APPEAL - 581

DETERMINATION OF

THE RACING PENALTIES APPEAL TRIBUNAL

APPELLANT:	**MILTON S CAMPBELL**
APPLICATION NO:	**A30/08/581**
PANEL:	**MR J PRIOR (PRESIDING MEMBER)** **MR S PYNT (MEMBER)** **MR W CHESNUTT (MEMBER)**
DATE OF HEARING:	**24 SEPTEMBER 2002**
DATE OF DETERMINATION:	**24 SEPTEMBER 2002**

IN THE MATTER OF an appeal by Mr M S Campbell against the determination made by the Stewards of the Western Australian Turf Club on 16 August 2002 imposing 6 months disqualification for breach of Rule 178 of the Australian Rules of Racing.

Mr M S Campbell represented himself.

Mr W J Delaney appeared for the Stewards of the Western Australian Turf Club.

This is a unanimous decision of the Tribunal.

Mr Campbell is the trainer of JULIE'S SMILE, which ran in Race 4 over 2100 metres at Belmont Park on 8 August 2002. JULIE'S SMILE started at 6/1 and finished 5th in a field of eight. A pre-race blood sample taken from JULIE'S SMILE on analysis by the Chemistry Centre (WA) revealed the level of TCO_2 to be 38.3. That value was subject to an uncertainty of measurement of plus or minus 1.2 millimoles per litre. Racing Analytical Services Limited in Victoria reported a TCO_2 level of 37.3. That level was also subject to an uncertainty of measurement of plus or minus 1.2 millimoles per litre.

On 16 August 2002 the Stewards opened an inquiry into the Analyst's reports that the Total Carbon Dioxide was in excess of 36.0 mmol per litre in plasma. Called to the inquiry were:

M. S. Campbell	Trainer of JULIE'S SMILE
S. J. Suvaljko	Managing Part Owner of JULIE'S SMILE
Dr J. C. Medd	WATC Veterinary Steward
C. Russo	Manager, Racing Chemistry Laboratory
T. Rendell	WATC Cadet Steward

After hearing the evidence the Stewards charged the Appellant with a breach of Rule 178 of the Australian Rules of Racing. That rule states:

> *"178. When any horse which has been brought to a race-course for the purpose of engaging in a race is found by the Committee of the Club or the Stewards to have had administered to it any prohibited substance as defined in A.R. 1, the trainer and any other person who was in charge of such horse at any relevant time, may be punished, unless he satisfy the Committee of the Club or the Stewards that he had taken all proper precautions to prevent the administration of the prohibited substance."*

Mr Campbell pleaded not guilty. In finding the charge proved the Chairman of the Inquiry stated:

> *"Mr Campbell by your own admission you have administered alkalinising agents to JULIE'S SMILE in the lead up to the race. In our view, based on the evidence tendered by Dr Medd, for those levels to have been obtained it is likely that an administration via stomach tube was made by a person or persons who we are unable to determine. In addition, we are satisfied that you have failed to have in place appropriate security precautions to prevent unauthorised access to your stables. Stewards are satisfied that you have failed to take all proper precautions to prevent the administration of the prohibited substance, therefore we find you guilty. It is now up to you to present submissions in relation to penalty before we consider that fact."*

Mr Campbell requested that the Stewards impose the penalty of a fine.

In announcing the penalty the Chairman said:

> *"The Western Australian Turf Club has maintained a policy of prohibited substance free racing for a considerable period of time. It has gone to great lengths through the publication of its Racing Calendar to advise trainers in this regard. You've been licensed as a trainer with the WA Turf Club for many years and have previously been disqualified under Rule 178 for a prohibited substance offence, so it is reasonable to expect that you would be well aware of your obligations as a trainer to present your horses for racing free of prohibited substances. The success of this industry depends on the level of support it receives from the racing public. That support is dependent on the integrity of the industry as a whole and the integrity of its individual participants. Any undermining of that support through a loss of confidence could have serious consequences. It is imperative that racing be seen as being conducted fairly. A breach of the prohibited substances rule is considered a serious breach and in the case of TCO_2 offences has historically incurred a penalty of disqualification of between three and twelve months for a first offence. For the record we have not considered your 1980 conviction in arriving at penalty here this afternoon. We have considered your submission for a fine and do not consider it appropriate. We are of the opinion that given the circumstances of your particular offence the appropriate penalty is disqualification of six months."*

This is an appeal against penalty only.

The Appellant appeals against the severity of the six months disqualification imposed and submits that a penalty of suspension may be appropriate. He refers to the decision

of this Tribunal in Appeal 467 – Monteleone. In that matter the penalty of six months disqualification was reduced to four months disqualification. That appeal related to the same rule and substance as this case.

For an appeal against penalty to succeed it is incumbent on the Appellant to demonstrate the penalty imposed by the Stewards was made in error, was manifestly excessive in the circumstances, or some other error of principle was made.

Generally in Western Australian thoroughbred racing for first offences of breach of Rule 178 relating to TCO_2, penalties of disqualification have been imposed. Only in one matter has a fine been imposed which was $10,000. No suspensions have been imposed.

Six months disqualification is within the general range of disqualifications imposed for first offences. In this matter the Appellant was treated as a first offender although he had a previous conviction under the same rule dating back to 1980. We are satisfied therefore that it was appropriate for the Appellant to be treated as a first offender.

The facts of the Monteleone matter are distinguishable from this appeal. A significant fact in Monteleone was that the presence of the prohibited substance was due to inadvertence arising as a result of a failure by the manufacturer to properly label the product in question. In this matter it is undoubted that the administration was intentional although by persons unidentified. Trainers however have an overriding obligation to have adequate security and supervision at their stables. That was clearly not the case in respect to Mr Campbell's stables.

For these reasons we are not satisfied that the penalty imposed was made in error or was manifestly excessive. Nothing else has been raised by the Appellant which casts any doubt on the correctness of the penalty imposed.

The appeal is dismissed.

John Prior

JOHN PRIOR, PRESIDING MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA