

**RACING APPEALS TRIBUNAL  
QUEENSLAND**

**NOTICE OF DECISION**

**APPEAL NO:** RT006-07

**DATE:** 3 May 2007

**APPELLANT:** Brenton Dane Clark

**RESPONDENT:** Queensland Racing

**APPEARANCES:** Mr JE Murdoch SC for the appellant, and  
Mr N Torpey on behalf of the respondent,  
Queensland Racing.

**REASONS FOR JUDGMENT**

Mr Leo Williams AO – Chairman

Mr Brockwell Miller - Deputy Chairman

Mr Dennis Standfield - Member

The appellant, Brenton Clark, is a licensed stable hand with Queensland Racing which opened an inquiry into the result of an analyst's report following a urine sample that had been taken from the appellant on Tuesday, 27 February 2007. During the course of that inquiry it was apparent that Mr Clark acknowledged that the sample that he had provided properly reflected a positive result to the presence of the substance marijuana. There was no dispute by him as to that finding and he readily acknowledged that he had used cannabis in a casual, social gathering with associates and friends that were not associated with the racing industry. His

admission to the cannabis use was sufficient to justify a charge being preferred against him under Australian Rule of Racing 81A(1)(a).

What was of more concern to Mr Clark, at the time, was the positive reaction in the finding of the analysis to his also having ingested amphetamines. He gave evidence that he had never taken amphetamines in any form whatever unless it had been mistakenly present in some cold and flu medication that he had obtained from a pharmacy in Toowoomba. He produced, during the course of the inquiry, evidence of the purchase of that medication.

The Drug Screening Certificate marked Exhibit 3 by the Stewards in the inquiry confirmed that the initial screen was conducted for seven substances and that there were two positive results, the first to the testing under the name "Amphetamines" and the second under the test name "Cannabinoids". The first positive result confirmed a concentration of 677 as opposed to a threshold allowable level of 300 and showed the substance present to be B-Methamphetamine, more commonly known as "speed" or "ice". Whilst not particularly relevant, it is noted that the concentration was slightly double that of the threshold allowance. The other positive test for "cannabinoids" reflected a concentration of 334 with the threshold allowance then being 15.

During the course of the inquiry the Chairman of Stewards, Mr Sanders, questioned the appellant to identify whether there was any possible explanation for the existence of methamphetamines in his system. This line of questioning arose as a result of the

appellant's query as to how such a substance could have become apparent or present in his system. Mr Clark identified at line 24 on page 6 of the transcript: *The only possible way I can see it (methamphetamines) being that high is through some cold and flu tablets I have been taking at the time, which I have got proof of when I bought that at the time of this.*

Mr Sanders:

*Cold and flu tablets containing methamphetamines?*

Mr Clark:

*No. It contains suda-effadrine (sic) apparently. That is what can put your levels up.*

Mr Sanders:

*This isn't an amphetamine; this is methamphetamines.*

*Suda-effadrine, which can be contained in cold and flu tablets, would normally have opiates and morphine and maybe a minimum – normal straight amphetamine positives and that is what the levels are there for – the 300ug.*

*But this is methamphetamines. This is speed or ice or – a street product.*

*This is a methamphetamine. Methamphetamines is not – in my advice from the laboratory it is not used in any prescription products.*

Mr Clark:

*Well, that's the only possible way I can see it to be – to be up like that – is through what I was taking. I've never touched any of that sort of thing before that's basically all I can say on that, really.*

That is the only evidence tendered or produced relative to the presence of this “further drug”. Immediately after that exchange Mr Hackett, one of the inquiry members, questioned Mr Clark as to how cannabis came to be present and Mr Clark unhesitatingly admitted to having tried cannabis before and *especially on the weekend before the testing. I'm not a regular user. I have never bought or dealt in it with it. I don't deal or buy it, never have. People or friends of mine that I associate with is how I come about it, and I associate with them fairly regularly. It was just on (inaudible) occasion that I had it this weekend.* A further line of questioning then centred on whether it had been possible for someone to have “popped” Mr Clark a pill whilst he was under the effect of the cannabis and whilst Mr Clark acknowledged that it would always have been possible, he certainly did not recall or recollect anything at the time.

Mr Clark was charged with a breach of the relevant Rule of Racing and on page 15 entered a plea of guilty to being positive to cannabis but reserved his plea to the other part of the charge which related to the methamphetamines. Upon being convicted of the charge, the Stewards heard evidence from the employer of the appellant, Mr Tregaea, who supported the work ethic of the appellant and who frankly

was astounded at his testing positive to either substance as he had, in his experience and association with him, assumed that the appellant was not a drug user of any type but was a committed advocate and supporter of the racing industry. It is in fact important to note that Mr Tregoe, through his business, has significant racing interests and has invested substantial funds in the industry. To further his company's interests in that regard, he had employed the appellant to manage that part of his operations and he had reposed in the appellant his trust and faith to perform appropriately.

After considering all of the issues before them, the Stewards determined that it was appropriate to try to deter people from being associated with substances of this nature. At line 40 on page 22 Mr Sanders identified *We also have to give consideration to your particular circumstances and we believe we have done that in this case, as I said, taking into account what you put forward. We also have to derive at what we believe is an appropriate penalty to you for the crime, so to speak, or the breach of the Rules.* Mr Sanders referred thereafter to various precedents that have been before the Stewards in dealing with matters relating to drug use and identified that it was appropriate that a penalty of disqualification be imposed for a period of 12 months but with the rider that the Stewards would reduce the last 3 months of that disqualification to a suspension to allow the appellant to ride work on the condition, namely to have use of his track work rider's licence to facilitate his return to the industry provided that he confirms by presentation of certificates that he had undergone some rehabilitation for the drug use.

The appellant appealed against the imposition of that penalty and his counsel, Mr Murdoch, in his Outline of Submissions noted the following:-

- 2 – The appellant was a key employee in a commercial business owned by Mr Tregoe, rode track work 6 days per week for his employer and was the only full time employee in the stables.
- 3 - Since the disqualification he has been kept in full time employment by Mr Tregoe.
- 4 - Was aged 22 years at the time of breach.
- 5 - The apparent benchmark penalty for a breach of the relevant rule was a suspension or disqualification of 3 months.
- 7 - The appellant had no previous punishment under the Rules of Racing or any criminal record or any suggestion that he associated with criminals or was involved with drug dealers.

The appellant gave evidence before this Tribunal as did Mr Tregoe. The Tribunal members were satisfied as to the truth of the evidence presented by the appellant. He was a young man who had devoted his entire working life to the industry of Racing. It seems to the Tribunal that the incident in question is an aberration. Certainly the supporting evidence of Mr Tregoe tends to support that as does his representations that he has faith still in the appellant's ability to undertake not only a drug rehabilitation program that he has already entered into, but also to complete

whatever other tasks are presented or required of him by either the Stewards or the employer.

There is no evidence available to the Tribunal to identify how methamphetamine came to be in the appellant's system. There was an article that had been tendered which had been published in Canada which suggested that there seems to be evidence of marijuana now being present "laced with highly addictive crystal meth". The simple fact is that speed or ice is a highly toxic and dangerous substance that can lead to death and frankly the appellant did not strike this Tribunal as a person willing to "chance his life" by such use of this substance. Whether the cannabis that he used had been in some way or other tainted or laced with the substance is simply something unknown, but the Tribunal is inclined to the view that the appellant could not have returned a positive swab for any other reason.

Mr Tregoe, during the course of his evidence, identified that he was prepared to undertake a regular testing regimen of the appellant and to provide the results to the Stewards if this Tribunal was minded to vary the penalty. The appellant also confirmed and gave an undertaking that he would make himself available at any point in time for such testing. The Tribunal has determined that, in all the circumstances, the penalty imposed is as Mr Murdoch suggested in his submissions, manifestly excessive. The Tribunal proposes therefore to allow the appeal and in lieu of the penalty of 12 months disqualification, impose a suspension of nine months of which the last six months be suspended to facilitate and undertake his work related duties

with Mr Tregua on the proviso that he undertake satisfactory weekly tests to reflect negative findings of all drug substances (other than prescribed by a medical officer) to the satisfaction of Mr Tregua who has agreed and must report the results to Stewards. In the circumstances, subject to that proviso of negative testing, the appellant will be able to resume track work riding on 15 June 2007. It is noted this date as appropriate because he was effectively stood down from riding from 15 March 2007.

The Tribunal orders that the deposit be refunded to the appellant.

Mr Leo Williams AO  
Chairman

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Mr Brockwell Miller  
Deputy Chairman

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Mr Dennis Standfield  
Member

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