The medical information should now be treated as fresh evidence and taken into account in this appeal.

In a short written submission after the appeal had been adjourned, the Stewards make the point that the Appellant may have suffered no more than the consequences that any person will suffer as a result of a disqualification. However, in my view, the effect of a disqualification on Mr Yujnovich is greater than that on a person without his medical condition. It is a matter personal to him which should be taken into account in fixing the penalty. It was a fact not known to the

Stewards at the time of imposition of the penalty

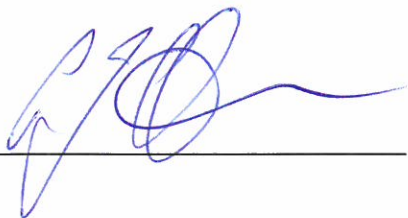
The medical report from Dr Manners includes the following opinion:

“If Mr Yujnovich is barred from training for 6 months it is likely to have an adverse impact on his self-esteem and could result in a breakout in his anxiety and depressive symptoms despite being on medication.”

CONCLUSION

In my view, a different penalty should be imposed, on the basis that there is now available information personal to the Appellant which was not available to the Stewards. The new material leads to the conclusion that a lesser penalty should be imposed, on the basis that the period of disqualification will have a significantly greater impact on Mr Yujnovich than on other people convicted of the same offence. The penalty should be at the lowest end of the range. The fact that Mr Yujnovich is a first offender after 48 years in the industry is also a significant factor.

I would allow the appeal. I would set aside the penalty of six months disqualification, and substitute for it a penalty of three months disqualification.



PATRICK HOGAN, MEMBER

