**APPEAL - 523**

# DETERMINATION OF

# THE RACING PENALTIES APPEAL TRIBUNAL

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| **APPELLANT:** | **GARY EDWARD HALL** |
| **APPEAL NO:** | **A30/08/523** |
| **PANEL:** | **MR D MOSSENSON (CHAIRPERSON)**<br>**MS K FARLEY (MEMBER)**<br>**MR WJ CHESNUTT (MEMBER)** |
| **DATE OF HEARING** | **13 MARCH 2001** |
| **DATE OF DETERMINATION:** | **17 JULY 2001** |

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**IN THE MATTER OF an appeal by Mr GE Hall against the determination made by the Western Australian Trotting Association Stewards on 13 February 2001 imposing a penalty of 6 months suspension together with a $5,000 fine for breach of Rule 190(2) of the Rules of Harness Racing.**

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Mr GE Hall appeared in person.

Mr MJ Skipper represented the Western Australian Trotting Association Stewards.

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This is a unanimous decision of the Tribunal.

For the reasons published the appeal against penalty is upheld. The period of suspension already served coupled with a fine of $2,000 is substituted for the penalty imposed by the Stewards.

Dan Mossenson

**DAN MOSSENSON, CHAIRPERSON**

Seal of the Racing Penalties Appeal Tribunal of W.A.

**APPEAL - 523**

# THE RACING PENALTIES APPEAL TRIBUNAL

## DETERMINATION OF MR WJ CHESNUTT (MEMBER)

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|---|---|
| **APPELLANT:** | **GARY EDWARD HALL** |
| **APPEAL NO:** | **A30/08/523** |
| **PANEL:** | **MR D MOSSENSON (CHAIRPERSON)**<br>**MS K FARLEY (MEMBER)**<br>**MR WJ CHESNUTT (MEMBER)** |
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Mr GE Hall appeared in person.

Mr MJ Skipper represented the Western Australian Trotting Association Stewards.

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I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and conclusions and have nothing to add.

**WILLIAM CHESNUTT, MEMBER**

Seal of the Racing Penalties Appeal Tribunal of W.A.

# THE RACING PENALTIES APPEAL TRIBUNAL

## DETERMINATION OF MS K FARLEY (MEMBER)

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|---|---|
| **APPELLANT:** | **GARY EDWARD HALL** |
| **APPEAL NO:** | **A30/08/523** |
| **PANEL:** | **MR D MOSSENSON (CHAIRPERSON)**<br>**MS K FARLEY (MEMBER)**<br>**MR WJ CHESNUTT (MEMBER)** |
| **DATE OF HEARING** | **13 MARCH 2001** |
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**IN THE MATTER OF an appeal by Mr GE Hall against the determination made by the Western Australian Trotting Association Stewards on 13 February 2001 imposing a penalty of 6 months suspension together with a $5,000 fine for breach of Rule 190(2) of the Rules of Harness Racing.**

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Mr GE Hall appeared in person.

Mr MJ Skipper represented the Western Australian Trotting Association Stewards.

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I have read the draft reasons of Mr D Mossenson, Chairperson. I agree with the reasons and conclusions and have nothing to add.

Kae Farley

**KAREN FARLEY, MEMBER**

Seal of the Racing Penalties Appeal Tribunal of WA

# THE RACING PENALTIES APPEAL TRIBUNAL

## REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

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|---|---|
| **APPELLANT:** | **GARY EDWARD HALL** |
| **APPEAL NO:** | **A30/08/523** |
| **PANEL:** | **MR D MOSSENSON (CHAIRPERSON)**<br>**MS K FARLEY (MEMBER)**<br>**MR WJ CHESNUTT (MEMBER)** |
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Mr GE Hall appeared in person.

Mr MJ Skipper represented the Western Australian Trotting Association Stewards

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**THE STEWARDS' INQUIRY**

VERSACE won Race 8 at Gloucester Park on 12 January 2001. It did not run a particularly fast time and the field was very weak. Arising out of that race on the 6 February 2001 the Western Australian Trotting Association Stewards sent a letter by registered mail to Mr GE Hall, in his capacity as the registered trainer of VERSACE, in the following terms:

*'Further to you presenting the abovenamed horse to race at Gloucester Park on Friday 12th January 2001 for race 8 the Healthy Heart Stakes, and the subsequent reports from the Racing Chemistry Laboratory (WA) and Racing Analytical Services Ltd. (VIC) regarding the post-race blood samples taken from the horse at that race meeting (Sample Number 67802).*

*Rule 190 (1) states –*

> *A horse shall be presented for a race free of prohibited substances.*

*Under the provisions of Local Rule 188(1) phenylbutazone and oxyphenbutazone are prohibited substances.*

*Therefore, in accordance with the provisions of Rule 190 (2) the Stewards are issuing a charge against you. The specifics of the charge are –*

> *As the trainer of Versace you presented the horse to race at Gloucester Park on the 12th January 2001 where the post-race blood samples taken from the horse were found to contain the prohibited substances phenylbutazone and oxyphenbutazone.*

*In accordance with Rule 191, the Racing Chemistry Laboratory's (RCL) report number 00R3665 provides prima facie evidence that Versace was presented for a race not free of prohibited substances. Furthermore, the Racing Analytical Services Limited (RASL) report dated 31st January 2001 provided conclusive evidence that Versace was presented for a race not free of prohibited substances.*

*For your information I have enclosed a copy of the relevant rules and in particular, I draw your attention to Rule 191(7).*

*You may present evidence in defense (sic) of the charge at an inquiry convened for the purpose, in the Stewards Room at Gloucester Park, at 1.00pm on Tuesday the 13th December 2000.*

*Please advise in writing by 5.00pm on Friday 9th February 2001, if you intend questioning the Analysts regarding their respective reports.'*

At the inquiry Mr Hall did not challenge the certification procedure involved in the taking or analysis of the sample. Consequently, the Stewards without more found the charge sustained. In dealing with the penalty Mr Hall explained to the Stewards he was treating VERSACE's nervous condition with Vitamin B1 starting approximately a week and a half before the event in question. The vitamin was administered after each time the horse was worked. At the same time Mr Hall gave the horse carnitine. The bottles containing these substances were kept in a cupboard in Mr Hall's stables. On the day after the race Mr Hall realised there was a third bottle containing Butazolidin in the cupboard with the other 2 bottles. All 3 bottles

were brown and shaped exactly the same. Mr Hall later realised he *'...might have given that horse Bute instead of the L-carnitine and/or B1'.*

The scientific evidence which was presented to the Stewards was that phenylbutazone generally acts on the musculo-skeletal system and to a degree on the gut. It is normally used as a palliative measure for pain and to relieve musculo-skeletal problems. If these conditions did not exist the drug probably would not have had any effect at all. The drug basically is aligned with pain relief and relief of inflammation. The level of phenylbutazone detected in VERSACE was 2.9 milligrams per litre which is probably consistent with more than one dose. Mr T Horsten, Senior Chemist and Research Officer from the Forensic Science Laboratory Chemistry Centre of WA, was of the view that the last dose was the day prior to the race.

According to Dr T Rieusset, the Association's Veterinary Consultant, the drug may have helped the horse towards the end of the race had the horse been feeling some musculo-skeletal pain. However, it did not *'...have an effect on the buffering capacity or the TCO2 or anything like that'*. It is reasonably clear from the evidence that Mr Hall would not have intended to give the horse phenylbutazone as he could not anticipate any benefit to the horse from an administration of the substance. Further, Dr Rieusset acknowledged that Mr Hall had:

> *'been pretty particular about the way he presents his horses and so on ... I wouldn't imagine a person of his intelligence thinking that he could give Phenylbutazone within two or three days of the race and think he can get away with it. I mean, I think I would be insulting his intelligence to say that'.*

Mr Hall asserted that he was *'dead set against drugs and always have been'*. He claimed that he did not believe in racing sore horses.

Mr Hall gave some evidence to the Stewards regarding his own adverse personal circumstances and the consequences to himself and others of him losing his licence. He explained that he had no other employment opportunities, faced heavy commitments due to his marriage breakdown, was rushed off his feet and was short staffed at the relevant time. He explained that because of what had happened to him last year and the anti-depressant tablets he had been taking, coupled with poor sleep and sleeping tablets, he was *'...not as alert'* as he had been. He went on to state:

*'I'm just saying that I haven't been one hundred percent. I haven't been one hundred percent. It's not even an explanation. I've been flat out. The horses haven't been going that good. I'm under pressure from owners, one thing and another. That's the only explanation I can give myself for why I could've possibly mixed it up. I don't know why I did. I've never done that before in my life. Never even come close.'*

Mr Hall agreed that his *'stable procedures must be pretty haphazard'*. He admitted he did not keep records of administration *'...because I don't do anything'*. .

After watching the video which the Stewards had taken whilst visiting Mr Hall's stables the Chairman of Stewards made the following statement:

*'...In relation to penalty, you indicated financial hardship, if you were disqualified. You know, the starting point for penalty has been quite well indicated by the Committee. With their recent activities, made it an option of a 6 months disqualification or a 3 months suspension, plus a $15,000 fine. Now you put to us there certain mitigating circumstances. You've willingly acknowledged the particular offence. But it would have been better had you come forward sooner, but that's only with the benefit of hindsight. But there is still some discretion for the Stewards to issue lesser than either of those two penalties. But what's your financial position in relation to a fine?'*

Mr Hall went on to tell the Stewards:

*'In this particular occasion I have nothing to gain by giving this horse Bute. It's just a plain and simple accident. Stupid there's no doubt about that. Something that I didn't think I could ever do and I would probably be critical of anyone else that did it. But that's what's happened.*

The Chairman of Stewards announced the outcome on penalty as follows:

*'...the Stewards have deliberated on the matter for some time and you have created somewhat of a dilemma for us. Bearing in mind the recent controversy regarding the drug related penalties and the Committee being involved and so on and so forth, but as I indicted (sic) the options that the Stewards are presented with by some of the recent Committee decisions of a 6 months disqualification or a 3 months suspension and $15,000 fine.*

*They did make other variations to a number of penalties at their most recent attempt and one of those penalties in relation to Kevin Nolan, lends itself to us issuing a lesser penalty to yourself than either the first two options I mentioned. However, in deciding any penalty we've got to be mindful foremost of the circumstances of the offence, and in your favour the fact the first real opportunity you've had to acknowledge the offence you've done that. There's the evidence of Dr Rieusset, that there's probably not a great deal of assistance gained from the horse or – by the horse from the administration and Mr Horsten confirms that you're (sic) explanation for the drug or – the*

*prohibited substance being present, is consistent with what he's been able to determine from the analysis of the sample.*

*On the other side, whatever penalty we impose not only will it be a deterrent to you, but also to others who may find themselves in similar circumstances, and when we publish our findings we will be indicating to the general public that the penalty we are imposing on you shouldn't be considered a precedent.*

*But after much deliberation and agonising, we feel that the appropriate penalty is a 6 months suspension and plus a $5,500 fine, and the fine comprises of a portion of GST. But the basic fine is $5,000 and the $500 comprises GST.*

*Against that decision you have 14 days in which to exercise your right of appeal to the Racing Penalties Appeals Tribunal. And I don't know whether you are aware or not, but a number of persons in similar circumstances as yourself have requested the Committee to consider reviewing the penalty that the Stewards imposed. So they're the options open to you in that regard.'*

It only emerged during the course of the appeal proceedings that the Stewards had in fact issued a report of the inquiry to the press. That report, which is dated 13 February 2001, states:

*'The Western Australian Trotting Association Stewards today concluded their inquiry into the Analyst's reports on the post race blood samples taken from Versace after its winning performance in race eight at Gloucester Park on Friday the 12th January 2001.*

*The Stewards received conclusive evidence by way of certificates of analysis from the Racing Chemistry Laboratory (WA) and Racing Analytical Services Limited (VIC) confirming the presence of phenylbzutazone and oxyphenbutazone in the samples. Phenylbutazone and oxyphenbutazone are non-steroidal anti inflammatory drugs.*

*Mr. Gary Hall the registered trainer of Versace, did not present any evidence to prove that the certification procedure was flawed, therefore he was guilty of breaching Rule 190(1) by presenting Versace to race where it was found to be not free of prohibited substances.*

*Mr. Hall, acknowledged the unintentional administration of the drug phenylbutazone on the day before the horse raced. He explained to the inquiry that he had intended to administer vitamin B1 and the amino acid L-Carnitine as part of a post workout regime to settle the horse. However, he was unsure if an incorrect administration was made on more than one occasion. Mr. Hall also stated that Versace was not suffering from any malady that required the administration of phenylbutazone and that the drug was in the stable for the treatment of an unnamed two-year-old colt.*

*Mr. Theo Horsten, Senior Chemist & Research Officer from the Chemistry Centre of WA advised the inquiry that the possible administrations acknowledged by Mr. Hall were consistent with the quantification analysis undertaken by the laboratory on the samples.*

*Dr Tom Rieusset, WATA Veterinary Consultant, advised the inquiry that the administration of the drug was unlikely to provide any benefit to a sound horse.*

*In deciding penalty, the Stewards were mindful of several factors. Mr. Hall readily acknowledged the offence at the first opportunity. There was no evidence of an intentional administration of the drug. There was no evidence of anything sinister in relation to the betting activity on the horse. Mr. Hall has a previous offence in relation to a prohibited substance (Caffeine 1986 – Vero Prince, penalty varied at appeal to disqualification for 3 months). It was obvious that Mr. Hall's stable procedures in relation to such matters were less than satisfactory. The penalty should contain a deterrent factor relative to the circumstances of this particular case and also be consistent with the recent penalty variations for prohibited substance related offences.*

*Mr. Hall's trainer and drivers license was suspended for six months and he was also fined $5500 (including GST). As Mr Hall has runners engaged at the Gloucester Park meeting on Friday the 16th February 2001, the Stewards ruled that his suspension would take effect from midnight on that date.*

*Versace was disqualified from the race, the Healthy Heart Stakes'*

## BACKGROUND TO THE APPEAL

Mr Hall appeals against the severity of the penalty on the following basis:

'1. *My financial position due to my recent separation and divorce is chronic. I have taken on large commitments to enable myself to keep training. They include the rent of the property at $1300 a month. I have other commitments of $1700 a month i.e. vehicles and credit cards. I have custody of my youngest daughter. My son works for me and has made a career in the industry based on his employment with me.*

2. *I am virtually unemployable outside the industry due to my age, qualifications and I have no computer skills at all.*

3. *The stewards have given me no leniency for my Plea of 'Guilty' and honestly (sic) of my evidence.*

4. *The Stewards have not sentenced me in line with the other penalties of a similar nature.*
   *Those being*
   - i. *Mr. Andrew De Campo*
     *Horse 'Merline Muffett'*
     *Positive Phenylbutezone*
     *Fine $2000 14/04/1997*
   - ii. *Mr. Trevor Warwick*
     *Disqualified six months*
     *Horse 'Pebble Ayr'*
     *Positive Phenylbutazone*
     *Reduced on appeal to $4000 Fine*
     *09/02/1989*
   - iii. *Mr. Ken Kieke*
     *Horse 'Nero's Son'*
     *Positive 'Finipyne' (Exact same qualities as Phenylbutezone)*
     *Fine $5000 18/02/1993*

*These Trainers are the only records I could find on positive swabs to Phenylbutezone or the like and all these escaped without suspension or disqualification.*

5. *The Stewards agree that the evidence of myself and that of the analyst was proof that I had made a genuine mistake and there was no 'intent' by myself to gain any advantage.*
6. *Professional Trainers as such outlay large amounts to set up training establishments and can lose their living for making an honest mistake as I have whereas Professional Drivers can only receive a six week suspension for an error. There seems to be an imbalance with these penalties.'*

At the same time Mr Hall applied for a suspension of operation of the penalty. I granted the stay on 23 February 2001 until 13 March 2001 or as otherwise ordered.

**THE APPEAL PROCEEDINGS**

Mr Hall's submissions at the appeal are brief and to the point. In essence he argues:

- that if he were suspended and therefore could no longer make a living he cannot pay the fine.
- he is unemployable outside the sport of racing.
- he has been upfront and honest and openly admits he had *'Grabbed the wrong bottle out of the drawer'.*
- other trainers have only been fined for their breaches of the same rule in respect of the same substance - they have been treated more leniently for the same offence.
- the Committee has intervened and reduced penalties for TCO2 offenders.
- TCO2 offenders have tried to improve performance which is to be contrasted with his offence.

Generally I am impressed with Mr Hall's forthright approach in the way he conducted himself at the appeal. The transcript of the inquiry and the video of Mr Hall's stable inspection both clearly reveal his approach before the Stewards had been no different. During the appeal hearing his comments on drugs in racing confirm what is apparent from the transcript. I am satisfied Mr Hall sincerely believes there is no place in the sport for deliberate drug administration designed to influence performance. It is clear from the material before the Tribunal that Mr Hall is not a drug cheat. However, this is not Mr Hall's first offence relating to prohibited substances. In 1986 he was disqualified for 3 months for a caffeine offence.

At the conclusion of the hearing the Tribunal adjourned to consider the matter. It was quickly concluded that this case was out of the ordinary. It is of more than the usual significance to the industry in that it involves consideration of the recently amended penalty provisions. It is the first matter to be dealt with by the Tribunal since the mandatory penalties were deleted from the Rules of Harness Racing. Further, it requires the Tribunal to take into consideration the Committee's role in relation to the penalties imposed by the Stewards. In the light of all of these factors the matter was adjourned but not before the Stewards were directed to produce further information as to all of the TCO2 determinations made by the Committee which clearly the Stewards had been regarded as being relevant. As a consequence of the adjournment Mr Hall's stay order was extended until the Tribunal's determination of the matter or as otherwise ordered.

The Stewards subsequently supplied the following formal written response to the Tribunal's request for more information:

> *'Further to the above appeal and your request for information in relation to the recent variations to Steward's penalties by the WATA Committee.*
>
> *To date, the Committee has only reviewed penalties in cases where the prohibited substance ("Drug") was TCO2 (Plasma total carbon dioxide in excess of 35.0mmo/l).*
>
> *The history of the Committee's involvement started with the amendment to the current LR256. The Committee essentially "wiped the slate clean" by excluding previous offences committed before 24th October 1994. Therefore, there were a number of trainers involved in "transitional" inquiries who, until the amendment, would have faced more than the "mandatory minimum" 12 months disqualification.*
>
> *This amendment was retrospective and was made prior to penalties being imposed on Ross Olivieri and Ken Kirke for a breach of Rule 497(1) [Previous Rules]. Penalties were imposed on Mr. Olivieri and Mr. Kirke under the provisions of LR256. As there were no "extenuating circumstances" both trainers were disqualified for 12 months.*
>
> *Mr. Beckett, Mr. Cusma and Mr. Nolan were also dealt with under LR256 for breaches of Rule 190(2) and, as there were no "extenuating circumstances, all were disqualified for 12 months.*
>
> *The Committee then deleted LR256, which left the way clear for the Stewards to impose penalty in accordance with Rule 256. The Committee also resolved that penalties should be decided in accordance with Resolution 16.00/25 (Committee Meeting 22nd August 2000 attached).*

*The first offenders to come under the provision of Rule 256, were Michael Cornwall and Diana Reeves. After considering Committee Resolution 16.00/25, the Stewards imposed 12 months disqualification on both trainers. It was our opinion that there were "suspicious" circumstances in each case, as neither trainer was able to provide an explanation for the high TCO2 levels. In the case of Mrs. Reeves, we found "stomach tubing" equipment at the stable.*

*The Committee further amended LR256 to facilitate the Stewards using Rule 256 to decide the penalty for Justin Warwick. Once again, in Mr. Warwick's case, there was no satisfactory explanation for the high level, therefore, the Stewards imposed a 12 months disqualification.*

*Because the Stewards had continued to impose the 12 months disqualification, the Committee became involved in the penalty review of all three cases and gave each trainer the option of a 6-month disqualification or a 3-month suspension plus a $15,000 fine. Mr. Cornwall and Mrs. Reeves elected to take the 6-month disqualification and Mr. Warwick took the suspension/fine option.*

*It is noteworthy, that when handing down its determination, the Committee seemed to have amended its resolution 16.00/25 by deleting reference to "suspicious" circumstances, as it was not mentioned in the determinations or the "Press Release" of the 7th December 2000.*

*The Committee then made further amendments to the Rules to facilitate a review of five other penalties imposed under the provisions of either Rule 55A (Previous Rules) or LR256 (Before amendment and deletion). In all cases the penalty was 12 months disqualification. Those were, Ross Olivieri, Ken Kirke [Both Rule 497(1) – Previous Rules], Corrado Cusma, Kevin Nolan and Chris Beckett [All Rule 190(1) – Current Rules].*

*There has been one further inquiry involving TCO2 since the Committee commenced varying penalties, that being Colin Brown. The Stewards gave Mr. Brown the option of 6-months disqualification or 3-months suspension plus $15,000 fine. Mr. Brown took the 6-months disqualification.*

*Some of the documentation provided to you is obviously confidential and therefore, not available to Mr. Hall. May I suggest that you review all the documentation and determine those items, which may be essential to Mr. Hall, and then I can provide him with a copy? In awaiting your advice, I have not provided Mr. Hall with any of this information to date.*

*Attached for your information is a copy of the following documentation –*

- *Extracts from WATA Committee minutes 3/8/00, 22/8/00, 5/10/00, 26/10/00 and 22/2/01.*
- *Details of all prohibited substance related cases since 1993.*
- *"Press Release" from the Committee dated 7th December 2000.*
- *"Format For Review of Penalties By Committee" (Sample C Cusma).*
- *Written submissions to Committee for penalty variations (Oral presentations were also made by some of the trainers) and the Committee's determinations relating to each penalty review.*

- *Memorandum to Committee from M Skipper dated 14th December 2000.*
- *Memorandum from M Skipper to Committee dated 17th January 2001.*
- *Memorandum from R Bovell to M Skipper dated 31st January 2001.*
- *RPAT determination Appeal 517 – K A Nolan*
- *NSW Appeal Tribunal determination – A D Turnbull.*
- *Copy of video film of the Stewards inspection of Mr. Hall's stable.'*

Committee Resolution 16.00/25 states:

> *'That where the stewards see it is a first drug offence and the person has not committed fraud and there are no suspicious circumstances, the stewards should consider varied penalties which may consist of a fine, disqualification or suspension or a combination thereof.'*

Mr Hall was given an opportunity, on a confidential basis at the Registry, to study the material supplied by the Stewards. Following that, Mr Hall submitted his written comments to the Tribunal. Those comments, in summary, include the following propositions:

- the offence cannot be compared to TCO2 offences where not only is administration involved but also an intent to enhance and improve the horse's performance to an optimum level.

- there is a widespread industry belief that trainers with high TCO2 readings are reluctant to change training and feeding practices because of the success they are having.

- the penalty was harsh compared with other similar incidents where trainers escaped disqualification or suspension.

- the Committee should not be interfering in drug penalties.

- a soft line on performance enhancing drugs should not be countenanced.

- the lack of intent and the accidental nature of the administration do not warrant such a harsh and inconsistent penalty.

Mr Hall was in favour of the Tribunal viewing the video which was taken by the Stewards at Mr Hall's stables and which had been shown to the Stewards during the inquiry. That video featured the drawer in which the 3 bottles were located as well as the bottles themselves. The bottles had not been produced at the appeal hearing. The video highlighted how easy it was for someone to remove one bottle from the drawer, then to tip out and feed the contents to a horse without having to examine the bottles. Someone routinely feeding a horse and not concentrating on the task at hand could easily empty out and administer contents from the wrong bottle.

**REASONS**

At the outset it is helpful to spell out the relevant provisions of the Rules of Harness Racing. Part 12 of the Rules deals with prohibited substances and covers Rules 188 to 196 inclusive. Rule 190 dealing with *'Presentation free of prohibited substances'* reads:

> *'(1) A horse shall be presented for a race free of prohibited substances.*
>
> *(2) If a horse is presented for a race otherwise than in accordance with sub rule (1) the trainer of the horse is guilty of an offence.'*

As far as I can determine Rule 256 took effect from 1 September 1999 (see Rule 314). Rule 256 reads:

> *'(1) One or more of the penalties set out in sub rule (2) may be imposed on a person, club or body guilty of an offence under these rules.*
> *(2) (a) A fine within the limits fixed by legislation or by the Controlling Body,*
> *(Note: Maximum fine under (2)(a) is $50,000 – Committee resolution 5.00/50 18th April 2000)*
> *(b) conditional or unconditional suspension for a period;*
> *(c) disqualification, either for a period or permanently;*
> *(d) warning off, either for a period or permanently;*
> *(e) exclusion from a racecourse, either for a period or permanently;*
> *(f) a bar, either for a period or permanently, from training or driving a horse on a racecourse, track or training ground;*
> *(g) conditional or unconditional suspension of registration for a period or cancellation of registration;*
> *(h) conditional or unconditional suspension of a licence for a period of cancellation of a licence;*
> *(i) a severe reprimand;*
> *(j) a reprimand.*
> *(3) Should a rule of its own terms impose a penalty in respect of an offence created by that rule then, subject to any contrary intention expressed or otherwise apparent in that rule, that penalty is the only one which can be imposed in respect of that offence.*

(4) *Penalties, whether under this or any other rule, attach from the time they are imposed, except that the Controlling Body or the stewards may postpone such attachment.*

(5) *(a) Penalties other than a period of disqualification or a warning off under this or any other rule may be suspended for a period not exceeding 12 months upon such terms and conditions as the Controlling Body or stewards see fit;*

*(b) If the offender does not breach any term or condition imposed during the period of suspension,*

*(c) If the offender breaches any term or condition imposed during the period of suspension then, unless the Controlling Body or stewards otherwise order, the suspended penalty thereupon comes into force and penalties may also be imposed in respect of any offence constituted by the breach.*

(6) *Although an offence is found proven a conviction need not necessarily be entered or a penalty imposed.*

(7) *Before an offence is found proven, the following conditions shall be satisfied:-*

*(a) the offender shall be afforded reasonable opportunity to cross examine witnesses, make submissions, present evidence to the Controlling Body or the stewards as the case may be;*

*(b) those submissions or evidence shall be taken into account;*

*(c) evidence relied upon in establishing the offence shall be identified;*

*(d) in a matter before the stewards, those stewards who finally determine that an offence has been committed shall be present during the whole of the proceedings.'*

By this rule there is an extremely wide discretion to punish drug offenders. Any number of combinations of penalties of very much varying degrees of severity could have been imposed on Mr Hall. By the time his conviction was recorded Local Rule 256 was amended to exclude its operation in relation to offences involving prohibited substances. Otherwise by that local rule, which was introduced in March 2000, drug offence minimum penalties automatically applied unless extenuating circumstances existed in relation to the actual commission of the offence itself. Such circumstances may justify a reduction of the otherwise automatic penalty. This Local Rule has been amended several times. At the time the Stewards dealt with Mr Hall's matter this Rule stated:

*'(1) A person who is convicted of an offence under:*

*(a) Part 12 of these Rules, other than LR196; or*

*(b) Part 42 of the Rules of Harness Racing repealed by these Rules (other than Rule 499) which offence was committed on or after 21 October 1994,*

*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; and*

(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.*

(2) *Rule 256(6) shall not apply to an offence found proven under Part 12 (other than LR196).*

(3) *This local rule shall not apply to an offence, under Part 12 of these Rules, committed on or after 24 March 2000.*

(4) *When exercising the power under LR256A to increase, reduce or vary a penalty imposed by the Stewards, the Controlling Body is not bound by the minimum penalties set out in paragraphs (c), (d), (e) and (f) of LR256(1).'*

Sub-rule 3 was gazetted on 10 November 2000, just 2 months prior to the commission of Mr Hall's offence. The Stewards were therefore obliged to determine Mr Hall's penalty pursuant to Rule 256.

Another complicating factor entered on the scene shortly after Mr Hall's offence and by the time the Stewards came to deal with him. According to the footnote to the Rules, Local Rule 256A was introduced into the Rules on 22 February 2000. This new rule empowered the Controlling Body to make decisions in relation to penalties. Local Rule 256A states:

> *'The Controlling Body may, at any time, whether or not an appeal has been bought before it, either increase, reduce or vary any penalty imposed at any time by the Stewards.'*

Clearly the Committee was empowered by this Local Rule to overturn a decision of the Stewards. As stated earlier when the Stewards were discussing the type of penalty after having watched the video, they claimed that *'...the starting point for penalty has been quite well indicated by the Committee. With their recent activities, made it an option of a 6 months disqualification or 3 months suspension, plus a $15,000 fine. ...But there is still discretion for the Stewards to issue lesser than either of these two penalties...'*. This approach of the Stewards of having been consciously influenced by the Committee's role is confirmed by the statement made by the Chairman of Stewards at the outset of pronouncing the Stewards' findings as to penalty where he refers to *'...the options that the Stewards are presented with by some of the recent Committee decisions...'*. It is reiterated in the press release issued by the Stewards following the inquiry. In the press release the Stewards made it clear the Stewards believed Mr Hall's penalty should be *'...consistent with the recent penalty variations for prohibited*

*substance related offences.'*. The logic and generality of this approach escape me. The circumstances surrounding a competing horse having an elevated level of a substance well known to affect a horse's system, by inhibiting fatigue during its race, cannot be equated to the present case. Mr Hall did not consciously administer the prohibited substance involved in his offence. Mr Hall is known for his stance against drugs. The only possible explanation for his predicament was the unfortunate bottle mix up. Further, there was no prospect of the substance which was found in VERSACE influencing this fit horse's performance in the race in question. The Committee itself did not share the Stewards' view that this matter should be dealt with in any way similar to the manner in which the Committee had handled the TCO2 cases. Mr Hall did approach the Committee for relief after the Stewards' hearing and the handing down of the findings. His overtures were ignored by the Committee. Why the Committee chose to treat all of the TCO2 offences (referred to earlier in the formal written response to the Tribunal) as matters requiring Committee involvement, thus setting them apart from all other different drug offences, has not been explained. One can only assume the Committee may have been swayed by factors such as the numbers of such offences, the prominence of the trainers concerned and the overall impact on the industry of so many trainers being involved. Even if the assumption was correct none of these factors are relevant to Mr Hall's matter. Mr Hall in commenting on the materials supplied by the Stewards asserts that the *'Committee should not be interfering in drug penalties'*. The circumstances behind the rash of TCO2 offences which led to the disqualification of so many important industry participants and the consequences to the local industry are irrelevant to this present matter. What effect the spotlight of TCO2 matters within the industry at a national level had, if any, and the ultimate change to the threshold of 35mm/l to 36mm/l are both quite irrelevant. In view of Local Rule 256A one cannot question the undoubted role which the Committee may play in drug matters should the Committee chose to do so. The Committee has been more than busy in the realms of TCO2 but appears to have shown no such inclination in any other prohibited substance matters on the basis of Mr Hall's experience. The Stewards should have dealt with Mr Hall based on relevant factors, namely the drug with which he was involved, his conduct and circumstances personal to Mr Hall. The Stewards should have ignored the Committee's TCO2 activities.

Although, as indicated earlier, at the time the Tribunal reserved its decision it considered this matter potentially could have important implications for the industry as it dealt with the role of the Committee influencing the outcome of the Stewards'

finding, upon full analysis it is now clear that Mr Hall's fate essentially needs to be considered only in the light of the facts and circumstances peculiar to his particular case. These features have been earlier identified. However, they are worth repeating, albeit briefly, to distinguish this particular case from others which may involve the same substance. The special factors relevant to this particular case are:

- Mr Hall's first drug offence occurred a long time previously, namely in 1986
- the early acknowledgment of the offence by Mr Hall
- the nature of the drug in question and its lack of effect on a fit horse
- the explanation, being entirely one of an innocent mistake, which was consistent with the analysis and was accepted by the Stewards
- the lack of sinister circumstances, and
- a whole range of troublesome subjective matters personal to Mr Hall including his matrimonial breakup, financial burdens, the lack of work opportunities outside of the industry and his state of mind at the time.

The reasons given by the Stewards do not make it clear how the Stewards arrived at and could justify the 6 months suspension coupled with the $5,000 fine in this case. Scant regard appears to have been given to the previous penalties for the same offence involving the same substance. In 1989 Mr T. Warwick's penalty was reduced to $4,000 fine on appeal (presumably to the Committee). In 1993 Mr Kieke was fined $5,000. More recently Mr De Campo was fined $2,000 in 1997. The Rules had changed in the meanwhile, although it is not argued that those changes require tougher penalties now compared with formerly. The Stewards were clearly preoccupied by the Committee's approach in relation to the TCO2 drug offences. The Stewards expressly state they considered *'options'* presented to them by the recent Committee decision when in fact it was the Rules alone which should have guided their thinking. Mr Hall had complied with the Rules over the last 14 years. The previous 3 offenders in this State during this period whose penalties were directly relevant were all fined. I am satisfied the treatment meted out to Mr Hall reflects an error on the part of the Stewards. It is too harsh when one takes into account all of Mr Hall's mitigating circumstances.

After mature consideration of all of the relevant factors I am satisfied the Stewards failed to give any weight to or proper consideration of Mr Hall's personal circumstances as mitigation. Those circumstances were not only relevant in a general way in terms of the penalty to be enforced but in this case are particularly important to explain Mr Hall's lack of care in failing to observe the Butazolidin bottle in the drawer. Mr Hall's general state of health and the pressures he was experiencing at the time help explain why this mix up occurred. The impact of a lengthy period of suspension coupled with a monetary penalty, not only on himself but on others in the family and those involved in his stables, are not addressed by the Stewards.

The De Campo matter is particularly relevant. Stewards conceded in the case that the presence of oxyphenbatazone found in MERLENE MUFFETT was the result of a stable feed mix up. It was admitted the circumstances of De Campo's offence were somewhat similar. On appeal to the Tribunal by the owner (DJ Gardiner Appeal 361) the disqualification of the horse was set aside. The rules subsequently changed. VERSACE's disqualification was mandatory.

At the appeal hearing Mr Skipper indicated the Stewards were sure the administration to VERSACE was an accident. Despite this finding the Stewards set the penalty as a deterrent to Mr Hall. Having conceded at the appeal the administration was accidental, presumably the only relevant aspect of deterrence is the lack of precision in operating the stable and recording information. Due to Mr Hall's acknowledged attitude to drugs, no deterrence in the normal sense is required in this case on that score.

This unusual case clearly turns on its own facts. One must measure the penalty against the circumstances of the individual concerned. There clearly was no motive – the substance was not performance enhancing and the administration was accidental. Mr Skipper acknowledged the Stewards faced a dilemma in arriving at an appropriate penalty which was not too harsh and addressed *'the Committee's guidelines'*. Mr Skipper indicated to the Tribunal the Stewards regarded $15,000 coupled with a suspension of 6 months or 3 months as appropriate. Otherwise 12 months is a mandatory minimum which would be reduced for mitigating circumstances. In a serious case the penalty could be 2 years. None of this approach is apparent or capable of being gleaned from studying the transcript of the Stewards' inquiry. In the light of these comments and the other aspects identified it

is clear the Stewards have not adequately explained in their reasons the basis of their approach other than their time and occupation with the Committee's involvement in the TCO2 cases. Further, at the appeal no decisions from other jurisdictions were cited to establish a tariff imposed in other jurisdictions which could be taken into account in arriving at a proper decision in this matter.

In conclusion I am satisfied there is merit in each of grounds 1 to 5 inclusive. As to the latter the circumstances surrounding the actual administration are indeed extenuating here. I am not influenced by Ground of Appeal 6. Equating or contrasting drivers' penalties with those of trainers serves little if any useful purpose.

Mr Hall has already served a short period of suspension: he was in fact suspended for the period commencing 13 February 2001 until the stay application was dealt with and granted on 23 February 2001. In exercising the very wide discretion that is available after carefully evaluating and weighing up the particular circumstances special to Mr Hall, I believe a fine of $2,000 in addition to the short 10 day period of suspension is appropriate here. I am satisfied that in view of Mr Hall's financial circumstances such a fine is a tremendous burden to him. Unless Mr Hall continues to be licensed and can exercise the privileges of his licence he will be battling to meet his other commitments let alone any fine.

I would uphold the appeal and substitute for the suspension and fine penalty imposed by the Stewards the period of suspension which Mr Hall has already served coupled with a $2,000 fine.

Da Mossenson

DAN MOSSENSON, CHAIRPERSON

Seal of the Racing Penalties Appeal Tribunal of W.A.

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