

**APPEALS TRIBUNAL
QUEENSLAND**

NOTICE OF DECISION

APPEAL NO: RT005-07
DATE: 22 May 2007
APPELLANT: Neville John Petersen
RESPONDENT: Queensland Racing
APPEARANCES: Mr PG Boyce of Butler McDermott Lawyers for the
appellant, and
Mr John Hackett on behalf of the respondent,
Queensland Racing
CHARGE: Breach of Rule – AR178

REASONS FOR JUDGMENT

Mr Leo Williams AO – Chairman

Mr Brockwell Miller - Deputy Chairman

Mr Dennis Standfield - Member

The appellant is a licensed trainer resident in Toowoomba who, on 3 March 2007, attended the Doomben race meeting for the purpose of his horse, Milady Clang, participating in a race. Prior to the race for which the horse was entered, a pre-Race Swab Sample was taken. The results of that sample revealed the presence of a prohibited substance, namely Total Plasma Carbon Dioxide, at a concentration in excess of the allowed threshold which was 36 millimoles per litre. A Steward's

Inquiry was convened at which Mr Petersen gave evidence on 26 March 2007. At that Inquiry a charge was levelled against him under AR178 which reads:

When any horse that has been brought to a racecourse for the purpose of engaging in a race and a prohibited substance is detected in any sample taken from it prior to or following its running in any race, the trainer and any other person who was in charge of such horse at any relevant time may be punished.

The Stewards identified that the trainer/appellant was guilty of the charge and by way of penalty imposed a disqualification period of eight months.

Against that penalty, the appellant has appealed to this Tribunal.

At the outset Mr Boyce, on behalf of the appellant, confirmed that the appeal would proceed solely on the issue of penalty and that the appeal against conviction had been abandoned. It is therefore irrelevant to embark upon a consideration of the relevant reading that was the subject of the positive analysis but it suffices to identify that the reading was above the threshold level and that is so even after an allowance was made for the measurement of uncertainty which was 1.2 millimoles per litre.

The appellant, in his submissions to the Tribunal, identified that in his 40 years of history as a licensed person he had no previous convictions of a like nature. His

counsel identified that his age and his record demanded that serious consideration should have been given by the Stewards during the course of their deliberations to reducing what is the apparent benchmark penalty imposed for similar breaches of the threshold level where TC02 is involved.

Further, it was obvious that, at the time the horse is alleged to have ingested the substance that led to the increased reading, the appellant was not then with the horse, he having despatched it to the races in his absence. That by itself merely negates a finding that he could possibly have been the administrator of the drug in question and the Stewards, to their credit, did not suggest otherwise. He has been charged under the *presentation rule* and under that rule, as a person who is the trainer of the horse in question, he suffers the consequences.

During the course of their discussions, the Stewards identified that: *The normal penalty of nine months will be reduced by a month for your record.* Simply put, the Stewards have sought to identify the benchmark at nine months disqualification.

The appeal to this Tribunal asks that the Tribunal give serious consideration to identifying firstly that the benchmark not be nine months and secondly that the same allowance that the Stewards made to the appellant when imposing the sentence initially be granted.

Queensland Racing Disciplinary History

BANS FOR: Neville Petersen

Date	Venue	Ban Type	Rule	No. of Meeting	Nature	Commences	Expires	Appeal To	Appeal Result	Comments
3/03/2007	Doomben	Positive Horse Swab	AR178	-	D	26/03/2007	26/11/2007	None	None	Milady clang elevated TCO2

REPRIMANDS FOR: Neville Petersen

Date	Venue	Reprimand Type	Rule	Comments
7/06/2002	Gatton	Negligence		failed to present reg papers

FINES FOR: Neville Petersen

Date	Venue	Fine Type	Rule	Amount	Appeal To	Appeal Result	Comments
28/06/2001	Dalby	Fail to notify rider	LR70 (1)	\$50	None	None	
2/08/2002	Kilcoy	Fail to declare rider by req time		\$50	None	None	
19/12/2002	Dalby	Fail to notify rider	LR70 (1)	\$100	None	None	
9/03/2003	Toowoomba	Negligence in saddling	AR140 A	\$50	None	None	
4/05/2003	Dalby	Fail to notify rider	LR70 (1)	\$50	None	None	
31/05/2003	Toowoomba	Fail to notify rider	LR70 (1)	\$50	None	None	
11/08/2003	Gatton	Fail to notify rider	LR70 (1)	\$50	None	None	
4/10/2003	Toowoomba	Fail to notify rider	LR70 (1)	\$50	None	None	
18/10/2003	Toowoomba	Fail to notify rider	LR70 (1)	\$50	None	None	
4/11/2003	Eagle Farm	Fail to declare rider by req time		\$50	None	None	
15/11/2003	Dalby	Fail to notify rider	LR70 (1)	\$50	None	None	
21/02/2004	Eagle Farm	Fail to declare rider by req time	LR70	\$50	None	None	
10/04/2004	Bundaberg	Fail to notify rider	LR70	\$50	None	None	
31/07/2004	Toowoomba	Fail to submit gear change by req time	AR140B (2)	\$100	None	None	
31/07/2004	Kilcoy	Fail to notify rider		\$100	None	None	
21/08/2004	Doomben	Fail to declare rider by req time	LR70(1)	\$100	None	None	
27/12/2004	Toowoomba	Present horse with incorrect gear	AR140B	\$100	None	None	
30/01/2005	Sunshine Coast	Fail to notify rider	LR70	\$100	None	None	
12/04/2005	Rockhampton	Fail to notify rider	LR70	\$100	None	None	
13/08/2005	Toowoomba	Fail to notify rider	LR70 (1)	\$100	None	None	
11/01/2006	Gold Coast	Present horse with incorrect gear	AR140A	\$50	None	None	
11/02/2006	Toowoomba	Fail to notify rider	LR70(1)	\$100	None	None	
9/07/2006	Sunshine Coast	Fail to notify rider	LR70	\$100	None	None	

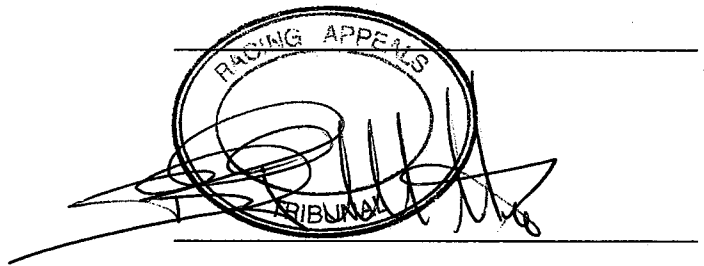
This Tribunal has ruled on many occasions that, in its opinion, an appropriate penalty where an issue of repeat offence is not canvassed would be six months disqualification of a licence. It does however behove the Tribunal Members to consider the character and the record of the trainer in question and to suggest other than that this trainer's record is impeccable over a period of 40 years would not seem appropriate. The Stewards, in their own deliberations, considered that a one month reduction in penalty would be appropriate and we agree with their reasoning in that respect. In the circumstances the Stewards' decision is reduced such that a penalty of five months disqualification of licence is imposed which gives full allowance to the appellant of the one month consideration raised by the Stewards in the first instance.

In the circumstances this appeal is allowed such that the penalty of eight months is reduced to five months disqualification. The deposit is ordered to be refunded.

Mr Leo Williams AO
Chairman

Mr Brockwell Miller
Deputy Chairman

Mr Dennis Standfield
Member

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