THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**GRANT LEMOS**
APPEAL NO:	**A30/08/520**
DATE OF HEARING AND DETERMINATION:	**14 February 2001**

IN THE MATTER of an appeal by Jockey G Lemos against the determination made by the Western Australian Turf Club Stewards on 8 January 2001 imposing a 3 months suspension for breach of Rule 81A(ii) of the Australian Rules of Racing.

Mr P Harris, instructed by DG Price & Co, appeared for Mr Lemos.

Mr RJ Davies QC represented the Stewards of the Western Australian Turf Club.

On the 4 December 2000 the Stewards of the Western Australian Turf Club conducted an inquiry into a report from Western Diagnostic Pathology that the urine sample provided by Jockey G Lemos in Albany on the 9 November 2000 was found to have detected in it carboxy tetrahydrocannabinol. Mr Lemos was charged under Racing Rule 81A(ii) *'...that the urine sample that you gave following trackwork on the morning of Thursday the 9th of November, 2000 which upon analysis, had detected in it cannabinoids and the metabolites'.*

Rule 81A(ii) states:

> *Any Jockey, Apprentice or Rider*
> ...
> *(ii) Who has delivered a sample of his urine or otherwise taken as directed by the Stewards prior to, during, or after fulfilling his riding engagements in any race or trial or at riding trackwork which upon analysis has detected in it alcohol, or any drug or its metabolites or artifacts may be punished.'*

The inquiry resumed on 8 January 2000.

Mr Lemos was convicted and was eventually suspended for 3 months.

The amended grounds of appeal are:

> ***A. Conviction***
>
> *1. The Respondents erred in convicting the Appellant of the charge under rule 81A(ii) of the Australian Rules of Racing on the evidence before them which when assessed in its entirety was unsafe and unsatisfactory.*
>
> ***Particulars***
>
> *(a) The sample was not taken at Percy Spencer Race Track as stated on the Analyst's sample sheet but rather at the Albany town site.*
>
> *(b) The sample that tested positive for Cannabinoids was collected by Western Diagnostic Pathology on 27 November 2000. A letter from Western Diagnostic dated 29 November 2000 states that the Appellant's sample did not arrive at the laboratory until 28 November 2000.*
>
> *(c) The Appellant had taken hayfeaver (sic) tablets 48 hours prior to giving the urine sample.*
>
> *(d) The test results were unsafe given the length of time between the date the sample was collected and the date the sample was tested. The sample was collected on 9 November 2000 and was not tested until 27 November 2000, 8 days later.'*

At the hearing the appeal against of the sentence was abandoned.

Mr Harris relies on the decision in Peter Hutchinson (Appeal 387) in which Mr Nash, Member, states that:

Further, in my opinion, if the test is taken prior to the riding engagement, it must be at a time that is not too long before the jockey's racing engagements commence since ultimately the rule is aimed at preventing Jockeys from racing whilst they have alcohol in their system. There must be reasonable contemporaneity between the time of testing and the time the riding engagements are to be performed. In my view it was reasonable for the stewards to test the appellant at 12.15pm when his first race was due to commence at 12.57pm, ie 42 minutes before the race.

The third element is that the sample must be found to have detected in it alcohol. It is argued by the Appellant there was no admissible or reliable evidence of alcohol in the Appellant's system. (This is Ground 3 of the Grounds of Appeal). The Stewards are not bound by the strict rules of evidence. They are, however, required to be satisfied that the proof put forward in respect of any matter before them is cogently probative of the matter and is sufficient to satisfy them of the matter on the balance of probabilities.'

Mr Harris argues that one must take into account the circumstances in which the sample was taken. On this occasion it was following trackwork. He points out the mistake in the transcript which refers to the Albany Racetrack when in fact it was outside the racing premises. Trackwork on that day finished a couple hours prior to the sample. It is submitted there is no differentiation in the Rules between alcohol and any other drug. It needs to be *'reasonably contemporaneous'*. Two hours after fulfilling obligations is excessive.

The delay in processing the sample was argued. Cumulatively the effect of all these factors is to make the findings unsafe and unsatisfactory. Further, the Western Diagnostic letter with its dates inaccurate brings into issue the cogency of the evidence upon which the conviction occurred.

Mr Davies argues that these are niggling points. Clearly the approach is different in dealing the intoxication from alcohol compared with drugs. Alcohol disappears at a quick rate compared to cannabis which can have a half life of 4 to 10 days. It is irrelevant whether the offence occurred during a race meeting or at trackwork. Others were present at trackwork.

There is no suggestion the test went wrong. The quantification is not relevant. It degenerates with time and does not increase. All the elements of the offence are made out. There can be no dispute as to the taking and testing of the sample.

I am not persuaded by any of the arguments for the appellant. I adopt the submissions of Mr Davies QC. The appeal fails and is dismissed.

DAN MOSSENSON, CHAIRPERSON