Appeal decision

Date: 14 April 2015

Code of racing: Harness

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

Appearances: Mr S Neaves appeared on behalf of Brian Manzelmann.

Mr D Farquharson, stipendiary steward, appeared on behalf of the stewards.

Decision being appealed: Three months' disqualification to commence at the expiration of current period of disqualification – AR 190A(4) and $1,000 fine – AR 194.

Appeal result: Appeal upheld.

Extract of proceedings – in the matter of a decision concerning the discovery of an unlabeled substance during a stable inspection carried out at the training premises of licensed trainers Mr. T McKay and Ms J. Manzelmann on 3 November 2014.

THE CHAIRMAN: On 3 November 2014 stewards from Racing Queensland undertook a stable inspection at premises then occupied by trainer T Mackay. During the course of the inspection certain items were confiscated from or near the stables. Those items were then sent to the Racing Science Centre for analysis. A Certificate of Analysis indicated that one of the samples was analysed between 3 November and 3 December 2014 and was shown to contain testosterone enanphate. That substance was in a bottle which was located in a room adjoining the stables. When questioned, trainer McKay identified that he had specific instructions not to interfere with anything contained in that room as it was not part of the area of his domain namely the training stables and was, in fact, subject to a lease to some women who were engaged in riding horses. These women had apparently kept significant amounts of equipment in the room for some time. It was identified that the substance in question is a synthetic form of testosterone. Testosterone is used for testosterone replacement therapy in certain cases such as prostate cancer where males have been castrated but is more typically used in the sheep and wool industry for treating castrated males or wethers for pizzle rot. The substance is not registered for use in horses and it is accepted by stewards and Racing Queensland that the substance has no place for use in the thoroughbred or standard bred horse industry. Evidence given at the Inquiry that was convened subsequent to the stable inspection confirmed that testosterone usage is highly regulated. Dr Bruce Young, the Chief Veterinary Officer at the Racing Science Centre, confirmed *it is to be administered by a veterinarian or under the direct supervision of a veterinarian. It is not to be dispensed to trainers. There are some provisions with the sheep industry where farmers can get hold of it, but certainly not the horse industry. It needs to be adequately labelled. It is*

a Schedule 4 compound. Dr Young identified that the bottle in question was extremely concerning and had obviously been aliquoted from a source potentially designed for pizzle rot treatment in sheep. He noted that it was not a therapeutic manufactured source of testosterone.

Mr McKay when questioned by stewards during the inspection and also at the Inquiry identified that he had never set foot in the room in question and further that he had been specifically instructed that it was nothing to do with him and he should not trespass into that area. Accordingly he decided to obey that requirement and did not become aware, or so he says, of the substance until it was brought to his attention by stewards. Mr McKay commented that the stewards had been in that particular room previously and it appears accepted by all the parties to this Inquiry that stewards from Racing Queensland had confiscated other items from the room and had also issued a directive that the room was to be cleared. Mr McKay for reasons best known to himself elected not to comply with that direction at the previous stable inspection. It seems apparent from the transcript that the stewards had been at the stable and conducted inspections of same even prior to Mr McKay being appointed as the trainer for the establishment and had been there when he was also present subsequently. It is however to be borne in mind that the stewards apparently advised that this was the first time that they had actually gone in to the particular section where this substance was located in an old fridge. Mr McKay, in his evidence, disagreed with that suggestion and confirmed that he had been asked to clean it out numerous times which would tend to indicate that certainly the stewards had been present on at least more than one occasion prior to this inspection on 3 November.

During the course of their enquiry and questioning of Mr McKay it became apparent that the premises were owned by Brian Manzelmann. Mr Manzelmann was, at the time of the inspection, a disqualified person within the meaning of the Rules such disqualification having been imposed to take effect from 9 October 2014 until 8 October 2015. The stables and the room and adjoining areas were owned by Mr Manzelmann who, after his disqualification in October 2014 was permitted by stewards to remain in occupation of the house property but was banned from entering or having anything to do with the training of horses either on the property or in the stables. He was further constricted from entering the stable area, a line having been drawn as a demarcation point over which he was not allowed to cross. It is accepted by the stewards that Mr Manzelmann did not, subsequent to his disqualification, enter that stable area or the room in question.

Mr McKay of course explained his position regarding occupancy of the premises to the stewards and in the Inquiry the chairman of the Inquiry identified that Mr Manzelmann may have been able to assist in identifying where and from whom this substance was obtained as Mr McKay had no knowledge himself. The Chairman of Stewards then suggested to Mr McKay that he might like to telephone Mr Manzelmann to seek some information regarding the substance in question. Page 22 of the transcript identifies that a conversation then took place between the Chairman of Stewards and Mr Brian Manzelmann. It was identified that Travis McKay was being questioned about the vial that contained the substance in question and the Chairman suggested that Mr McKay had asked the Inquiry to contact Mr Manzelmann in regards to any further witnesses or evidence and Mr McKay apparently asked that Mr Manzelmann himself be contacted in respect to the substance.
Mr Manzelmann was informed of this and was open with the stewards in his discussions over the telephone. He acknowledged that he believed, although he was not sure, that he had obtained the substance some considerable time ago and perhaps even more than 12

months prior. He confirmed that he was not sure because he had some foals that had been born very late and he understood that he would be able to help those foals by injecting them so that it would help them grow. Of some particular interest was the suggestion by the Chairman of Stewards that a number of substances that were recovered from the room in question were prescribed to a trainer and driver Justin Abbott and to another person Brad Connolly. Mr Abbott is currently a disqualified person. Mr Manzelmann told the stewards that when Abbott was disqualified he basically walked away from everything and he was told by Manzelmann that he could leave his stuff there as long as he wanted to until he got all of his problems sorted out. He admitted that he basically put all of his stuff in with his own and put it in the fridge and then when he, Manzelmann, was disqualified he had been meaning to clean the fridge out and throw it all away. Needless to say that from 9 October 2014 when he was disqualified he was not allowed to re-enter the stables.

During the course of the telephone conversation it became apparent that Mr Manzelmann had previously been charged with having certain unlabelled products and unregistered products in his possession in this particular fridge. The issue here is that Mr Manzelmann has stipulated that the substance in question was with those unlabelled and unregistered products with which he had been charged. Mr Manzelmann believes that he may have purchased all of those substances from Ambrosia Stud but so far as the testosterone was concerned he said that he had used it on one occasion for the foals but found that it did not work as he had been promised and did not use it again. It is apparent therefore that he left that substance in the fridge and made no attempt to remove it.
Mr McKay, of course, was a trainer with a registered licence operating from the premises. Notwithstanding that he had been forbidden entry to the room in question the stewards levelled a charge against him and imposed a penalty of $1,000 after he pleaded guilty. This Board is somewhat surprised at firstly the charge being levelled but more importantly at why Mr McKay did not lodge an appeal when his stated evidence was that he had been strictly forbidden access to the premises and therefore could not be seen to have been in charge of those premises. It is irrelevant for the purposes of this Inquiry to delve further into that aspect but it is of some importance to note that it was as a result of the telephone discussion with Mr Manzelmann during the course of the Inquiry in question that Mr Manzelmann then was required to answer two charges. The first charge under Rule 190A(4) which stipulates:

> *If any substance or preparation that could give rise to an offence under this Rule if administered to a horse at any time is found at any time at any premises used in relation to the training or racing of horses then any owner, trainer or person who owns, trains or races or is in charge of horses at those premises is deemed to have the substance or preparation in their possession and such persons shall be guilty of an offence*.

Mr Manzelmann accepted that he had placed the substance in question in the fridge and as a result he pleaded guilty to having the product there.
The second charge that Mr Manzelmann faced was under Rule 194 which states:

> *A person who procures or attempts to procure or has in his possession or on his premises or under his control any substance or preparation that has not been registered, labelled, prescribed, dispensed or obtained in compliance with relevant State and Commonwealth Legislation is guilty of an offence*.

The particulars noted by the stewards were that as he was the person who purchased the testosterone enanthate then from his own admission in evidence earlier that day he should be charged for procuring the substance which from 1 May 2014 was deemed a prohibited substance. Again Mr Manzelmann pleaded guilty. The Chairman of Stewards identified that the charges were levelled because the substance that was detected by the stewards (a) did not have a label on it; it was just a clear amber vial and (b) that it was a synthetic testosterone and (c) that it wasn't registered for use in horses and it was not dispensed in accordance with Commonwealth Legislation. The stewards then imposed a fine of $1,000.00 for the offence under Rule 194 and imposed a disqualification of three months as a penalty for breach of Rule 190A(4). The stewards acknowledged that the disqualification would run from 9 October when the original disqualification period of 12 months was due to expire.

It was against those findings of guilt or imposition of the penalty that Mr Manzelmann lodged appeals.
Mr Neaves who appeared on behalf of Mr Manzelmann argued that the penalty imposed in respect to the substance should not be maintained. In support thereof he opined that from 23 August 2014 Mr Manzelmann was charged with an identical offence under Rule 194 and was fined the sum of $200. Mr Neaves believes that the totality principle should have application in that the substance is accepted as having been in the premises and not having been used for some 12 months and certainly been in existence at the time the charge was levelled under Rule 194 on 23 August 2014. The stewards of course stipulate that that is not the position as they were unaware of the existence of the substance until such time as a proper analysis had been undertaken which analysis was performed only after the investigation of the stables took place on 3 November. Rule 194 of course relates to a person who has in his possession or on his premises or under his control any substance or preparation that has not been registered, labelled, prescribed, dispensed or obtained in compliance with relevant State and Commonwealth Legislation. It is irrelevant what the substance is. It is a matter of whether or not a previous charge encompassed the particulars of the charge now before this Board.

This Board is of the opinion that the penalty imposed on 23 August 2014 would have encompassed the substance in question. The fact that the substance was not removed after the charge was imposed could well have given rise to a further charge being imposed against Mr Manzelmann at a later date. If, at the relevant time, he had been a licensed person who was subject to the Rules of Harness Racing. The fact of the matter is however that his disqualification removed him from the controls imposed under those Rules of Racing and in fact he was a person who was not allowed to be in the vicinity or on the premises in question other than in his house. It is therefore the opinion of this Board that the penalty imposed under Rule 194 cannot be sustained and the appeal against the imposition and the fine of $1,000 is upheld.

The charge under Rule 190A(4) requires that *any owner, trainer or person who owns, trains or races or is in charge of horses at those premises is deemed to have the substance or preparation in their possession and such person shall be guilty of an offence*. The Rule presupposes that any such person must be either an owner or trainer or person who owns, trains or races or who is in charge of horses at the premises. Mr Manzelmann is none of those. He was a trainer who did own the premises at the point in time and he was also a person in charge of the premises but all of that indicia ceased as and from the date of his disqualification on 9 October 2014. He therefore cannot be the subject of any proper charge under this Rule and again this appeal must be allowed.

In the circumstances the determination of this Board is that the penalties imposed under the two charges be removed such that no penalty be imposed on either charge.

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