

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: CALLAN ANTHONY SUVALJKO
APPLICATION NO: A30/08/449
PANEL: MR D MOSSENSON (CHAIRPERSON)
MS P HOGAN (MEMBER)
MS K FARLEY (MEMBER)
DATE OF HEARING 14 JUNE 1999
DATE OF DETERMINATION: 14 JUNE 1999

IN THE MATTER OF an appeal by Mr C A Suvaljko against the determination made by the Western Australian Trotting Association Stewards on 2 March 1999 imposing two years disqualification under Rule 497(1) of the Rules of Harness Racing.

Ms S Edwards, instructed by Hammond Worthington, appeared for the appellant.

Mr B Goetze, instructed by Minter Ellison, appeared for the Western Australian Trotting Association Stewards.

This is a unanimous decision of the Tribunal.

On the 16 of February 1999 the Stewards of the Western Australian Trotting Association conducted an inquiry into the analyst's finding of Tramadol and Tramadol Metabolites in the urine sample taken from TORREVEAN BRAVE following its winning performance in Race 3 at the Harvey Trotting Club meeting on the 19 December 1998.

After receiving veterinary and other evidence, the Stewards charged Mr Suvaljko with a breach of Rule 497(1) of the Rules of Harness Racing in the following terms:

"The charge against you Mr. Suvaljko is under part (b) of that Rule. So its ... As the trainer of the pacer TORREVEAN BRAVE you presented it to race in Race 3 at the Harvey Trotting Club meeting on Saturday, 19th of December 1998 where the urine sample taken from the pacer following its winning performance was found upon analysis to contain the drug Tramadol and metabolites of that drug."

Rule 497(1) states:

“When any horse which has been presented to race is found to have had administered to it a drug:

- (a) any person who administered the drug to the horse;*
- (b) the trainer; and*
- (c) any other person who was in charge of the horse at any relevant time,*

is deemed to have committed an offence.”

Mr Suvaljko pleaded not guilty to the charge. Further evidence was taken by the Stewards and the inquiry continued on the 2 of March 1999. Ultimately the Stewards found Mr Suvaljko guilty. As part of what the Stewards concluded in announcing the conviction the following was stated:

“Tramadol is a drug under the Rules of Harness Racing. It is in Schedule 4 of the Australian Standard for Uniform Scheduling of Drugs and Poisons. It is a synthetic analgesic agent with narcotic analgesic actions registered for human use.

Tramadol has no legitimate use in a horse.

We therefore accept the Analyst’s findings and also find that Tramadol was administered to TORREVEAN BRAVE.

In relation to your defence that you took reasonable and proper precautions to prevent the administration of the drug, we do not accept that to be the case.

You have indicated there were periods in the lead up to the race when the horse may have been unattended. Certainly there were periods when you were not present at the stables, therefore there was opportunity for administration to have been made without your knowledge. You have acknowledged that stable security is poor with your stables being easily accessed.

Likewise there was opportunity for you or stable associates to have administered the drug.

We do not accept that the drug was administered post-race. The scenario you have put forward today is in our opinion totally implausible, but nevertheless does not abrogate your duty of supervision.

We are totally satisfied that the normal swabbing procedure was adhered to.”

In relation to the penalty, the Stewards received a written submission setting out reasons in mitigation. That written submission was in fact read out by the Chairman who was conducting the Stewards’ proceedings. It was in the following terms:

“In mitigation I would like to say:

- 1. I admit that my stable could have better security, but I think it is fairly good considering my financial position.*
- 2. We don’t know whether this drug has any positive effect on a horse.*
- 3. I only had a small bet on the horse and there was no betting plunge.*

4. *The drug is not a narcotic, it is an S4 drug.*
5. *Never had a positive swab, this is my first time I have been charged with a drug related offence.*
6. *Completely rely on trotting for my livelihood.*
7. *I have no other interest or knowledge, apart from Trotting."*

After retiring to consider the matter the Chairman of the Stewards' panel announced the penalty in the following terms:

"Mr. Suvaljko we have given considerable consideration to the matter of penalty. The Controlling Body's attitude to drug free racing has been well documented and is reflected in the range of penalties prescribed by Rule 55A.

The Stewards are of the opinion that there were no extenuating circumstances under which the offence was committed.

This is not a case of an inadvertent administration of an alkalisng agent resulting in an elevated TCO2 reading.

It is not an accidental administration of a therapeutic drug.

Tramadol is a drug with no legitimate veterinary use, but which has the potential to either stop or stimulate a horse.

As TORREVEAN BRAVE won the race in question, there can be no suggestion that it was administered to stop the horse.

The integrity of this industry has to be maintained for it to succeed.

The Stewards rely on the words of Justices Anderson and Owen J.J. (sic) in the Harper vs Racing Penalties Appeal Tribunal case where the following was said in relation to a drug case:

I quote:

"The survival of the industry as well as substantial government revenue would seem to depend on encouraging the public to bet on horse racing. That is to bet on the outcome of each race.

If it is correct to think that the financial wellbeing of the industry depends significantly on the maintenance of betting turnover, the need to maintain integrity in horse racing and to do so manifestly is easily seen to be imperative and of paramount importance.

It may well be anticipated that unless racing is perceived to be fair and honest people may be discouraged from betting. This might be thought to justify stringent controls in respect of the administration of drugs to horses and the enforcement of those controls by peremptory means."

There have been three previous cases in WA Harness Racing where a drug capable of having a similar effect to Tramadol have been found to have been administered.

The first case involved two separate charges under the old Rule 364(a) and a five year disqualification was amended on appeal to the Committee Appeal System, which was in place prior to the Racing Penalties Appeal Tribunal being set up. That was varied to a twelve month disqualification and a \$10,000 fine.

The second and third cases had penalties of two years disqualification confirmed on appeal to the Racing Penalties Appeal Tribunal.

In accordance with Rule 55A the Stewards are imposing a period of two years disqualification on yourself."

The appellant initially appealed against both the conviction and the penalty but in the event, proceeded only with the penalty. At the outset of the appeal leave was given to amend the grounds of appeal. The amended grounds of appeal are:

"1. In arriving at the Penalty the Respondents:

1.1 Did not give any or any proper consideration or weight to the submissions of the Appellant which were:

- (a) that this is the Appellant's first conviction of any offence under Rules of Trotting;*
- (b) that the Appellant's income is generated solely by his activities as a trainer of horses;*
- (c) the Appellant is not qualified to undertake any other type of work having left school at the age of 15 years with no formal qualifications of any type; and*
- (d) that in all of the circumstances surrounding the offence, a penalty of 12 months was proper and appropriate.*

1.3(sic) The matters referred to in paragraphs 1.1 (a) to (d) comprise mitigating circumstances as opposed to extenuating circumstances.

1.4 Erred in basing their penalty for this offence on that imposed by the Stewards in the Currie and the Voak decisions.

1.5 Erred in finding that Tramadol is a drug with no legitimate veterinary use.

2. The Penalty is manifestly excessive having regard to:

- (i) the matters referred to in paragraph 1;*
- (ii) the fact that Tramadol is not a narcotic drug; and*
- (iii) the other cases referred to by the Respondent."*

As to grounds 1.1 and 1.3 which deal with the question of giving a proper consideration or weight to the appellant's submissions and the aspect of mitigating as distinct from the extenuating circumstances, the Tribunal is satisfied that the Stewards did properly deal with the matter. The Stewards did have before them the written submission which had been read out by the Chairman of the Stewards' panel setting out the basis for the argument in mitigation of penalty. Although the Stewards do not in their reasons actually or expressly refer to those circumstances, the Tribunal is

not persuaded that the Stewards have ignored the submissions and that the Stewards have failed to take into account the personal circumstances of the appellant. For those reasons grounds 1.1 and 1.3 fail.

As to ground 1.4 alleging an error in basing the penalty on that imposed by the Stewards in the Currie and the Voak decisions, the Tribunal is not satisfied that that allegation is made out. It is clear from examining the transcript of the Stewards' inquiry that in announcing their finding in regard to penalty that initially they have been influenced by the Supreme Court decision of Harper. The Stewards then proceed to refer to the three previous cases in Western Australian Harness Racing where a drug capable of having similar effect to Tramadol had been found to have been administered. After briefly examining the outcome of those three cases, the Stewards conclude that they are imposing a period of two years disqualification on Mr Suvaljko.

The Stewards have properly referred to each of those particular cases and have taken into account other examples where a drug had the capacity to have a similar effect as the drug in question in this matter. The Tribunal is satisfied that it was open to the Stewards to conclude that the two year disqualification was a proper penalty in all of the circumstances.

The Tribunal notes that the behaviour of Mr Currie in the course of the Stewards' inquiry did attract criticism but there appears to be no indication that that conduct influenced the outcome of the ultimate penalty that was imposed. Indeed the matter was not raised on appeal to this Tribunal.

For these reasons ground 1.4 fails.

As to ground 1.5 alleging an error in the finding that Tramadol is a drug with no legitimate veterinary use, there was plenty of evidence before the Stewards to support the conclusion that the drug had no such legitimate use. In his report at page 2, Dr Reynoldson states that there are no preparations of Tramadol registered in Australia for veterinary use. One must consult a medical practitioner and obtain a prescription in order to obtain this particular drug.

We are satisfied that there is no merit in 1.5.

Finally as to ground 2 alleging that the penalty is manifestly excessive having regard to the three factors. As to the first and the third factors, the Tribunal has come to its conclusions already in regard to those same matters and consequently finds there is no merit in grounds 2(i) and (iii). This only leaves ground 2(ii) which alleges that due to the fact that Tramadol is not a narcotic drug and justifies the allegation that the penalty is manifestly excessive.

The Tribunal is satisfied that this aspect of the appeal in isolation is of no moment. This particular drug does have the potential to effect the performance of a horse. The drug is described in Dr Reynoldson's report as "*... a centrally acting synthetic analgesic agent with narcotic analgesic actions of the type produced by drugs such as morphine, codeine, heroin, methadone and etorphine and actions can enhance monoaminergic transmission*". Dr Reynoldson also states towards the end of the report that depending on dosage, the drug has the expectation to lead to "*... increased locomotor activity and an adverse effect may be to make a horse less competitive*".

In those circumstances we are not persuaded that there is any merit in any of the matters particularised in ground 2.

For these various reasons the appeal fails and is dismissed.



