Appeal decision

Date: 28 October 2014

Code of racing: Harness

Appeal panel: Mr P James (chair), Mr D Kays.

Appearances: Mr S Neaves, barrister, appeared on behalf of trainer/driver Ricky Thurlow.
Ms K Wolsey, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Six months suspension of both trainer's and driver's licences – AR250(1)(a).

Appeal result: Appeal dismissed. Penalty reduced in relation to trainer's licence.

Extract of proceedings – finding of cocaine in a urine sample provided at Albion Park Raceway on 7 October 2014. Trainer/driver: Ricky Thurlow

THE CHAIRMAN: This appeal by trainer/driver Ricky Thurlow arose as a result of an inquiry by stewards conducted at the offices of Racing Queensland at Brisbane on 14 October 2014. The issue concerned the positive finding of the metabolites of cocaine, namely, benzoylecgonine and ecgonine methyl ester in a urine sample as a result of a random test carried out at Albion Park Raceway on 7 October 2014 on the appellant. These metabolites, as is cocaine, are banned substances as provided for in Rule 251 of the Australian Harness Racing Rules.

These banned substances were detected in a pathology report on 10 October 2014 from QML Pathology and the results thereof were conveyed to both the stewards and the appellant. On this appeal Mr Neaves, on behalf of the appellant Mr Ricky Thurlow, advised the appeal board that although the appeal notice stated that the appeal would be in respect of both conviction and penalty, in fact it was to be in relation to penalty only. Both Mr Neaves, on behalf the appellant, and Ms Kwan Wolsey, on behalf of the stewards, addressed us at length in regard to many and varied previous decisions, both in this State and interstate involving various types of prohibited substances, the stature of the persons involved, whether they had any previous or similar convictions and the penalties imposed.

It indeed seems clear from the great disparity in the sentencing decisions, both from this State as well as interstate, for all codes of racing that it is very difficult to identify an established guideline of penalties. This board takes the view that each case should therefore be dealt with on its individual merits.

The Queensland All Codes Racing Industry Board has a drug and alcohol policy, which policy was made on 1 May 2013, in which it is declared that the desired outcome to be achieved concerning this policy is the safe and professional conduct of race meetings and/or related activities such as training, free of risk of injury to persons and animals occurring as a result of alcohol or drug-impaired performance by those responsible for the control of registered animals. The Policy Statement goes on:

> *"Racing Queensland considers that the misuse of drugs and alcohol poses serious risks to the safety of both Queensland Racing Industry participants and members of the general public and will not be condoned. Penalties imposed will reflect this stand and may include suspension or disqualification of licence for proven offences."*

We are mindful in our decision of the above policy as well as the Workplace Health and Safety issues and the perception of the industry and the sport as a whole and the need for drug free racing.

In this case, there is certainly no evidence of self-administration of the drug, although there is some evidence of the appellant having procured drinks at a nightclub (bourbon and coke) over a number of hours some three days prior to the offence where he alleges that his "drinks could have been spiked." In this regard, he admits that his drinks may not have been properly secured by him during the course of the evening.

Mr Neaves, in his submission, handed to us a number of character references from various respected and well-known people in the harness racing industry who were prepared to attest to the appellant's good character and standing in the harness racing industry. In this particular case, there appears to be no great disparity between the appellant and the stewards with regard to the character of the appellant. It is readily identifiable in the transcript that the stewards, in arriving at their decision, took into consideration the appellant's previous good record and his present financial position.

The appellant has a very good record spanning over some 24 years in which he has held a licence and has not troubled the stewards in regard to any similar matters. He has a wife and two children. He has a very large second mortgage and substantial mortgage payments. He trains approximately seven horses, and any suspension will cause him a very serious financial burden.

Mr Neaves, on behalf of the appellant, contended that a suspension of both the appellant's training and driving licences created an extremely onerous financial burden on the appellant. In this regard, he submitted a document detailing the appellant's financial position.

On the other hand, Ms Wolsey, on behalf of the stewards, submitted that the fact that the stewards only suspended both licences for a period of six months and did not disqualify the appellant's licences for this period, would allow the appellant to undertake certain activities such as shoeing, transporting of horses, being allowed on property and also at the race track so that the appellant would have some capacity to be involved in harness racing.

Mr Neaves, on behalf of the appellant, contended that this may be of little comfort to the appellant as a loss of his trainer's licence could effectively put him in a position whereby he could not meet his financial commitments.

Weighing up all these factors, including the appellant's past exemplary record and other relevant matters, it is our decision that the appellant's driver's licence should be suspended for a period of six months and we so order. In relation to the appellant's trainer's licence, in all the circumstances, we vary the stewards' decision to a three months suspension in lieu of the previous six months suspension.

We also order, as the stewards had previously ordered, that as the appellant was not granted a stay, that this suspension shall commence from Tuesday 7 October 2014, which was the date that the appellant was originally stood down.

Further right of appeal information: The appellant and the stewards may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **14 days of the date of this decision**. Information in relation to appeals to QCAT may be obtained by telephone on (07) 3247 3302 or via the Internet at www.qcat.qld.gov.au