

RACING APPEALS TRIBUNAL

RAT 3/07

DATE: THURSDAY, 21 JUNE 2007

TRIBUNAL: **DEPUTY PRESIDENT:** MR G LE POIDEVIN
ASSESSOR: MR G PRETTY
MR G LOCH, CHAIRMAN OF STEWARDS,
THOROUGHBRED RACING SA LTD
MR S WARD REPRESENTING TRSA STEWARDS
APPELLANT: MR M J WHITTLE
MR G THOMAS REPRESENTING APPELLANT

IN THE MATTER of an Appeal by **MICHAEL JOHN WHITTLE** against a decision of Thoroughbred Racing SA Ltd Stewards.

BREACH OF RULE: ARR 178

Rule 178:

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 punished.

PENALTY: FINE OF \$7,000

DETERMINATION

This is an appeal from a licensed trainer, MR MICK WHITTLE, against a conviction of presenting a horse "ALSO" to Morphettville last year with a prohibited substance, namely hydrocortisone at a level in excess of 1 mg per litre.

I do not propose to traverse all the history of the matter, suffice to say at the outset this was an appeal against conviction, and following an adjournment,

and obtaining a veterinary report from Dr Marmion, the appeal has changed to an appeal on penalty only.

The Stewards conducted an exhaustive investigation into this matter, and in the result convicted the Appellant, and fined him the sum of \$7,000. Against this he appeals.

I have heard lengthy submissions from Counsel for the Appellant, Mr Thomas, and Mr Ward for the Stewards.

It is common ground the Appellant was undergoing medical treatment in Sydney when the offence took place. Nonetheless he is the licensed person, and his obligations are not abrogated by the fact that his son had the care of the horse in his absence.

This is a difficult matter because of the Appellant's personal circumstances. He underwent a heart transplant last year, and he incurred significant expense, and he has on-going financial difficulties. On the other hand there is no explanation as to the cause of the horse presenting at the races with the elevated levels of a prohibited substance. Therefore any leniency sought by reason of his medical condition, and its consequences, is compromised by his failure to offer any explanation.

Taking those factors into consideration, and not without some hesitation, I alter the fine from \$7,000 to \$6,000. In doing so I am mindful there are other penalties of \$6,000 throughout Australia for this offence. The range of penalties is between \$5,000 and \$10,000. I think the figure the Stewards chose was not unreasonable, but of course I approach the matter afresh, and I consider a fine of \$6,000 strikes the appropriate balance.

Finally, I have given consideration to suspending some portion of the fine. I am not disposed to because of the absence of any explanation as to why the horse "ALSO" presented to the races with an elevated level of hydrocortisone. I think suspended sentences, broadly speaking, can be applied where there are exceptional circumstances pertaining to the horse's presentation to the races with a prohibited substance (or elevated levels). There has got to be special circumstances, and absent an explanation, I consider it is inappropriate to suspend any part of the fine.

I turn to the application for a contribution to costs brought by the Stewards: This matter was originally heard before me some months ago, and adjourned. It was submitted an application for adjournment could have been made earlier, and in the result costs would not have been thrown away. An application has been made for \$500 costs for an unnecessary adjournment.

The Constitution does provide for the Tribunal to order costs under Clause 16, which broadly says "each party bears their own costs, except where the Tribunal considers it would be unjust".

I am not inclined to make any order as to costs in this matter because first, the adjournment to obtain a medical report resulted in a change from not guilty to guilty. In turn this has saved the Tribunal hearing time, and the parties' legal

costs. Second, the Appellant's financial circumstances are compromised by his health condition, and a further financial imposition may place undue hardship upon him.

There will be the usual refund of the bond.

Appeals info/RAT/3_Whittle_Determination