APPEAL – 645

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR D MOSSENSON (CHAIRPERSON)

APPELLANT:	**PAUL FAHY**
APPLICATION NO:	**A30/08/645**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR J PRIOR (MEMBER)**
DATE OF HEARING:	**29 NOVEMBER 2005**
DATE OF DETERMINATION:	**29 NOVEMBER 2005**

IN THE MATTER OF an appeal by Paul Fahy against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 4 November 2005 imposing 6 months disqualification for breach of Rule 81A(1)(b) of the Australian Rules of Racing.

Mr M Ayoub appeared for the appellant.

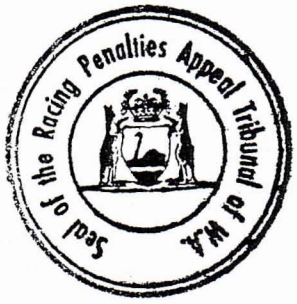
Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr J Prior, Member.

I agree with those reasons and having nothing to add.

Dan Mossenson

DAN MOSSENSON, CHAIRPERSON



APPEAL – 645

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR P HOGAN (MEMBER)

APPELLANT:	**PAUL FAHY**
APPLICATION NO:	**A30/08/645**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR J PRIOR (MEMBER)**
DATE OF HEARING:	**29 NOVEMBER 2005**
DATE OF DETERMINATION:	**29 NOVEMBER 2005**

IN THE MATTER OF an appeal by Paul Fahy against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 4 November 2005 imposing 6 months disqualification for breach of Rule 81A(1)(b) of the Australian Rules of Racing.

Mr M Ayoub appeared for the appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

I have read the draft reasons of Mr J Prior, Member.

I agree with those reasons and having nothing to add.

PATRICK HOGAN, MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA

APPEAL – 645

THE RACING PENALTIES APPEAL TRIBUNAL

REASONS FOR DETERMINATION OF MR J PRIOR (MEMBER)

APPELLANT:	**PAUL FAHY**
APPLICATION NO:	**A30/08/645**
PANEL:	**MR D MOSSENSON (CHAIRPERSON)** **MR P HOGAN (MEMBER)** **MR J PRIOR (MEMBER)**
DATE OF HEARING:	**29 NOVEMBER 2005**
DATE OF DETERMINATION:	**29 NOVEMBER 2005**

IN THE MATTER OF an appeal by Paul Fahy against the determination made by the Racing and Wagering Western Australia Stewards of Thoroughbred Racing on 4 November 2005 imposing 6 months disqualification for breach of Rule 81A(1)(b) of the Australian Rules of Racing.

Mr M Ayoub appeared for the appellant.

Mr R J Davies QC appeared for the Racing and Wagering Western Australia Stewards of Thoroughbred Racing.

On the 29 November 2005 the Tribunal by a unanimous decision dismissed the appeal and confirmed the penalty of six months disqualification. The Tribunal also determined that Member, Mr J Prior would publish the reasons for dismissing the appeal.

Mr Fahy is a licensed Trackwork Rider. On 29 October 2005 at the Lark Hill Training Complex during trackwork, Mr O'Reilly, Principle Investigator, directed the appellant to provide a urine sample. Mr Fahy declined that direction to provide the sample. Mr O'Reilly conducted a video taped interview with the appellant. The Principle Investigator reported the incident to the Chairman of Stewards who directed that Mr Fahy be stood down immediately from trackwork riding.

On 4 December 2005 the Stewards opened an inquiry. After hearing evidence from the appellant a charge was laid pursuant to Australian Rule of Racing 81A(1)(b). That Rule states:

> ***"AR.81A. (1)*** *Any rider commits an offence and may be punished if –*
>
> ...
>
> *(b) he refuses or fails to deliver a sample as directed by the Stewards to do so."*

The appellant pleaded guilty.

In handing down sentence the Chief Steward stated:

> *"Just in regard to penalty, we (sic) got the following comments. We say that Stewards and investigators are empowered to take samples from riders to ensure that their own, and the safety of other riders and horses can never be compromised. This is an extremely serious breach of the Rules as you've effectively eroded our level of control over the industry. The precedent from around Australia is that periods of disqualification have resulted for offences of the same nature. We've taken into account your plea of guilty and your personal circumstances and the fact that you're going to go away and get some rehabilitation. We don't believe a fine is appropriate in all of the circumstances, or a suspension. We do believe a period of disqualification should be served, and that should be for a period of six months."*

Mr Fahy lodged Notice of Appeal on 15 November 2005 against the severity of the penalty and applied for a stay of proceedings. The Chairperson of the Tribunal refused the application to suspend the operation of the penalty.

This Appeal proceeded on the basis that Counsel for the Appellant submitted that the penalty imposed was manifestly excessive in the circumstances.

Counsel for the Appellant conceded that a suspension or disqualification was an appropriate penalty, but it was in particular the length of the disqualification, being six months, that was manifestly excessive in the circumstances.

Counsel for the Appellant submitted that the six month period of disqualification was at "the top end of the scale" for an offence of this nature, in particular considering the Appellant was a track work rider only and not a jockey.

In my opinion, an offence under Rule 81A(1)(b) is a serious offence in any circumstances.

Refusal or failure to deliver a sample as directed by the Stewards denies the Stewards of the opportunity to see if the relevant party was under the influence of any prohibited substances. The power given to the Stewards under this Rule is significant, because if a person is under the influence of a prohibited substance, in particular one which may impair his or her ability to properly control horses, this has the effect of undermining the public confidence in racing and also places other persons and animals at significant risk.

In those circumstances, I am satisfied that a refusal or failure to deliver a sample, as directed by the Stewards, can be considered as serious an offence as that where a jockey or track rider is found to have a prohibited substance in the sample which could directly impair his or her ability to ride a horse.

In this case, it was submitted by Counsel for the Appellant that the Appellant had been co-operative with the Stewards, in particular at the Stewards' Inquiry, having made some admissions that he had been in a situation where he may have, even on a passive basis, ingested cannabis. He further advised the Stewards that he had a problem with cannabis usage.

The problem with such admissions is that because the Appellant failed to provide a sample of his urine, it created an inability for the Stewards to confirm whether in fact he was being truthful to them with respect to these statements.

I am not satisfied that because the Appellant only worked as a track rider, that made the offence of less serious nature than had he been employed as a jockey.

The safety of animals and other track riders would still have been at risk if he was under the influence of a prohibited substance to affect his ability to ride, whether he had been racing as a jockey or merely carrying out track work duties.

A significant factor for consideration in this matter and in particular, whether the penalty was manifestly excessive in the circumstances, is the fact that the Stewards, in imposing the penalty on this Appellant, found the Appellant only had one previous offence. At the hearing of this Appeal, it became clear that that was not factually correct, this Appellant having had convictions in 1999 in New South Wales for amphetamines and cannabis related offences, both penalties which resulted in a disqualification or suspension.

In that respect, it is difficult also to find that the Appellant has been totally candid with the Stewards in this matter.

The fact that the Appellant did have a previous record relating to another illegal substance, other than cannabis, also highlights the importance to the Stewards of being able to obtain a urine sample in this case, which could have even had the benefit to the Appellant of confirming that if he was affected by any prohibited substance, or the only relevant prohibited substance was cannabis.

Considering all the above matters, I am satisfied that the imposition of a disqualification penalty and a disqualification penalty for six months would not be considered to be manifestly excessive in the circumstances. Further to this, there is nothing in the submissions made by the Appellant that suggests there is any tariff for offences of this nature

and if so, the penalty imposed of six months disqualification was in excess of the usual tariff for offences of this nature.

In those circumstances, I would dismiss the Appeal against penalty.

John Prior

JOHN PRIOR, MEMBER

Seal of the Racing Penalties Appeal Tribunal of WA