

Appeal decision

Decision Date: 30 August 2016

Hearing Dates: 30 June 2016 and 4 August 2016

Code of racing: Harness Racing

Appeal panel: P James (Chair), D Kays and Mr G Casey

Appearances: Mr Paul Matis (Appellant) appeared on his own behalf and Mr D Farquahson appeared for the Stewards

Decision being appealed: Breach of Rule AHRR 193(3)

Appeal result: Appeal Dismissed – Penalty of \$5,000.00 confirmed

The appellant, Paul Matis, was the trainer of the standard bred “Shadow Son” which competed in Race 8 at Albion Park on Tuesday 26 February 2016. It finished third in the three year old Nursery Final for colts and geldings a group 2 event. A pre-race blood sample was collected from the horse and was subsequently analysed by the Racing Science Centre and the blood sample proved positive to a total carbon dioxide concentration of 36.9 millimoles per litre (mmol/L). The referee sample, also analysed by the Racing Science Centre, indicated that the level of TCO₂ was measured at 37.0 mmol/L.

An Inquiry was undertaken by the stewards of Racing Queensland and after evidence was presented a charge was levelled against the trainer pursuant to Rule 193(3) which stipulates:

A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race.

Sub-section (6) of that Rule stipulates:

For the purposes of this Rule, medication means any treatment with drugs or other substances.

The stewards believed that the finding of the levels abovementioned were sufficient to justify a charge under the Rule. Ordinarily the use of TCO₂ or the existence of a possible finding thereto is followed by a charge under what can simply be termed the “presentation rule” which demands that a trainer be penalised should the horse’s level exceed the threshold of 36 mmol/L subject all the while to the overriding factor that each test must be considered on its merits and not simply be of 36 mmol/L but above that level to allow for a factor of uncertainty which under the Legislation is nominated at 1 mmol/L on a plus or minus basis. That is not the position in this circumstance.

In support of their contention the stewards referred to various tests that had been conducted upon this same horse over a significant period all of which referred to samples taken at or near the time

of a race. On each of the preceding swab samples being recovered the horse's level of TCO₂ ranged between 29.0 and 35.0 mmol/L which, in the opinion of the stewards, was regarded as the normal range for a standard bred. Further a non-race day sample taken on 4 March 2016 recovered the horse's level of TCO₂ of 31.7 mmol/L. The existence therefor of a reading significantly higher was the sole basis for the steward's cause for complaint and for the issue of the charge under Rule 193(3).

Against that consideration, at the inquiry the appellant repeatedly submitted that there should be caution in giving weight to the evidence given by Dr Caldwell, as such evidence was not based on research conducted by Dr Caldwell, but rather on that of others, including Dr J H Vine.

In summary, the evidence of Dr Caldwell asserted that a number of researches, some involving thousands of samples, indicated that the level detected in this case was considerably higher than what could be considered normal and could not be achieved with normal accepted feeding practices.

In respect of Dr Vine, the Board is entirely comfortable with the reputation of Dr Vine, that is his eminent involvement with prohibited substance matters in the racing industry, which, over some decades, includes co-authoring several papers following exhaustive research.

The Board is mindful of the input by Dr Young – Racing Science Centre in the 2015 appeal by Donald Smith which came before this Board:

Dr Young indicated that the only explanation for the elevated race day level reported is a source of alkalisating agents which has found its way into the horse on that day and probably soon after lunch. Further evidence of Dr Young that while the horse's exercise program and maybe being anxious or dehydrated can slightly elevate a TCO₂ level, it certainly would not explain a 6 mmol/L elevation and for GB10 to have any effect the quantity needed to be ingested would be unpalatable. In summary Dr Young stated "I mean, looking at all of the facts in front of me, I acknowledge what the trainer has said, but looking at all of the facts in front of me, I think this paints a classic picture of a horse that is capable of having a normal level but has been administered alkalisating agents on race day. It's got all of those hallmarks". Further evidence by Dr Young indicated that a horse naturally capable of going from 30 to 36 without alkalisating agents - 640000 to 1. That evidence is supported by a 27 November 2015 "Statement of average TCO₂ concentration in standard bred blood samples submitted to the Racing Science Centre for analysis". The statement indicated that from 11450 samples, over a 5 year period, the average TCO₂ level is 31.2 mmol/L.

At the appeal hearing the appellant submitted, *inter alia*, numerous papers with a commentary directed towards:

- (i) if not discrediting – but seriously questioning, the opinions of Dr Caldwell, suggesting that the opinions were sweeping generalisations;
- (ii) the extent of research in which Dr Vine was involved, in particular the absence of the testing of horses that may be of a unique makeup; and

- (iii) research by some indicated that, under some circumstances, a horse may return an elevated level naturally, which could explain the relevant elevated level detected on the appellant's horse;
- (iv) the misuse of statistics; and
- (v) fatal flaws in data analysis.

In addition, amongst numerous submissions, the appellant asserted that:

- (vi) reliance on research submitted by Dr Caldwell was not warranted as it was not of a contemporary origin;
- (vii) the level of 36.0 was set arbitrarily and therefore has no credibility;
- (viii) the need for an external independent benchmark;
- (ix) the rule in question has no legal application as it was incapable of rational interpretation or application;
- (x) as it was the request of the Stewards that the analysis of the referee sample be at the same laboratory that analysed the original sample, the analysis has no validity as the rule prescribes that the request be made by the Controlling Body not the Stewards;
- (xi) doubt existed that the Control Body had been properly appointed by the Government of the day;
- (xii) there was no evidence that the Racing Science Centre, a laboratory accredited by NATA had been subjected to regular audits, and even if so, the scope and methodology of such audits.
- (xiii) a lack of weight given to the plausible credible explanation that the level detected was the result of natural phenomena relating to the uniqueness of the physiology, metabolism and, environmental, and training/racing management of Shadow Son; and
- (xiv) it being unrealistic to conclude that the high level must have come from an administration.

Notwithstanding the persistent submissions that the unique makeup of the horse combined with exercise and transport matters resulted in the levels detected, the Board is comfortably satisfied the appeal should fail on the science of the matter alone.

Further the Rule 193(3) *A person shall not administer or allow or cause to be administered any medication to a horse on race day prior to such horse running in a race* and 193(6) *For the purpose of this Rule, medication means any treatment with drugs or other substances* - places a clear obligation on a trainer NOT TO, on race day, and the appellant accepted the accuracy of the analysis, and admitted to, on the day of the race, include in the makeup of the feed provided to the horse "two scoops of bicarb – each is 100 grams and an extra handful of bicarb".

That alone is ample evidence to enable the Stewards and the Board to comfortably conclude that the admitted inclusion of bicarb on race day is contrary to the Rules the appellant, in applying to be licenced, agrees to be bound by.

In view of all of the circumstances, the Board is comfortably satisfied that, on race day, the horse received an alkalisng agent, and dismiss the appeal on conviction.

Notwithstanding the appellant's good record over several decades, and this being his first substance related conviction, the Board does not consider the penalty to be excessive, it being within the normal range, and dismiss the appeal on penalty.

Further right of appeal information: The Appellant and the Steward may appeal to the Queensland Civil and Administrative Tribunal (QCAT) within **28 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