

# RACING APPEALS TRIBUNAL

**RAT 8/2019**

**DATE OF HEARING:** THURSDAY 29 AUGUST 2019

**TRIBUNAL:** **PRESIDENT:** MR T ANDERSON, QC

## **IN ATTENDANCE:**

**MR J PETZER:** CHIEF STEWARD,  
THOROUGHBRED RACING SA LTD

**MR B CAMPBELL:** APPELLANT

**MS T COWARD:** APPELLANT

IN THE MATTER of an Appeal by **Mr Barry Campbell** and **Ms Tania Coward** against a decision of Thoroughbred Racing SA Ltd Stewards.

The Tribunal heard this matter on 29 August 2019 and on 5 September 2019 advised the parties of its decision regarding convictions and penalties, advising that a full and final determination would be provided at a later date.

This determination sets out the reasons for the decisions handed down on 5 September 2019 and includes those decisions.

Mr Paul O'Sullivan appeared for both appellants and Mr Simon Ward for the Stewards.

## **BACKGROUND**

The gelding Eastender was entered to run in the Adelaide Cup on 11 March 2019 at Morphettville Racecourse.

Eastender had come from Tasmania by ferry to Melbourne and then was floated to Adelaide and housed in stables adjacent to the racecourse.

Mr Campbell was the trainer of Eastender. Ms Coward was his stable foreperson and rode trackwork for Mr Campbell.

Eastender was one of the favoured runners for the Adelaide Cup and was priced at approximately \$6.00 for the win on the morning of the race.

The Stewards conducted a routine inspection of the stables and inspected Eastender at about 8.30 am on the morning of the race.

They returned shortly after and found a hypodermic needle inserted into the horse's jugular vein and Mr Campbell with the cap from the needle in his mouth.

Mr Campbell was interviewed, and the interview was filmed.

He made some important admissions in that initial interview.

He was asked what he had given to the horse, and he said it was a solution of potassium chloride diluted in water.

He said he gave the horse 10 mills of potassium chloride diluted with 10 mills of water.

After having stated this and during further discussion, Ms Coward intervened and claimed that nothing had been administered because the dog had barked when the Stewards returned and Mr Campbell had squirted the substance onto the floor of the stable.

Mr Campbell then adopted that version of events. Ms Coward was not in the stable at the time but outside when she volunteered the information.

Some of the solution must have been displaced, because the syringe, which had been attached to the needle, contained a blood-tinged fluid.

Mr Campbell appeared to accept in his discussion with the Stewards that this meant that some of the potassium solution had been injected into the horse.

After a complicated hearing process which required several adjournments, the Stewards finally charged both Mr Campbell and Ms Coward.

I set out below details of the charges and the ultimate penalties decided by the Stewards.

## CHARGES LAID

**Appellant: Mr Campbell**

Charge No	Rule of Racing	Particulars	Penalties (all to be served concurrently)
1	AR 254(1)(a)(i)	Inject a horse on race day without Stewards permission  Morphettville Race 7 – 11 March 2019  Injected Eastender with a potassium solution	18 month disqualification reduced to 12 month disqualification
2	AR 249(1)(a)	Administer a medication to a horse on race day without Stewards permission  Morphettville Race 7 – 11 March 2019 Administered a potassium solution to Eastender  Minimum mandatory penalty of 6 months disqualification applies	18 month disqualification reduced to 12 month disqualification
3	AR 229(1)(b)	Conduct intended to corrupt the outcome of a race  Morphettville Race 7 – 11 March 2019 In relation to Eastender – (relates to the injecting of Eastender)  Minimum mandatory penalty of 5 years disqualification applies	Penalty reduced to 3 year disqualification following special circumstances and other factors

**Appellant Ms Coward**

Charge No	Rule of Racing	Particulars	Penalties (all to be served concurrently)
1	AR254(1)(d)(i)	<p>Party to injecting a horse on race day without Stewards permission</p> <p>Morphettville Race 7 – 11 March 2019</p> <p>Party to the injecting of Eastender with a potassium solution</p>	<p>]8 month disqualification reduced to 6 month disqualification</p>
2		<p>Party to conduct intended to corrupt the outcome of a race</p> <p>Morphettville Race 7 – 11 March 2019</p> <p>In relation to Eastender – (relates to the injecting of Eastender)</p> <p>Minimum mandatory penalty of 5 years disqualification applies</p>	<p>Penalty reduced to 18 month disqualification following special circumstances and other factors</p>

**FINDINGS OF STEWARDS**

I am setting out in detail the comprehensive findings of the Stewards as, in my view, they have correctly assessed the evidence and because those findings accord with my own views of the evidence.

I have underlined those parts of the findings which I regard as most significant.

***In relation to Mr Campbell:***

***Charge 1 -***

“In respect of this charge, charge two, we note the following elements of the rule under which you have been charged.

- (1) The horse concerned must have been engaged to run in a race and EASTENDER was so engaged to run in race 7 at Morphettville on 11 March 19.
- (2) Such horse must not be without the permission of the stewards administered a medication, at any time on the day of the race prior to commencement of the race. There was no such permission granted by stewards.
- (3) We note that for the purpose of this rule, medication means any drugs or other substances. The potassium solution you premixed can be classified as medication.
- (4) The question then turns to what is considered to be meant by administer. Its ordinary meaning is to give medicine. And what stands to be determined is whether the insertion of a hypodermic needle with a syringe filled with potassium solution can be classified as an administration or not. The question is does the substance have to be injected fully or in part into the horse for it to be considered administration. On a strict view and interpretation, we say it does require some of the substance to enter the horse's system and it would appear that the act of giving or administering must be either complete or part complete.

And that is without the steward's permission obviously.

- (5) In the circumstances having regard for the evidence at this Inquiry, the Stewards are satisfied that the provisions of this rule have been breached and we find the charge proven and consequently you are found guilty of the charge. We also note that you have pleaded to that charge."

### **Charge 2 -**

"The particulars of that charge under AR 249(1)(a) was that you Mr Barry Campbell, as the trainer of the racehorse EASTENDER, which was entered in race 7 the Adelaide Cup on Monday 11 March 2019, while present at 4-6 Grafton Avenue, Morphettville in the period from approximately 8:40 to 9am.

And in the presence of Ms Tania Coward, administered without the permission of the stewards, a medication by hypodermic needle and syringe containing but not limited to sterile potassium chloride concentrate IV 10 millimol, 0.75 gram in 10 millilitre and ilium water for injections BP to the racehorse EASTENDER. In respect of this charge, charge two, we note the following elements of the rule under which you have been charged.

- (1) The horse concerned must have been engaged to run in a race and EASTENDER was so engaged to run in race 7 at Morphettville on 11 March 19.
- (2) Such horse must not be without the permission of the stewards administered a medication, at any time on the day of the race prior to commencement of the race. There was no such permission granted by Stewards.

- (3) We note that for the purpose of this rule, medication means any drugs or other substances. The potassium solution you premixed can be classified as medication.
- (4) The question then turns to what is considered to be meant by administer. Its ordinary meaning is to give medicine. And what stands to be determined is whether the insertion of a hypodermic needle with a syringe filled with potassium solution can be classified as an administration or not.

The question is does the substance have to be injected fully or in part into the horse for it to be considered administration. On a strict view and interpretation, we say it does require some of the substance to enter the horse's system and it would appear that the act of giving or administering must be either complete or part complete.

- (5) Having regard for (a) the fact that you did not advance the proposition that you had removed the syringe and needle, and squirted the substance out onto the stable floor, at either the first instance or for that matter for in excess of some three minutes when addressed by Mr Hayles, and (b) to that point in time spoke in terms which clearly indicated that you had administered the substance to EASTENDER, and, (c) that it was only when Tania Coward advanced the proposition that you had not administered any of the substance into the horse, that you advanced the same proposition.

(d) We say this clear lapse of time during which you held a particular view, and did not advance at any stage during that period, of your own volition a proposition of having squirted the substance out onto the floor of the stable leads us (e) to draw on a balance of probabilities a reasonable inference that at least a portion, however small the amount, or for that matter all of the substance had entered the horse's system, and consequently we consider an administration had occurred. (f) The rule is then quite clear, once a person has as in your case administered a medication to a horse on race day, in your case the horse EASTENDER, then such person commits an offence. (g) In the circumstances having regard to the evidence at this Inquiry stewards are satisfied the provisions of this rule have been breached and we find the charge proven, and consequently you are found guilty of the charge. We note that you pleaded not guilty to this charge."

### **Charge 3 -**

"The particulars of that charge was, that you Mr Campbell being a licensed trainer in Australia on Monday 11 March 19, as the trainer of the racehorse EASTENDER, which was entered to race in race 7 the Adelaide Cup scheduled to be run at 4:15pm at the Morphettville Racecourse, on that day engaged in conduct, which was intended to corrupt the outcome of a race.

- (1) That race being race 7 at the Morphettville Racecourse on Monday 11 March 19.

And (2) the conduct being, that you while present at 4-6 Grafton Avenue, Morphettville the stables where EASTENDER was stabled that morning, in the period from approximately 8:40am to 9am and in the presence of Ms Tania Coward,

your stable foreman, injected via hypodermic needle and syringe a solution premixed by you, which solution contained but not limited to, sterile potassium chloride concentrate IV 10 millimol .75 gram in 10 millilitre and ilium water for injection to EASTENDER.

In respect of this charge, we note the following elements under the rule, of which you've been charged. It requires conduct on the part of the offender. We find in your case that you did engage in conduct the act of doing, by attempting to administer on your own admission, or administered on the evidence by drawing a reasonable inference that the administration had been completed or been part completed, a solution premixed by you by the insertion of a hypodermic needle and syringe, which solution contained but not limited to potassium to the racehorse EASTENDER on race day, when that horse had a confirmed engagement.

(2) That the outcome of a race is either corrupted or that it is intended to corrupt the outcome of a race. The rule itself details what is to be considered corrupt in a given circumstance. As such, it is not, in our view necessary to look at the meaning of the word corrupt. What we find in this case is that your conduct intended to corrupt the outcome of a race, that race being race 7 at Morphettville Racecourse on Monday 11 March 2019.

On the basis that your intended administration of the solution by injection, the insertion of a hypodermic needle referred to in the charge to EASTENDER, had such been administered and the horse raced in the said race, and we are not excluding the real possibility that on the balance of probabilities, and on reasonable inferences drawn from the evidence, that some or all of the solution of potassium, may have actually been administered to the horse.

That such would likely have affected the outcome of a race, having regard for the fact that outcome in this rule is stated to include, any result within the race and is not limited to winning or placing, in the race.

And that the administration of the solution, if such occurred would have had the propensity at the very least, to have an effect on the muscles and nerves of the horse. You stated yourself that the horse was not himself and for that reason you decided to inject the horse with the substance. The substance injected does not in our view, necessarily have to have a performance enhancing effect on the horse. It is open to stewards to find that by injecting the horse with the substance, you used in this case that the horse may very well have been assisted to present in a better state than it was in relative terms, as you assessed him.

And that such could have allowed the horse to perform to its normal standard as opposed to presenting in the flat manner you described, which may not have allowed the horse to perform to its normal natural ability. (3) In any event, we find that on the construction of the rule it is not necessary to find that a race in particular had in fact been corrupted. Our view is that the rule is such that it was also designed to capture those who engaged in conduct, which was intended to corrupt the outcome of a race. The intention over the effect, effectively. It can be said on the evidence having regard for all the evidence, that your conduct in these circumstances were such that it was clearly intended to corrupt the outcome of the race for which EASTENDER was engaged in.

(4) We find on the balance of probabilities applying the Briginshaw Standard, that is that we need to be comfortably satisfied, and we so are, that the outcome of the race would have been affected or was likely to be affected, had you succeeded in your administration of the solution, without being interrupted by the stewards, and on your version after having, that's on your version, or after having administered on the evidence to the horse and the horse raced.

It was only for the intervention of Stewards Hayles and Streckbein that the process you engaged in was disrupted. In the circumstances having regard for your admission and the evidence of this Inquiry, Stewards are satisfied applying the Briginshaw Standard that the charge is proven and we find you guilty of that charge."

***In relation to Ms Coward:***

***Charge 1 -***

"In respect of this charge, we note the elements of the rule under which you've been charged are as follows.

The horse concerned must have been engaged to run in a race, and EASTENDER was engaged to run in race 7 at Morphettville 11 March 19.

- (3) Such horse must not be without the permission of stewards injected at any time on the day of the race or at any time during one clear day prior to the race. We note that for the purpose of this rule injecting includes but is not limited to, the insertion of a hypodermic needle into the horse. Mr Campbell admitted to having inserted the hypodermic needle into the horse EASTENDER and that it is not necessary to establish whether any substance was injected or the nature of the substance injected.
- (4) On that basis for the purpose of this charge, we do not have to determine whether any part or all of the potassium solution premixed by Mr Campbell was in fact injected into the horse's system, and neither do we have to determine the nature of the substance although it had been admitted by Mr Campbell to be potassium.

On the evidence you knew that Mr Campbell had a syringe with a hypodermic needle attached to it, when he entered the stable and you held the horse. You described quite clearly which position you placed yourself in physically, in relation to the horse to enable Barry Campbell to inject the horse.

- (5) That there is no doubt that you knew what Barry Campbell was about to engage in.
- (6) You also knew that Barry Campbell intended that course of action, as you admitted that you'd had a discussion with him in this regard and questioned him regard to his intended conduct.
- (7) We find that your conduct by remaining in the presence of Barry Campbell when he injected EASTENDER, can comfortably be classified as someone who is a party to the injection.
- (8) It is also clear to Stewards having regard for the extended surveillance vision available, parts of which were viewed in your presence at the various hearings, that your conduct in the lead up to the injecting of the horse by Barry Campbell, was such that it appeared on a reasonable viewing suspicious.

You were clearly walking around in the lead up to the injection in a manner that appeared to be consistent with someone who is surveying the landscape, in preparation of some intended course of action, which required the coast to be clear.

(9) The rule is then quite clear. Once a person is considered a person who is a party to the injection such a person commits an offence.

(10) In the circumstances having regard for the evidence at this Inquiry stewards are satisfied applying the Briginshaw Standard, that is that we need to be comfortably satisfied that you are guilty of the breach of this rule and we find the charge proven. We note you pleaded guilty to this charge.”

### **Charge 2 -**

“The second charge levelled against you was under 229(1)(b).

And the particulars levelled against you was that you Ms Tania Coward being a licensed stable foreman in Australia on Monday 11 March 19, in relation to the racehorse EASTENDER, which was entered to race in race 7 Adelaide Cup scheduled to be run at 4:15pm at the Morphettville Racecourse on that day, engaged in conduct which was intended to corrupt the outcome of a race.

That race being race 7 at Morphettville Racecourse on Monday 11 March 19.

And (2) the conduct being that you, while present at 4-6 Grafton Avenue, Morphettville the stables where EASTENDER was stabled that morning, in the period from approximately 8:40am to 9am and in the presence of Mr Barry Campbell, the trainer to whom you are registered, when he injected via a hypodermic needle and syringe, a solution premixed by him which solution contained but not limited to sterile potassium chloride concentrate IV 10 millimol .75 gram in 10 millilitre and ilium water for injection BP to EASTENDER was a party to and remained present with the horse, and held such horse with the knowledge that a race day administration to EASTENDER by way of injection, was about to take place and did take place, and that such injection was contrary to the rules of racing. In respect of this charge levelled against you we note the following elements of the rule, under which you’ve been charged.

It requires conduct on the part of the offender. We find in your case that you did engage in conduct. The act of omission. By remaining engaged in the presence of Barry Campbell when he attempted to administer by his own admission or administered on the evidence, a solution premixed by him by insertion of a hypodermic needle and a syringe which solution contained but not limited to potassium to the racehorse EASTENDER on race day, when that horse had a confirmed engagement.

Part (2) That the outcome of a race is either corrupted or that it is intended to corrupt the outcome of a race. The rule itself details what is to be considered corrupt in a given circumstance and as such, it’s not in our view necessary to look at the meaning of the word corrupt.

What we find in this case is that your conduct in remaining engaged in the presence of Barry Campbell when he attempted to administer by his own admission or administered on the evidence, a solution premixed by him via insertion of a hypodermic needle and syringe, which solution contained but not limited to potassium to the racehorse EASTENDER on race day would likely have affected the

outcome of that race having regard for the fact, that outcome in this rule is stated to include any result within a race and is not limited to winning or placing in the race, and that the administration of the solution if such occurred would have had the propensity at the very least to *have* an effect on the muscles and nerves of the horse.

And further having regard for the evidence that the horse was not himself and that the injection of the substance, which does not in our view necessarily have to have a performance enhancing effect on a horse, may very well have assisted the horse in being presented in a better state than it was as assessed by Barry Campbell, and that such, could have allowed the horse to perform to its normal standard as opposed to presenting in a flat manner described at this Inquiry, which may not have allowed the horse to perform to its normal natural ability.

(11) In any event we find that on the construction of the rule, it is not necessary to find that a race in particular had in fact been corrupted.

(12) Our view is that the rule is such, that it was also designed to capture those engaged in conduct which was intended to corrupt the outcome of a race. It can be said on the evidence having regard for all of that evidence that your conduct in the circumstances was such that it was clearly intended to corrupt the outcome of a race, the race for which EASTENDER was engaged in.

(13) We find that it was open to you to either walk away from the situation, if you did not agree with Barry Campbell's intended administration or administration but you did not do so. You say that you did not make comment in the form of a question, being words to the effect, is this wise, to Barry Campbell. But did no more than that. Our view is that a reasonable person in your circumstances, would have walked away from the situation, and you did not do so.

(14) We consider that a person in your position should have taken more decisive steps to dissociate themselves with the situation and the circumstances.

(15) It was also clear to Stewards that you displayed a distinct demeanour in the period leading up to the horse being injected. At or about 8:45am when walking past EASTENDER'S stable, you appear to drop something from your pullover pocket. This appeared to be packaging of some sort. However, what is also pertinent, is that you are holding an object in your right hand. That object on any reasonable view was a syringe. It is questionable why you would be walking around at a time so close to proximity, to when the injection by Barry Campbell took place with a syringe, whether fitted with a needle or not, in your possession. It brings into question your own mindset, knowledge and/or concurrence or otherwise with the intended conduct of Barry Campbell.

(16) We find on a balance of probabilities applying to the Briginshaw Standard, that is that we need to be comfortably satisfied, and we so are, that you were a party to an attempt of the administration, or the administration of a substance referred to, to EASTENDER, and that the outcome of the race would have been affected or was likely to be affected had Barry Campbell succeeded in his administration of the solution, on his and your version, or administration on the evidence to the horse had the horse raced. It was only for the intervention of

Stewards Hayles and Streckbein that the process you engaged in, as party to the conduct of Barry Campbell was disrupted.

(8) In the circumstances having regard to the evidence at this Inquiry, we are satisfied applying the Briginshaw Standard you are guilty of a breach of this rule and we find the charge proven.”

## **GROUND OF APPEAL**

### ***In relation to Mr Barry Campbell:***

#### Charge 1

The penalty imposed by the Stewards was too severe.

#### Charge 2

- 1 The Stewards erred in finding that a potassium solution was administered by the Appellant to the horse Eastender on 11 March 2019.
- 2 The Stewards’ finding that a potassium solution was administered by the Appellant to the horse Eastender on 11 March 2019 was contrary to the evidence.
- 3 The Stewards erred in not finding that special circumstances existed pursuant to LR 32.5(b) (c) and (d).
- 4 The penalty imposed by the Stewards was too severe.

#### Charge 3

- 1 The Stewards erred in finding that the Appellant engaged in conduct that is intended to corrupt the outcome of a race.
- 2 The conduct alleged to have been engaged in by the Appellant could not affect or be likely to affect the outcome of race 7 at Morphettville on 11 March 2019
- 3 The Stewards erred in not finding that special circumstances existed pursuant to LR 32.5 ©.
- 4 The penalty imposed by the Stewards was too severe.

At the hearing before the Tribunal Mr O’Sullivan confirmed that Mr. Campbell was not proceeding with ground 3 under charge 3, that is, as to his mental capacity at the time.

### ***In relation to Ms Tania Coward:***

#### Charge 1

The penalty imposed by the Stewards was too severe.

#### Charge 2

- 1 The Stewards erred in finding that the Appellant engaged in conduct that is intended to corrupt the outcome of a race.
- 2 The conduct alleged to have been engaged in by the Appellant could not affect or be likely to affect the outcome of race 7 at Morphettville on 11 March 2019
- 3 The penalty imposed by the Stewards was too severe.

## **ARGUMENTS ON APPEAL**

### **Charge 1**

As to charge 1, to which Mr Campbell pleaded guilty, Mr O'Sullivan pointed out that it was the act of injection which was admitted by his client.

He argued that the penalty of a 12 month disqualification was too severe. He referred to a decision of Balfour from Victoria on 17 October 17 on the basis of similar circumstances.

There were 3 charges in Balfour relating to an intention to inject 3 horses. Mr Balfour had a good record like that of Mr Campbell.

The Stewards in Victoria imposed a disqualification on each charge to be served concurrently. Mr Balfour appealed and was successful in having the disqualification reduced to a suspension for 6 months on each count.

Mr O'Sullivan argued that suspension on charge 1 was the appropriate penalty. I do not agree. This was a clear case for disqualification.

Decisions in the same jurisdiction are difficult enough to compare because of the subjective nature of each matter. It is even more difficult to compare decisions across jurisdictions where different considerations apply.

Mr Campbell pleaded guilty to this charge. There is no mandatory minimum penalty for this offence. The Stewards used a starting point of 18 months disqualification and then reduced that to 12 months on account of the guilty plea entered by Mr Campbell, his prior record, his age and his contribution to the industry over many years.

In all the circumstances I find that the overall penalty is too severe. I find that the starting point was high and the reduction was insufficient.

I therefore allow the appeal on this ground and substitute a penalty of 9 months disqualification having used a starting point of 15 months.

### **Charge 2**

In relation to charge 2, it was argued by Mr O'Sullivan that there had been no administration of the potassium chloride solution.

This was clearly based on the evidence of Ms Coward and the later evidence of Mr Campbell, despite his earlier evidence that he had administered about 10ml of potassium chloride diluted with 10ml of ilium water.

Mr O'Sullivan argued that there was no administration. He dealt with Mr Campbell's early admissions on the basis of the evidence of Ms Coward and Mr Campbell's corrected or amended evidence. He argued on the timing and submitted that the administration could not have taken place in the period which he calculated of about 40 seconds. He referred to the evidence of the dog barking as an interruption to the process. He asked me not to reject the evidence of Mr Campbell and Ms Coward as it was credible evidence.

There was clearly conflicting evidence, and the Stewards in my view were entitled to make the findings that they did. They did weigh the testimony of Mr Campbell and Ms Coward and concluded that at least some potassium solution was administered to Eastender.

They made the point that it may only have been a small amount, or it could have been a larger amount but, in any event, at least a portion had been administered.

I can see no error by the Stewards in coming to this conclusion.

The finding was based on available evidence and the clear inferences which could be drawn from that evidence.

I find that the Stewards were justified in treating Mr Campbell's evidence and that of Ms Coward with suspicion given the fact that when caught with the needle cap in his mouth Mr Campbell was prepared to admit the administration of some of the solution.

In my view, the Stewards were aware of the standard of proof in relation to this, that being the Briginshaw standard, and they followed that standard in coming to their conclusion.

Mr O'Sullivan argued that the penalty under charge 2 was too severe. The offence carries a mandatory minimum sentence of 6 months disqualification. It is clearly a serious offence.

A starting point of 18 months was used by the Stewards and reduced to 12 months on the basis of a finding of special circumstances. I say this even though it is not clear that the Stewards made a specific finding. Clearly the reduction was for special circumstances as there was no guilty plea.

Mr O'Sullivan argued that with a minimum mandatory disqualification of 6 months the Stewards were wrong to then use a starting point of 18 months.

There is nothing to require a Tribunal to start at the mandatory minimum. It is just that, namely, a minimum.

The Stewards considered in all the circumstances that the offence was so serious as to impose the starting point of 18 months and I can see no error in them doing this.

The administration on race day by injection is a very serious matter and I would not interfere with the Stewards in relation to their starting point. Neither would I disagree with the Stewards in reducing the 18 months to 12 months.

I do not agree that where there are special circumstances it means that a 6 month disqualification is the starting point and that therefore a reduction from that 6 months disqualification is required.

I can see no logic in the argument that special circumstances apply to reduce the minimum penalty. Special circumstances apply to reduce what ever period of disqualification is regarded as the appropriate penalty having regard to the severity of the offence.

### **Charge 3**

In relation to charge 3, much of this argument depended on the expert evidence of Dr Tennent-Brown.

At the hearing before the Stewards, Dr Horridge, a specialist veterinarian, was called to give evidence by the Stewards.

He said potassium was one of the electrolytes essential for muscle contraction and nerve function.

Dr Tennent-Brown is also an expert veterinarian, and he prepared a report which was tendered before the Tribunal.

The Stewards of course did not have the benefit of this report at their Inquiry. However, the Stewards accepted in the Tribunal that they had no quibble with Dr Tennent-Brown's report.

Dr Tennent-Brown says that the administration of the potassium chloride solution will have a transient effect of the plasma potassium when injected into a vein. He said that the potassium will then distribute itself across the extra cellular fluid total volume.

As I understand it, there will then be an adjustment or redistribution of the administered potassium over a period ranging from as low as some minutes to as high as some hours.

It is the opinion of Dr Tennent-Brown that with the amount administered in this matter, any excess potassium would be excreted within a few hours by the horse's natural kidney function.

He also said that it was not regarded, in his experience, as having any performance-enhancing effects.

Therefore, it was argued on the basis of his evidence that there could be no effect likely to affect the outcome of the race.

I asked Mr O'Sullivan what was the purpose of administering the solution on the morning of the race. He took instructions and advised me that in his submission it was to assist the horse in getting over the effects of the long journey by ship and road from Tasmania. He said it was to assist in regard to the "the horse's general well being".

Under AR 229 (1)(b) Mr O'Sullivan pointed out that the conduct alleged had to satisfy two criteria. First, he said, "conduct corrupts the outcome of a race if it affects or if engaged in is likely to affect the outcome of any race" and, second, the conduct is "contrary to the standards of integrity that a reasonable person would expect of a person in a position to affect the conduct of race".

Mr O'Sullivan relied on his argument regarding lack of proof of administration and said without that there could be no corruption under charge 3.

I have found that there was administration from the whole of the evidence for essentially the same reason as set out by the Stewards.

However, I do not agree with Mr O'Sullivan that it has to be a case of administration because of the wording regarding intention. I agree Mr Ward's submission, "all that is needed is an intention to give a medication to an off colour or sick horse so that it can perform at its usual best which otherwise it would not do in the race".

Mr Ward went on to submit "to act to overcome sickness or off colour in the horse is to seek to get an advantage on what would occur if the horse were to run in its unwell state".

It is not to the point in my view that the effect of the administration would have passed through the horse before the running of the race. The fact is that it was intended to give the horse an advantage by removing the listlessness from which it suffered. It was to assist the horse by medication in contravention of the race day rules.

Mr O'Sullivan argued that even if there was administration then, on the evidence of Dr Tennent-Brown, it would not have affected the outcome. I do not agree. With the administration and the horse being better it would follow that it would run a better race than without the administration and therefore affect the outcome of the race.

Mr O'Sullivan's submission in relation to charges 2 and 3 apply equally to Ms Coward, despite her lesser role in the scheme of things.

The injection was given to the horse to improve its status from what the trainer perceived it to be.

Mr Campbell believed that he could raise the spirits of the horse by having it revived from its listless condition.

To use Mr Campbell's words, he was attempting to get the horse pre-race up to his "best possible shape".

This was to overcome his observation that the horse was "flat, sweating, was not at ease and was not himself".

## **FINDINGS OF THE TRIBUNAL**

(1) It is clear that on the morning of the race the horse was not well, in the sense that he was not behaving normally for the reasons which I have already set out.

(2) Mr Campbell was concerned about these matters and obviously considered that the horse could not run up to its merits as he was.

(3) At that stage, he could have taken action to scratch the horse with the permission of the Stewards.

(4) In the alternative, he could have sought permission from the Stewards to administer the solution of potassium chloride.

(5) He chose the unfortunate option of deliberately injecting the horse at a time when he knew that it was prevented by the Rules.

(6) Mr Campbell's attempts in trying to get the horse back to normal were understandable in the sense that he had a concern no doubt that the owners should have the horse presented in the best possible fashion, but of course that is outweighed by the fact that he knew well that the Rules prevented him from administering by way of injection without the Stewards' permission any substance at the time he did.

(7) It was a premeditated action by Mr Campbell, aided and abetted by Ms Coward.

(8) The substance itself, had it been administered at the right time, was not illegal.

(9) Very simply, Mr Campbell took a chance. He took that chance knowing the consequences and knowing that he had options whereby he could have sought permission of the Stewards or reported the horse's condition to the Stewards.

(10) He was in fact caught red-handed.

(11) In my view, in attempting to revive the horse or make the horse better by the administration of the potassium chloride solution, Mr Campbell intended to corrupt the outcome of the race within the meaning of that phrase, because if he had successfully engaged in it, it would have been likely to affect the outcome of the race.

It does not matter that it is not of itself a performance-enhancing substance.

The plain fact of the matter is that he was running the horse with the aid of some pick-me-up which was not to be administered without the permission of the Stewards at the time it was administered.

It is very important from the public point of view that breaches of the Rules relating to medication on race day when the horse is engaged to run must give protection and confidence to the members of the public that all horses are running in an unmedicated state.

It is my view that the Stewards correctly analysed the whole of the evidence and came to the correct conclusion in finding that there was a breach of AR.229(1)(b).

## **SUMMARY OF TRIBUNAL FINDINGS (as provided to the parties on 5 September 2019)**

### **1 Mr Barry Campbell: Ground 1**

In relation to the charge under AR.254(1)(a)(i), the ground of appeal is that the penalty imposed by the Stewards was too severe. Mr Campbell pleaded guilty to this charge.

There is no mandatory minimal penalty for this offence.

The Stewards used a starting point of 18 months' disqualification and then reduced that to 12 months on account of the guilty plea entered by the Appellant, his prior record, his age and his contribution to the industry over many years.

In all the circumstances, I find that the overall penalty is too severe. I find that the starting point is high and that the reduction was insufficient.

I therefore allow the appeal on this ground and substitute a penalty of nine months disqualification, having used a starting point of 15 months.

### **Ground 2**

In relation to the charge under AR.249(1)(a), On the whole of the evidence, I find that there was an administration of a potassium solution. I find that the onus of proof on the Briginshaw standard has been discharged.

The Stewards must have found special circumstances existed and, after a starting point of 18 months' disqualification, they reduced that to 12 months.

This offence carries a minimum mandatory six months disqualification. It is a serious offence and there was no plea of guilty.

I find that the Stewards were correct in both their decision on conviction and for the penalty imposed.

The appeal grounds on this charge therefore are all dismissed.

### **Ground 3**

In relation to the charge under AR.229(1)(b), the Appellant argued that, on the basis of the evidence as to the nature and quantity of the solution administered, there could be no finding of corruption.

I find that the horse was not well on the morning of the race at the time the solution was administered. He was not eating, not drinking, was listless from his travel from Tasmania to Adelaide, and had only two manure drops to his normal seven overnight. The horse generally was not in his usual condition. He was flat, sweating and generally unwell.

I find that the administration of the potassium solution in those circumstances was for the purpose of bringing him back to his normal state.

I find that it was Mr Campbell's intention in administering the solution to affect the outcome of the race and would, if the horse were to run, have likely affected the outcome by allowing an unwell horse to improve prior to the race.

I find that what occurred and the reasons for why it occurred were designed to affect the outcome of the race and contrary to reasonable standards of integrity.

I therefore reject the argument on conviction and uphold the conviction imposed by the Stewards.

On penalty, there is a minimum mandatory period of disqualification for five years in the absence of special circumstances. The Stewards found special circumstances but, in my view, did not allow a sufficient reduction for those special circumstances.

They reduced the penalty from the minimum mandatory five years to a period of three years' disqualification.

It is my view that in all the circumstances the appropriate period of disqualification is a period of 24 months.

I therefore allow the appeal on the ground that the penalty was too severe.

All of the sentences imposed are to operate concurrently and as a stay of proceedings was not granted, are backdated to begin at midnight on 21 June 2019 as determined by the TRSA Stewards at their Inquiry.

## **2 Ms Tania Coward**

### **Ground 1**

In relation to the charge under AR.254(1)(d)(i), the Stewards started with a disqualification of eight months, which they then reduced to six months, having regard to her guilty plea and her role in the matter generally.

I think that the reduction was insufficient, but I also think the starting point was on the high side.

I therefore allow the appeal on penalty. I start with a period of six months disqualification and reduce that to four months.

### **Ground 2**

In relation to the charge under AR.229(1)(b), it follows from what I said about Mr Campbell that the appeal on conviction is dismissed. As to penalty, again there was the aspect of Ms Coward playing a minor role, but still significant.

Despite her minor role, she is still faced with the minimum mandatory disqualification of five years unless there are special circumstances. The Tribunal found special circumstances in her case and reduced the minimum mandatory period to a period of disqualification of 18 months.

In all of the circumstances of this matter, I consider that to be too severe. I allow the appeal on penalty and I reduce the period of disqualification to 12 months.

Both sentences imposed are to operate concurrently and as a stay of proceedings was not granted, are backdated to begin at midnight on 21 June 2019 as determined by the TRSA Stewards at their Inquiry.

### **Appeal lodgement fee and bond**

I order that the applicable portion of the lodgement fee and bond be refunded to the Appellants.