

## **RACING APPEALS TRIBUNAL**

### **QUEENSLAND**

**APPEAL NO:** RT004-07

**DATE:** 22 March 2007

**APPELLANT:** Said Ahmed Hamade

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Decision of the Stewards of Queensland Racing imposing a penalty of 15 months disqualification for a breach of Australian Rules of Racing 175(h)(i). Appeal against penalty.

**BREACH OF RULE:** AR175(h)(i)

**DECISION:** Appeal upheld. Penalty varied to 9 months disqualification.

**APPEARANCES:** Mr Tim Carberry Solicitor of Butler McDermott & Egan Solicitors appeared on behalf of the Appellant.

Mr John Hackett, Deputy Chief Steward appeared on behalf of the Respondent.

### **REASONS FOR TRIBUNAL'S DECISION**

Mr Leo Williams AO - Chairman

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

At a Stewards Inquiry held on 6 March 2007 Said Ahmed Hamade who was the holder of an Open Trainer's Licence received 15 months disqualification following him pleading guilty to a breach of Australian Rules of Racing 175(h)(i)(ii).

AR175(h)(i) provides:

“The Committee of any Club or the Stewards may punish:

- (h) Any person who administers, or causes to be administered, to a horse any prohibited substance -
  - (i) for the purpose of affecting the performance of behaviour of a horse in a race or of preventing its starting in a race; or

Section (ii) provides:

- (ii) which is detected in any sample taken from such horse prior to or following the running of any race.”

The particulars stated by the Stewards when charging Mr Harmade were that he administered a prohibited substance, namely total plasma carbon dioxide at a concentration in excess of the threshold as provided in the rules of 36.0 millimoles per litre to Half Circle for the purpose of affecting the horse's performance in race 7 at the Ipswich Turf Club race meeting on 15 February 2007.

The race concerned was a Class 1 Handicap of 2150m and Half Circle finished 5<sup>th</sup> at a starting price of \$61.00.

The circumstances of the administration as advised by Mr Hamade to the Stewards was that he had purchased from a produce merchant drenches marked O and X. In the statement provided by Mr Hamade to the Tribunal these products were stated to be EquiO and EquiX. The X product contains Sodium Biocarbonate while the O product is stated as being bicarb free.

Mr Hamade advised the Stewards that at Half Circle's race previous to the Ipswich Race on Thursday 15 February 2007 the horse didn't recover well and he gave it a drench for the Thursday race. He states that on the Saturday (5 days

before the Thursday race) he mistakenly administered the X product when he should have administered the O product.

On the morning of the race he states he administered both the X and the O products.

Mr Hamade advised that he used a 60 ml syringe for a drench which was administered down the horse's throat. Mr Hamade said the procedure was similar to administering a horse a worming paste.

The analyst's results of the TC02 concentration by the Racing Science Centre and Racing Analytical Services Limited were both greater than 39mmol/L.

After Mr Hamade's plea of guilty the Stewards requested that Mr Hamade address them on penalty and Mr Hamade requested that there be a fine. The antecedent particulars given by Mr Hamade to the Stewards can be summarised as:

- trainer for seven months;
- involved in the industry for six years as a stablehand to his wife Tracey;
- Tracey Hamade holds a Trainer's Licence and both Mr & Mrs Hamade trained in the same complex but with different stables;
- Mr Hamade had ten horses in work;
- two horses have been transferred to his wife Tracey;
- there are two staff;
- he has three young children of seven, five and two years of age;

- two previous offences as a Trainer being one for improper behaviour and the other for having an unregistered stablehand.

When imposing penalty the Stewards stated to Mr Hamade (from page 31 line 35 of the Stewards Transcript):

“THE CHAIRMAN: Now continuing. Mr Hamade, we have been considering the matter of penalty, having accepted your plea of guilt to administering a prohibited substance to Half Circle, which raced at Ipswich on 15 February. We note from the evidence and our records that you are now a professional trainer. You’ve held a professional trainer’s licence – a licence to train for the public for the last 7 months, having previously had 6 years experience as a stablehand or stable foreman to your wife Tracey Hamade.

We are very concerned that you have mixed up this mixture of bicarb, which has been well advertised over the years as a substance to be treated with extreme caution. Trainers have been continually warned. Not only that, in the last 6 months there have been 9 positive swabs, which is a major concern.

It has been pretty well advertised that stewards will be continuing the surveillance in that area. We believe that your actions to mix up this milkshake on the day of the race and administer it to the horse some number of hours before racing is a - is at the highest level of the breaches of the rules.

We believe that a deterrable penalty must be administered to anyone who considers using this substance. The testing and analysis of these substances is not a cheap exercise and there is no place - I say it - no place in this industry whatsoever for the illicit use of the substance. It does assist with - affects the horse’s performance.

Having said that, we are also extremely mindful of the excessively high level that has been found. It is the highest level we can recall. As Dr Young has stated, it went over the Richter Scale with the laboratory’s calibrators. We have no alternative other than impose a lengthy period of disqualification.

We are disqualifying you for a period of 15 months. It is effective immediately.”

The Tribunal notes that the Stewards referred to “milkshake” when giving their decision on penalty. Certainly in the transcript (page 19 line 38 of the Stewards

Transcript) there is reference to Dr Young referring to the term “milkshake” as the colloquial term when bicarbonate is added to water and given as a drench. However, this is not the manner in which Mr Hamade stated he administered the drench. While nothing turns on the matter the Tribunal is satisfied that the drench was administered by syringe in the manner stated by Mr Hamade.

The Appellant’s grounds of appeal essentially turn on two matters. Firstly the penalty is excessive and secondly that the Stewards failed to give any weight to him pleading guilty.

In criminal proceedings when an accused person pleads guilty that is a matter properly to be taken into account in mitigation of the sentence imposed. The Tribunal sees no reason why this principle should not also be relevant in this jurisdiction. Indeed Section 13 of the *Penalties and Sentencing Act 1992* states that when imposing sentence there must be stated in open court that a guilty plea was taken into account when determining the sentence imposed. Although there is no reference concerning the guilty plea when the Stewards imposed the 15 months disqualification Mr Hackett did advise the Tribunal that it was taken into account. Mr Hackett stated the starting point was 18 months and there was an effective reduction in disqualification to 15 months because of the guilty plea.

While the Tribunal is not prepared to state the proportion any penalty should be discounted because of a guilty plea as every matter would turn on the particular facts presented, the Tribunal finds no fault with the Stewards imposing a three months deduction in disqualification in the circumstances of this matter. The starting point however is not the 18 months imposed by the Stewards but what should have properly been imposed.

There was presented to the Tribunal a schedule headed “Queensland Racing - Positive Horse Swabs Register” which dealt with TC02 matters for the period 4 November 1995 to 16 January 2007. There are 30 matters on that Schedule with the last nine commencing on 20 June 2006. The previous one to that date was 9 July 2004. The nine recent matters are summarised as:

<b>Date</b>	<b>Trainer</b>	<b>Horse</b>	<b>Penalty</b>	<b>Appeal</b>
20/06/06	T. Cook	Shazradad	6 months disqualification	RAT - dismissed
04/09/06	L. MacPherson	Dashing Dane	8 months suspension	RAT - dismissed
28/11/06	J. Caught	Beecad	12 months disqualification	Varied to 9 months disqualification – RAT
28/11/06	L. Smith	Santa’s Queen	4 months suspension	Convicted with R Smith - Appeal withdrawn
28/11/06	R. Smith	Santa’s Queen	6 months suspension	Convicted with L Smith
14/12/06	K. Flemming	Silver Halo	6 months disqualification	Appeal withdrawn
21/12/06	W. Holbeck	Browns Plains	9 months disqualification	Varied to 6 months disq. – RAT
21/12/06	R. Walsh	Bold Barassi	6 months disqualification	Dismissed.
16/01/07	R. Vale	Mining Silver	9 months disqualification	Varied to 6 months - RAT.

While it is noted that all of the above (and indeed all 30 on the Schedule) are under the presentation Rule AR178 none of the matters are near an 18 months disqualification period.

The most recent penalty imposed for administration was on 10 November 2006 involving Trainer A Morris with the horse Albert where the drug was cocaine and the Stewards imposed a 15 month disqualification.

While the Tribunal is not familiar with the particular circumstances of the Morris penalty it is familiar with a number of the matters in the summary referred to above as they were dealt with by the Tribunal and concern “multiple offenders”.

Mr Carberry presented to the Tribunal a statement by Mr Hamade the particulars of relevant additional antecedents to those provided to the Stewards are summarised as:

- born 1973;
- migrated to Australia when he was six months of age;
- entered the stables of Bob Thompson for about one week to become an apprentice jockey but that never eventuated because of his parents divorce;
- met his wife Tracey in 1996 and was involved in show jumping and dressage;
- in 1997 moved to Warwick and purchased a property which become a spelling and pre-training property;
- his wife Tracey took out a Trainer’s Licence in October 2002;
- first obtained a Strapper’s Licence in 1997;
- Appellant and wife moved to Toowoomba to train in 2004;
- sold Warwick property in 2005;
- has a commitment of a mortgage and other living expenses.

On the basis of the previous penalties involving TC02 for the presentation rule and notwithstanding that this is an administration matter, the Tribunal is of the opinion that the starting point of the sentence imposed by the Stewards of 18

months is excessive. Certainly there is the fact in this matter that the Appellant's wife is also a Trainer and horses can be transferred to her which will in some way preserve the family income. This however would not justify such a lengthy disqualification imposed on a "first offender".

While the Tribunal shares the Stewards concerns with the number of recent TC02 positive swabs and the need to keep the industry drug free, it is of the opinion that a more appropriate sentence after considering the full antecedents of the Appellant and taking into account the guilty plea would be 9 months disqualification.

The Tribunal therefore allows the Appeal and substitutes the penalty of 9 months disqualification.

The Tribunal orders that the Appeal Deposit Fee be refunded.

Mr Leo G Williams AO .....  
Chairman

Mr Brock Miller .....  
Deputy Chairman

Mr Dennis Standfield .....  
Member