

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: DAVID J GARDINER

APPLICATION NO: A30/08/361

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

DATE OF HEARING: 15 May 1997

DATE OF DETERMINATION: 15 May 1997

IN THE MATTER OF an appeal by Mr D J Gardiner against the determination made by Western Australian Trotting Association Stewards on 14 April 1997 disqualifying *MERLENE MUFFETT* from Race 1 at Gloucester Park on 7 March 1997.

Mr D J Gardiner represented himself.

Mr W Delaney represented the Western Australian Trotting Association Stewards.

This is a unanimous decision of the Tribunal.

This is an appeal by the owner of *MERLENE MUFFETT* in relation to Race 1 conducted at Gloucester Park on 7 March 1997, in which *MERLENE MUFFETT* was the winner of the Race. A post race swab revealed the presence of oxyphenbutazone in a urine sample taken from the pacer.

The Stewards conducted an inquiry into the matter on 14 April 1997 which resulted in *MERLENE MUFFETT* being disqualified from the Race. In so deciding the Stewards stated that *"It's not acceptable that a horse be presented to race with a drug in its system, and that horse retain the race"*. The disqualification of the horse was ordered pursuant to Rule 502 which states: *"Where a horse has run in any race and is found by the Stewards or Committee of any Club to have had a drug administered to it, the horse may be disqualified from that race."*

Mr Delaney explained to the Tribunal the policy of the Stewards in exercising their discretion under that Rule. The Stewards normally would disqualify a horse unless that horse would have been allowed to race in circumstances where the Stewards were so advised by their veterinarian surgeon after a pre-race treatment sheet had been lodged.

Mr Gardiner submitted to the Tribunal that this approach was too strict and inflexible. Rather each case should be decided on its own individual merits.

The Tribunal agrees with this proposition put by Mr Gardiner as otherwise the Rule would have been couched in mandatory terms.

The Tribunal is satisfied that this particular case is in fact a special one and that it is difficult to determine.

The factors that were not considered by the Stewards, which are relevant to this particular case, include :

firstly, on the evidence of the principal scientist from the chemistry laboratory, the drug was a low concentration of a metabolite at the tail end of an administration;

secondly, on the evidence of the West Australian Trotting Association veterinary consultant, that the drug would certainly not have had any effect at all on the horse's performance; and

thirdly, that it was clear from the refreshingly frank evidence from those responsible for the care of the horse at the relevant time, that the administration occurred as a result of an honest mistake.

The Stewards were in error on this occasion in imposing their standard test to the interpretation and application of Rule 502. The Tribunal is satisfied that in the unusual and exceptional circumstances of this particular case that *MERLENE MUFFETT* should not have been disqualified.

Accordingly, the Tribunal upholds the appeal and sets aside the disqualification of the horse.

The fee paid on lodgement of the appeal is refunded.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON

