

DETERMINATION AND REASONS FOR DETERMINATION OF
THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT: JOHN ELLIS
APPLICATION NO: A30/08/470
PANEL: MR D MOSSENSON (CHAIRPERSON)
MR J PRIOR (MEMBER)
MR R NASH (MEMBER)
DATE OF HEARING 4 OCTOBER 1999
DATE OF DETERMINATION: 4 OCTOBER 1999

IN THE MATTER OF an appeal by Mr J Ellis against the determination made by the Western Australian Trotting Association Stewards on the 3 August 1999 imposing 12 months disqualification under Rule 497(1) of the Rules of Harness Racing.

Mr J Hammond, instructed by Hammond Worthington, appeared for the appellant.

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

On the 17 June 1999 the Stewards of the Western Australian Trotting Association commenced an inquiry into the analyst's finding of Flunixin in the urine sample taken from OVER HEAD CAM following its winning performance in Race 4 at the Gloucester Park meeting on the 23 April 1999. The inquiry continued on 21 June 1999 and was completed on 3 August 1999.

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

" ... the charge against you is made under Part (b) of that Rule and is that as the trainer of the pacer OVER HEAD CAM you presented the horse to race in Race 4, the 1999 Sealanes WA Derby Consolation at Gloucester Park on Friday, the 23rd of April 1999, where the urine sample taken from the pacer following its winning performance was found upon analysis to contain the drug Flunixin."

Rule 497 as it then applied states:

- (1) *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.*
- (2) *It shall be a defence to a charge under sub-clause (1) for the trainer and any other person who was in charge of the horse at any relevant time to prove that he took reasonable and proper precautions to prevent the administration of the drug.'*

Mr Ellis pleaded not guilty to the charge. The Stewards took further evidence and the inquiry continued on the 21 of June and 3 August 1999. Ultimately the Stewards found Mr Ellis guilty. As part of what the Stewards concluded in announcing the conviction the following was stated:

"Mr. Ellis the evidence before the Stewards has been that you (sic) the trainer of OVER HEAD CAM when it was presented to race at Gloucester Park on Friday, the 23rd of April 1999. Urine sample number: 66534 was taken from OVER HEAD CAM following its winning performance in Race 4, the Sealanes WA Derby Consolation and it was witnessed by you. The presence of Flunixin in the sample of urine was confirmed by the Racing Chemistry Laboratory on Report No: 98R4757. It was noted that the samples had been received in good order with the seals intact. Racing Analytical Services Limited by letter dated 27th of May confirmed the presence of Flunixin in the urine sample. The control solution did not contain Flunixin. The letter confirmed that the sample had been received with the seals intact.

Flunixin is a drug under the Rules of Harness Racing. It is described as a non steroidal anti-inflammatory agent with analgesic effects.

We accept the Analyst's findings and find that Flunixin was administered to OVER HEAD CAM.

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 that in the lead up to the race there were periods when the stables were unattended, therefore, there was opportunity for administration to have occurred without your knowledge. Your stables are easily accessed and security is poor.

Equally there was opportunity for you to have had administered the drug, either knowingly or unwittingly.

You acknowledged using Flunixin on other horses, including one on the day of the race and a quantity of the drug was found on your property.

Your suggestion that the drug had been orally administered by accident four to six hours prior to the race by the use of a contaminated syringe clearly demonstrated that the procedures adopted in the management of your stable did not show you to have taken all reasonable and proper precautions to prevent the administration of the drug.

After considering all the evidence, the Stewards are unanimous in finding you guilty of presenting OVER HEAD CAM to race at Gloucester Park on Friday, the 23rd of April 1999, where it had been found to have had the drug Flunixin administered to it."

Mr Ellis was disqualified for a period of twelve months pursuant to the provisions of Rule 55A. That Rule reads:

'55A. A person who is convicted of an offence under:

- (a) Part 42 of these Rules other than Rule 499; or*
- (b) Part 32 of the Rules repealed by these Rules other than Rule 363 of those Rules.*

is liable to a penalty which is not less than-

- (c) in the case of a first such offence, a period of 12 months disqualification.*
- (d) in the case of a second such offence, a period of 2 years disqualification.*
- (e) in the case of a third such offence, a period of 5 years disqualification.*
- (f) in the case of a fourth or subsequent such offence, disqualification for life.*

unless, having regard to the extenuating circumstances under which the offence was committed, the Controlling Body or the Stewards decide otherwise.'

The Stewards announced the penalty in the following terms:

"Mr. Ellis your evidence that the drug was inadvertently administered by use of a contaminated syringe was supported by an administration study carried out by the Racing Chemistry Laboratory and Queensland Racing Science Centre, however, a previous administration study suggested that the level detected could also be consistent with an administration made approximately 24 hours before the race.

We cannot discount the possibility that this is what happened and the evidence of the second administration study was fortuitous.

If in fact the contaminated syringe story was the correct version it nevertheless demonstrates that the circumstances were entirely within your control.

Poor stable management may well be an explanation, but not one in our opinion that excuses the responsibilities that the Rules place on you as a trainer.

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

We are also of the opinion that there is no evidence that would have justified imposing a penalty greater than the minimum, therefore, in accordance with Rule 55A we are imposing a period of twelve months disqualification."

Mr Ellis appeals against the severity of the penalty.

We have now had the opportunity to consider all the submissions that were presented and we have taken into account the affidavit of Mr Ellis which was presented in support of the appeal. We have arrived at a unanimous decision.

The Tribunal has had regard to the reasons of Steytler J in ANDERSON v RACING PENALTIES APPEAL TRIBUNAL & ANOR, Sup Crt Library No. 970504. The appellant has relied on a number of circumstances which are submitted as extenuating circumstances for the purposes of Rule 55A. These can be generally described as including:

firstly, the low dosage of the drug,
secondly, the nature of the drug,
thirdly, that there was no intentional administration,
fourthly, Mr Ellis' excellent personal antecedents as well as the adverse impact on him of the twelve month disqualification,
fifthly, Mr Ellis' cooperation with the Stewards and his candour during the course of the inquiry, and
finally, that the appellant did not back the horse.

Mr Hammond conceded that the appellant was properly convicted and acknowledges that this was a case of poor stable management. The only explanation which Mr Ellis was able to offer to the Stewards was the possibility that the administration occurred as a consequence of having syringed OVER HEAD CAM with a needle which had some drug residue in it. It was conceded by the appellant at the Stewards' inquiry that the syringe was obtained from a box of used and unwashed syringes. In addition, the Stewards were told that Mr Ellis had administered Flunixin to another horse and that had thrown the syringe back on top of the box.

Assuming that this is how the drug came to be administered to the horse the Tribunal does not find that this amounts to an extenuating circumstance for the purposes of the Rule. The Tribunal agrees that the minimum penalty of twelve months disqualification should have been applied having regard to the mitigating factors including the matters itemised as one, two and four to six inclusive which were referred to previously.

This case highlights the fact that the discretion which is open to the Stewards in relation to penalty under this particular Rule is restricted and there is little room to give much recognition to mitigating factors in particular cases.

For these reasons the appeal is dismissed.



DAN MOSSENSON, CHAIRPERSON

