

RACING APPEALS TRIBUNAL

RAT 9/05

DATE: THURSDAY, 10 AUGUST
2006

TRIBUNAL: PRESIDENT: MR C LEE

ASSESSOR: MR J JOHNSON

THOROUGHBRED RACING SA LTD:
MR GRAHAM 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 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

As I said at the outset, I have taken the opportunity of reading the earlier decisions and the submissions made by counsel in the exchange of correspondence, and I confess to having come to the hearing this morning with a tentative view about what the outcome should be.

This is a re-hearing, but as I also said at the outset I cannot ignore what has gone on in the past in this matter. Nothing that I have heard from either side leads me to take any different view from the tentative view that I have already formed. So that explains why I will be reading from notes in delivering my decision.

I will need to spend some time in recounting the history because as I have implied the history does have a significant impact upon my ultimate decision.

On 17 July 2005 SILENT SANDS ran in the Port Augusta Cup. Mr Daniel was the licensed trainer of the horse. A post race urine sample was taken. On analysis the drug Flunixin was detected as an anti-inflammatory agent. Flunixin is a prohibited substance under Rule 178B of the Australian Rules of Racing. So in taking SILENT SANDS to a racecourse for the purpose of engaging in a race on that day, Mr Daniel was in breach of Rule 178.

On 26 September 2005 the Stewards suspended Mr Daniel's licence for 4 months and fined him the sum of \$3,000. Mr Daniel appealed.

On 9 December 2005, at the conclusion of the hearing of the appeal, the Tribunal confirmed the period of suspension and the fine but then suspended service of the period of suspension until 17 July 2007 on condition that Mr Daniel be not convicted of charges of offences arising out of Rules 177 and 178. In the result the length of the suspension of the period of suspension was a period of approximately 19 months.

On 6 January 2006 Mr Ward, who had represented the Stewards at the appeal, wrote to the Registrar of the Tribunal. Mr Ward drew attention to Local Rule of Racing 5.13 which provides that suspension of a period of suspension must not exceed 12 months. Mr Ward submitted in his letter that the Tribunal should reconsider the matter of penalty rather than merely reduce the suspension to the 12 months allowed by the Rule. Mr Ward submitted that, having not only subjected the horse to a sustained course of Flunixin between January 2005 and approximately 4 days before the race, Mr Daniel had been recklessly indifferent to the consequences, notwithstanding that his motive was to treat a medical condition, namely colic, rather than to make the horse go faster. I should mention that compounding the problem was evidence that the horse had a habit of eating its own manure. In his letter Mr Ward pointed to certain aggravating circumstances, namely Mr Daniel's two previous disqualifications in relation to prohibited drugs and to his failure to keep records of his administration of Flunixin to the horse.

On 6 February 2006 Miss Nelson, QC, who had represented Mr Daniel at the hearing, wrote to Mr Ward. Miss Nelson asserted that the Tribunal had no power to revisit penalty, other than to reduce the suspension of the period of suspension to no more than 12 months in conformity with the Rules.

On 9 March 2006 the Registrar wrote to Mr Ward and Miss Nelson and asked them to make written submissions to the Tribunal on its powers to correct the order or to rehear the appeal afresh.

On 14 June 2006 the Tribunal, having received the written submissions of counsel, concluded that it had committed a jurisdictional error rendering its order null and void and therefore incapable of correction. The Tribunal directed that the appeal be reheard. To this point the Presiding Member of the Tribunal had been Mr Le Poidevin. The hearing before me today arises as a consequence of Mr Le Poidevin's direction.

So much for the history. I proceed now to consider how the matter should be concluded in a way that, consistently with my powers under the Constitution, does justice to the parties and observes the rules of procedural fairness.

As for the Stewards I find myself in general agreement with the observations that they made when imposing the original penalty. I quote two passages from the transcript of what the Stewards said at that time.

The first passage is this:

"The determination of Principal Racing Authorities to provide racing that is free of prohibited substances remains pivotal to the integrity of our Industry and our racing product and cannot be doubted by anybody within that Industry. All individuals who invest in and work within the Industry should have an interest in securing such a result. Trainers in particular carry the prime responsibility because they first of all, though not exclusively, care for the horses in their charge and bring them to the racetrack. In order to fulfil the responsibility, that expectation is that the trainers act professionally whether they be full time, part time or hobby trainers. They have to be aware of the consequences and the risks associated with the introduction of any substance into the alimentary systems of a horse in their care. That is to say the trainer must, in our view, inform himself of what has been administered to the horse, what effect it will have and if there are any likely other effects, what is the proper withdrawal period".

The second passage is this:

"We are obliged to frame a penalty that recognises this is an offence against the Rules of Racing. We are obliged to frame a penalty which is of relevance across this authority's jurisdiction and which also has a relevance across all jurisdictions in Australia. We are also obliged to frame a penalty which offers a general deterrence to others and notification that the Industry is keen to preserve its image and its integrity and at the same time as framing a penalty that is relevant to your own circumstances and the circumstances which you put to us today and yet is not so crushing that it doesn't provide for rehabilitation".

As I have said I agree with these observations. For myself, I would emphasize that the Rules relating to the administration of prohibited drugs should be upheld and enforced by the authorities in a way which acts as a deterrent and in a way which enhances confidence in the Industry, both in the minds of the general public and in the minds of those who work and participate within the Industry. I would also make the point that, generally speaking, it should not much matter whether the drug is performance enhancing or whether it gives the horse by the relief of pain an unfair advantage over other horses in the race.

I have said that the outcome should do justice to both sides and observe the rules of procedural fairness.

As for Mr Daniel, for more than ten months he has already been the recipient of a ruling of the Tribunal that he should be free to train unless he commits a further offence. The fine and the period of suspension and the decision to suspend that period were the important components of the penalty that the Tribunal imposed at that time. The length of the suspension of the period of suspension, in my view, was not so important. Indeed, my speculation is that had the Tribunal been alerted to the words "*not exceeding 12 months*" in Local Rule 5.13, it would have imposed the same penalty and limited the suspension of the period of suspension to 12 months. As I have said the length of the suspension of the period of suspension is not so important. If Mr Daniel commits a further drug related offence, whether within 12 or 19 months, or at any other time, he can expect to receive, it would seem to me, especially given his record, a penalty which is both immediate and significant.

This is an unusual case and as far as I know without precedent. In the end, whilst supporting and reinforcing the observations that the Stewards initially made, I have decided to allow Mr Daniel to retain the benefit, with which he has lived for more than ten months without any further offending, of a suspension of the period of suspension.

The order of the Tribunal is that the \$3,000 fine and the 4 months period of suspension be upheld but that the period of suspension be suspended for a period of 12 months from 9 December 2005. The condition of the suspension is that Mr Daniel does not breach Australian Rule 178 or any Rule of a similar nature within the said period of 12 months.

That then leaves the matter of costs. The formal order is that Mr Daniel be paid his costs of and incidental to the hearing today, which costs I fix at \$1,500. I note that it is common ground that the costs will be the responsibility of Thoroughbred Racing SA Ltd.

Mr Le Poidevin ordered that the bond be refunded and I confirm that that order still stands.

