

# RACING APPEALS TRIBUNAL

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RAT 9/05

DATE: WEDNESDAY, 14 JUNE 2006

TRIBUNAL: PRESIDENT: MR G LE POIDEVIN

ASSESSOR: MR J HODGINS

THOROUGHBRED RACING SA LTD:  
MR G LOCH, CHAIRMAN OF STEWARDS

MR S WARD FOR THOROUGHBRED RACING SA LTD

APPELLANT: MR R DANIEL

MISS F NELSON QC FOR APPELLANT

**IN THE MATTER** of an Appeal by **RONALD DANIEL** 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 \$3,000 AND SUSPENSION OF LICENCE FOR 4 MONTHS

## DETERMINATION

This is an appeal of Mr Ronald Daniel, licensed trainer, who has been suspended under Australian Rule of Racing 178 for bringing a horse to Port Augusta races with a prohibited drug present, namely Flunixin.

He was found guilty and the appeal relates solely to the question of penalty. The penalty imposed by the Stewards was a suspension for a period of four

months and a fine of \$3,000. The matter turned on the harshness or otherwise of this penalty.

The Tribunal published *ex tempore* reasons at the end of the hearing. It suspended Mr Daniel's four month suspension of his licence to train for a period of two years on the condition he did not re-offend the 'prohibited substance' Rules in this period. Subsequently the parties informed the Tribunal the maximum period it may suspend a suspension is a period not exceeding twelve months, (see Local Rule of Racing 5.13).

It was submitted by Mr Ward on behalf of the Stewards that the Tribunal's decision on penalty is against power, and that a differently constituted Tribunal should rehear the Appeal afresh. Counsel further submitted the Tribunal does not have the power to recall an Order by way of the slip rule or under the terms of the Tribunal's Constitution.

Ms Nelson submitted the Tribunal has the power to vary or amend the order, i.e. to suspend the penalty for a period of twelve months. She also submitted the Tribunal does not have the power to retry the matter or to revisit the type of penalty imposed because it is, in that respect, *functus officio*.

Mr Ward referred me to the joint judgments of Justices Gaudron and Gummow in the High Court decision of *Minister for Immigration and Multicultural Affairs v Bhardwaj* 2002 HCA 11. They said:

"There is, in our view, no reason in principle why the general law should treat administrative decisions involving jurisdictional error as binding or having legal effect unless and until it is set aside. A decision that involves jurisdictional error is a decision that lacks legal foundation and is properly regarded, in law, as no decision at all. Further, there is a certain illogicality in the notion that, although a decision involves jurisdictional error, the law requires that, until the decision is set aside, the rights of the individual to whom the decision relates are or, perhaps, are deemed to be other than as recognised by the law that will be applied if and when the decision is challenged. A fortiori in a case in which the decision in question exceeds constitutional power or infringes a constitutional prohibition

and later,

As already pointed out, a decision involving jurisdictional error has no legal foundation and has properly been regarded, in law, as no decision at all. Once that is accepted, it follows that, if the duty of the decision maker is to make a decision with respect to a person's rights but, because of jurisdictional error, he or she proceeds to make what is, in law, no decision at all, then, in law, the duty to make a decision remains unperformed. Thus not only is there no legal impediment under the general law to a decision maker making such a decision but, as a matter of strict legal principle, he or she is required to do so."

Mr Ward also submitted the fact the Tribunal is a domestic one rather than statutory based was of no moment.

The threshold issue is whether the Tribunal has made a decision within its power. I conclude it has not, because the error as to penalty is a jurisdictional error rendering the Tribunal's decision null and void. I embrace Mr Ward's submissions. I conclude the concept of functus officio only arises where there has been a decision that is made within the power of the Tribunal. Finally, I observe it is an unusual situation which requires the Tribunal to adjudicate upon itself. I conclude it is not irregular, because it is the product of the Tribunal's nature and construction, and the absence of a further appellate process.

In the result the Appeal will have to be reheard.