

# RACING APPEALS TRIBUNAL

## QUEENSLAND

### NOTICE OF DECISION

**APPEAL NO:** RH003-09

**DATE:** 15 July 2009

**APPELLANT:** Darren Ian Hooper

**RESPONDENT:** Harness Racing Queensland

**APPEAL FROM:** Appeal from the decision of the Stewards to impose a penalty of 6 months disqualification. Appeal against penalty only.

**BREACH OF RULE:** Rule 190(1)

**DECISION:** Appeal upheld and penalty varied to 3 months disqualification and \$1000.00 fine.

**APPEARANCES:** David Keane of Counsel appeared on behalf of the Appellant.

J E Murdoch SC, instructed by Schweikert Lawyers appeared on behalf of the Respondent.

### REASONS FOR DECISION

Mr Leo Williams AO - Chairman  
Mr Brock Miller - Deputy Chairman  
Mr Dennis Standfield - Member

This is an Appeal by Mr Darren Ian Hooper against the penalty of six months disqualification imposed upon him by the Stewards of Harness Racing Queensland as a result of him presenting the horse River Valley Rocket in breach of Rule 190(1) of the Rules of Harness Racing.

Rule 190(1) provides:

*“A horse shall be presented for a race free of a prohibited substance”*

River Valley Rocket had a pre-race blood sample taken prior to it racing in Race 7 of the Redcliffe Harness Racing Club Meeting on 27 May 2009. A certificate of analysis from the Racing Science Centre stated the total plasma carbon dioxide ("TCO2") concentration of the sample to be 37.2 mmol/L. The confirmatory sample from Racing Analytical Services Limited showed a reading of 36.9 mmol/L. The allowed threshold concentration for TCO2 is 36 mmol/L and there is allowed a 1.0mmol/L concentration for uncertainty of measurement.

At the Stewards Inquiry held on 15 June 2009, Mr Hooper advised the Stewards of his training and feeding regime for River Valley Rocket and how as the horse had been "tying up fairly badly" he gave the horse additional Nutradex to flush out the horse's system. This was administered both on the Sunday afternoon and the Monday morning before the Redcliffe race on the Wednesday. Nutradex contains citrates which may elevate a horse's TCO2.

Mr Hooper entered a plea of Guilty at the Stewards Inquiry and the Stewards then went on to impose a penalty of 6 months disqualification. When imposing a penalty the Stewards stated (page 29 from line 15 of the Stewards Transcript):

*"THE CHAIRMAN: Gents, we have considered it in depth. A few things we took into consideration were your submissions; we have also taken into consideration the penalties that have been handed down with TCO2 or bicarbonate offences. But in the wash-up, Mr Hooper, we do believe that the correct penalty is a disqualification, and we think for varying away from what has been consistent for first-time offenders, is a disqualification for 6 months."*

While from the Tribunal's own experience and on review of the penalties imposed for elevated TCO2 readings, a period of 6 months disqualification is considered the common penalty, the Tribunal does, of course, need to consider what is an appropriate penalty in the circumstances of each matter.

Mr Hooper is a full time trainer and his income is dependent upon being involved in the Industry. He has the support of his major owner, Mr Whiteoak, who is also the owner of River Valley Rocket. Mr Whiteoak appeared in support of Mr Hooper at the Stewards Inquiry. Mr Hooper employs 3 persons at his stable and there is no doubt that any disqualification will cause him severe hardship.

There is no evidence not to accept Mr Hooper's explanation of him administering Nutradex to the horse's feed. While it was incumbent on Mr Hooper to know the ingredients of Nutradex, there is no suggestion that he tried to take an advantage by racing the horse with an elevated TCO2 level.

At the Inquiry Mr Hooper handled himself properly and professionally and entered a plea of guilty at the first opportunity. He was completely open with the Stewards as to his feeding and training regime and prepared to present his log books for substantiation.

In the circumstances of the administration of Nutradex, the hardship that would be caused to Mr Hooper and the way he presented himself at the Stewards Inquiry, the Tribunal is of the opinion that a period of 3 months and a fine of \$1,000.00 should be the appropriate penalty. The Tribunal makes the following orders:-

1. Appeal against penalty upheld;
2. Penalty varied to 3 months disqualification and \$1,000.00 fine.
3. Appeal deposit fee refunded to Appellant.

Mr Leo Williams AO .....  
Chairman

Mr Brockwell Miller .....  
Deputy Chairman

Mr Dennis Standfield .....  
Member