

**RACING APPEALS TRIBUNAL
QUEENSLAND**

NOTICE OF DECISION

APPEAL NO: RT002-07

DATE: 9 February 2007

APPELLANT: Ricky John David Vale

RESPONDENT: Queensland Racing

APPEARANCES: Mr Harvey Walters of counsel on behalf of the
appellant
Mr Norm Torpey on behalf of the respondent

CHARGE: Breach of Rule – AR178

REASONS FOR TRIBUNAL'S DECISION

Mr Brockwell Miller - Deputy Chairman

The appellant was the trainer of the thoroughbred "Mining Silver" when that horse was entered to race at the Brisbane Turf Club on Saturday, 23 December 2006. Mining Silver subsequently won the event for which it was entered and a sample of its blood was taken prior to it competing in the race in question. Subsequently the analyst's findings reported to the stewards of Queensland Racing indicated that a prohibited substance, Total Plasma Carbon Dioxide at a concentration higher than 36 millimoles per litre as prescribed by the Rules of Racing, was present. The Queensland Government Racing Science Centre was the first authorised body to analyse the sample and it reported that the concentration was higher than 36 millimoles which is the maximum prescribed under the relevant rules. A second

investigation was undertaken by the Australian Racing Forensic Laboratory in New South Wales. That second reading identified a slightly higher concentration than that found by the Queensland Racing Science Centre but of course again, the concentration found exceeded the threshold laid down in the Rules of Racing.

An enquiry was convened by the stewards of Queensland Racing and was conducted on Tuesday, 16 January 2007 at which Mr Vale attended and gave evidence. As well as that evidence, Dr R Cassidy of the Racing Science Centre was called to provide confirmatory evidence firstly of the sample but secondly and perhaps more importantly to identify the basis upon which the investigations, into analysis of the sample, are undertaken. Suffice to say that Mr Vale, during the course of the enquiry, exhibited some expertise in respect to the actual method of analysis and had sought to investigate the protocols that had been adopted and stipulated. Mr Vale wanted to be satisfied that all of the protocols had been appropriately identified, particularly when one saw that the second analysis of the first sample revealed a higher concentration than did the first analysis.

As a result of the evidence given at the steward's enquiry Mr Vale was found guilty and his licence was disqualified for a period of nine months. As a result of that determination this appeal was lodged to this Tribunal.

Mr Walters of counsel in his address made it quite plain that the appeal centred on his belief that there had been no reasonable justification to deny Mr Vale the

opportunity to investigate and see the testing procedures and to identify that they had been conducted properly. During the course of the initial enquiry the stewards had been requested to provide evidence as to the protocols and these procedures but, on their approach to the Laboratory personnel, they were informed that it was irrelevant and that it was not the Laboratory's staff duty or obligation to provide details thereof. Mr Walters took exception to this point and identified that it was totally improper for an operation to be undertaken where there were certain clouded areas and secret investigations. During the course of his address he suggested that any person accused of a breach of a rule relative to a drug intake or finding must be allowed to inspect and investigate the protocols as without doing so, he said, one could not have any confidence whatever in the actual testing regime. In support of that argument he referred to the decision of Morling J in the Lindy Chamberlain case as well as a number of decisions of the US Supreme Court. Copies of those decisions were provided by him. He suggested that natural justice must be afforded to a person and it (natural justice) demands that such a person should be allowed to challenge that testing regime adopted. That argument may well have some basis had it not been for the determination of the legislation setting up the accreditation of the laboratories in question. The laboratories are identified as required to be accredited under the NATA legislative enactments and have been so approved. It was the Laboratory that refused to provide Mr Vale with details of the protocols or the information relevant to the testing regime. It was not the stewards who in fact had sought same to placate Mr Vale's remonstrations during the initial enquiry. Having said that the stewards have done all in their power to facilitate the appellant's own

investigations. The laboratories have complied with the requirements under the Racing Act and provided a certificate. That certificate is deemed to be evidence of the finding of the analysis. It is not appropriate for an investigation into whether the proper tests were conducted to be embarked upon unless there was some evidence presented by Mr Vale to the effect that there was an anomaly not merely conjecture on his part. During the course of both this enquiry and the appeal no such anomaly, in my opinion, exists.

Mr Torpey for the stewards has identified, quite correctly in my opinion, that both certifying bodies had the NATA accreditation and that the Rules of Racing set down the requirements for proving the presence or otherwise of any drug. Appeal No. ARH009-05 identifies that more is required than simply a request for more facts before a certification can be discredited. There must be some evidence to suggest a failure of the total analytical procedures and in the absence of that information, then the certification and its finding is deemed final.

I have no doubt that the certificates truly reflect the extent of the level of the drug in the blood. It is irrelevant, in my opinion, that the second analysis is slightly higher.

There is nothing that has been presented to me to indicate that there is anything that would warrant my interfering with the decision and determination of the stewards. In the circumstances I dismiss the appeal as to guilt.

Mr Vale also appealed on the issue of penalty. He was the subject of an order that his licence be disqualified for a period of nine months. The stewards in their presentations, both in this issue and in other similar carbon dioxide cases, have been strong in their protestations that periods of disqualification of six months have proven to be inadequate as a general deterrent to the industry. That may well be the position however this issue has arisen during the course of a number of similar findings and there must be a stronger basis for increasing a penalty than merely identifying the need to provide a general deterrent. Mr Torpey, on behalf of the stewards, suggested the fact that the horse participated in a metropolitan race and that it was the winner of that race should suffice to support the lengthy disqualification. Frankly I am not convinced. There was no suggestion that the horse had been heavily backed and of course the charge here deals with the presentation of the horse, not with the administration of a drug to the horse. In the circumstances I do not accept that nine months disqualification is realistic or reasonable in the circumstances and I order that the nine months disqualification be reduced to a period of six months disqualification. I order that the deposit be forfeit.

Mr Brockwell Miller
Deputy Chairman
