

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO RT007-07
APPELLANT: Jason Dean Warrington
RESPONDENT: Queensland Racing
DATE: 3 May 2007
APPEARANCES: Mr J E Murdoch SC appeared on behalf of the Appellant
Mr Norm Torpey, Steward, appeared on behalf of the Respondent

REASONS FOR JUDGEMENT

Mr Leo Williams AO – Chairman
Mr Brockwell Miller – Deputy Chairman
Mr Dennis Standfield - Member

This is an appeal by jockey, Jason Warrington who was convicted on 27 March 2007 of two breaches of the Rules of Racing:

1. He was convicted of breach of Rule AR81A1(a) in that he returned a urine sample which was positive to a finding of cannabis. In respect of that breach, Warrington was disqualified for 3 months.
2. On the same date he was convicted of a breach of Rule AR175(a) in respect of which he was disqualified for a period of 12 months. AR175(a) provides as follows:

“AR175. The Committee of any club or the stewards may punish:

- (a) Any person, who in their opinion, has been guilty of any dishonest, corrupt, fraudulent, improper or

dishonourable action or practice in connection with racing.”

Warrington has appealed the finding of guilt and the severity of the sentence in respect of the second offence. He has not appealed in respect of the first offence.

The hearing by the Stewards took place at the offices of Queensland Racing in Toowoomba on 22 March 2007 before the Chairman of Steward, Mr Reid Sanders, in company with Stewards, Messrs Tutt and Childs.

Evidence was given by Warrington himself and by Mr John Hackett, Deputy Chairman of Stewards, on behalf of Queensland Racing.

On Tuesday, 27 February 2007, the Stewards conducted a series of drug tests on a number of riders in Toowoomba. It appears that Warrington was requested by telephone to present himself after track work to provide a sample of urine for testing.

The evidence is best recorded in Mr Hackett's own words:

“Mr Hackett: Thanks Mr Chairman. Just to take you over the events of the day. We arrived – a number of stewards from Brisbane – about 6am and we linked up with 2 local stewards and formed a panel of sampling officials for the purposes of sampling a number of trackwork riders and jockeys at the Clifford Park Racetrack, and part of that exercise was to block off some of the gates.

Mr Childs I think it was and Mr Birch instructed several riders, and it was drawn to our attention that some riders had left the course. They had finished their duties (inaudible) come back for some trackwork. Somewhere around 7.30, 8 o'clock I asked Mr Childs to contact Jason Warrington as I had been aware he left the course and requested him to provide a sample. I was aware he had some rides in jump-outs.

It was probably somewhere around about half-past 8, maybe a little later, that Jason arrived back at the track, and he was asked to provide a sample. I recall when Jason came in he had a box of some medication that had been

taken for some complaint that he said he had. This medication I think had been prescribed to another person but Jason said he had taken this medication.

In the course of this, Mr Booshand took the role to take Jason into the gentlemen's (sic) toilet and I elected to proceed in there to ensure that the sample was provided. A number of riders had been in and out throughout the morning, and I had probably been most of the day out in the yard or down making sure they were coming up and assisting with the whole operation.

Jason as asked to provide a urine sample and I proceeded into the gentlemen's (sic) toilet with him – to the urinal. He was dressed in a pair of jeans. It appeared as though they were for trackwork. He had some trouble providing the sample. He had the bottle in his right hand. With his left hand he appeared to me to be having some trouble – difficulty providing the sample. I was standing just back from him a bit, and I asked him to – I said I think the words, 'Get it out and get it into the bottle'. He again seemed to be struggling with his left hand as if he was sort of fidgety or fiddling with it. I said to him, 'Get your pants down.' I said, 'Get your pants down.' He just seemed uncomfortable.

Anyhow, it was then that I looked across and I observed what appeared to be something that appeared false. It was a – an object that was in the shape of a penis. I noticed the – probably the first couple of inches of this object, and I realised then that it was not his own penis. I said to him, 'Come on.' With that, Jason surrendered basically and said, 'Well, I'm gone'.

I placed it on top of the urinal. From there we proceeded to go outside. I took possession of it. I'd like to enter it into the record as an exhibit, Mr Chairman. That's the object that was taken from Jason.

The Chairman: We will mark that Exhibit number – can we have the bag, Mr Hackett. I will mark that Exhibit Number 7.

EXHIBIT 7 - PLASTIC INSTRUMENT TAKEN POSSESSION OF FROM JOCKEY WARRINGTON.

Mr Hackett: From that point on.

The Chairman: Just one minute, Mr Hackett. Jockey Warrington, the plastic instrument that's shaped like a penis, I suppose you would call it, which is now Exhibit 7, is that the instrument that Mr Hackett obtained from you?

Jockey Warrington: Yes. I surrendered it quite willingly.

The Chairman: All right.

Jockey Warrington: There was no argument.

The Chairman: All right. That's Exhibit Number 7. We will let Mr Hackett continue and then we will come back.

Jockey Warrington: Yes.

The Chairman:* Yes, I think – Jason is right. He surrendered it. I think he seemed very deflated when he had been caught with it. I was very disappointed. It appeared as though we were being deceived. From that point, Jason then – I suppose you could say he – that he was instructed to provide a sample of his own urine. I did ask him where he got it from. He didn't offer that. It took some time to eventually get a sample from Jason. I got

the feeling initially he have been hedging a bit, but he did drink quite some water and said the water was starting to make him ill.

Jockey Warrington: I did have ----

The Chairman: Just hang on. Just let Mr Hackett finish and then you can ask some questions.

Mr Hackett: Half way through he had provided a small amount into a bottle, and half way through he indicated he wished to have a cigarette. We went out – there was only Jason and myself out in the carpark and he indicated then that he had a cannabis smoke at a party.

He indicated – he was very remorseful, very upset with the fact that he had a bust up I think with his wife or his family or there had been a problem – some problem there, and as a result of that he was at a party on Saturday night and had partaken in a, what I understand to be, cannabis and marijuana cigarette.

From there we came back and I instructed him – under the rules he was instructed to provide the sample and probably in the next half hour or so he did provide a sample of analysis and left the premises probably somewhere around about a bit after 10 o'clock or ----

Jockey Warrington: Yes, about 10.30.

Mr Hackett: That's basically the events as I understand them, Mr Chairman, and my recollection of the events of that morning.

The Chairman: Mr Hackett, that sample is the one we are also dealing with today, I take it – the one that has come back and showed the presence of cannabis?

Mr Hackett: I'm not aware of the number of it, but a sample was taken from him and forwarded for analysis. I am aware that Jason Warrington does have a cannabis problem."

* Obviously an error

On the appeal, Mr Murdoch SC appearing for Warrington, submitted as follows:

- “6. Point 1 – AR175(a) does not, in my submission, extend to conduct of the kind in this case. Namely, bringing a novelty item filled with someone else's urine along to a facility where a personal urine sample has to be provided, but where the urine in the novelty item was never actually put into the sample container. Jason Warrington was telephoned and requested to attend at Clifford Park on a non race day when he had previously completed trackwork riding.
7. AR175(a) is concerned with dishonest action 'in connection with racing'. The rule covers dishonest actions such as bribing jockeys, cheating at the scale etc. The present matter relates to the administration or control of racing. It is not racing based or connected.
8. Point 2 – The charge as particularised is that Jason Warrington, inter alia, 'attempted to deceive the stewards'. Note that AR175(a) is directed solely at an action or practice. It clearly is too narrow to extend to 'attempts'. There is no provision in the rules, akin to that in the Criminal Code, which contains a blanket provision which picks up attempts to commit substantive offences.

9. Although the rules of racing are a statutory instrument, an infringement of the rules is not a criminal offence. The Criminal Code does not apply. Consequently AR175(a) does not extend to attempts.
10. To further illustrate this point there is nothing in the rules of racing which is analogous (sic) to the provisions in the Commonwealth Criminal Code which provides that a person who attempts to commit an offence is guilty of the offence of attempting to commit that offence and is punishable as if the offence attempted had been committed.
11. It is to be particularly noted that the conviction is not under AR175(l).
12. Point 3 – There are specific provisions ancillary to the taking of urine samples from riders. Note in particular AR81A(1) – *any rider commits an offence and may be penalised if*
(b) he refuses or fails to deliver a sample as directed by the stewards to do so.

Clearly that rule creates offences aimed at attempts to subvert the sampling rule. But it does not extend to the conduct which occurred in this case.

10. AR83(a) – *every jockey or apprentice may be punished –*
(a) if he misconducts himself in any way

is arguably closer to the facts of this case. However, that is academic since the stewards did not charge under AR83(a). In any event, a charge under AR83(a) would normally carry a much lighter penalty than that under AR175(a)."

AR175(a) is to be found in the "Offences" section of the Australian Rules of Racing. It is wide in its compass and is framed around the opinion of the committee of a club or the stewards. Mr Murdoch seeks to limit the application of AR175 on two bases.

Firstly that Warrington by not actually providing a false sample of urine (i.e. by putting someone else's urine into the container) was not guilty of an offence within the ambit of AR175 and at most could only be charged with an attempt to commit an offence.

There being no provision in the rules relating to attempts it is Mr Murdoch's argument that AR175(a) is not applicable.

In his second point, Mr Murdoch refers to the particulars of the charge and the use of the word "attempt" to deceive the stewards and makes the same point in relation to AR175(a).

The facts appear to be uncontested and having read the charge and the evidence of the stewards the use of the word “attempt” in the particulars is indicative only of the fact that the stewards caught Warrington as he was in the course of perpetrating a deception but before he had actually completed. Mr Murdoch also makes the point that the charge should more properly have been brought under Rule AR81A(1)(b) which is a more specific rule

“(b) he refuses or fails to deliver a sample as directed by the stewards to do so.”

The other Rule referred to by Mr Murdoch, AR83, relates to misconduct. It is Mr Murdoch’s contention that these Rules rather than AR175 should have been used and would, if used to sustain a conviction, be more likely to have drawn a lesser penalty than that imposed.

This was more than an attempt in the legal sense of the term. Warrington had equipped himself with the necessary paraphernalia to abort a drug test and to procure a clear result dishonestly. He maintained throughout the hearing that his motives were only that he did not wish his wife to become aware of the fact that he had used drugs as they had recently separated and his chances of reconciliation would thereby be diminished.

Regardless of what his stated intention may have been, the fact remains that by his actions he clearly manifest the intent to deceive the Stewards and the authorities.

In the view of the Tribunal and having regard to the fact situation with which the stewards were confronted, it was open to the stewards to bring the charge under the

provisions of AR175(a). That which has been sought to be perpetrated by Warrington goes beyond non-compliance with a direction of the stewards or simple misbehaviour. It is an act of outright dishonesty and fraud and also meets the description of improper or dishonourable action contained in AR175. The stewards by their finding rightfully formed that opinion.

Mr Murdoch also sought to discriminate between the control of racing in the general sense and the administration of racing in the sense arguing that the requirement that jockeys present themselves for racing, training etc. free of drugs falls into the latter category, and is therefore not within the ambit of AR175.

The distinction is not one that appeals to the Tribunal.

It is commonly accepted throughout Australasia that one of the major problems in racing is the emergence of the drug culture both in relation to its administration to horses and to the use of drugs by riders. The circumstances giving rise to this appeal do not in the view of the Tribunal fall within the ambit of an administrative problem in the context of Mr Murdoch's submission.

This type of case raises a problem which goes to the very heart of the industry. Warrington has been a jockey for 17 years and despite previous drug tests has maintained a clean record in that regard until this incident.

The Stewards imposed a disqualification of 12 months which seems to the Tribunal to be excessive. The Tribunal's view is that justice would be served by the imposition

of a 6 months' disqualification followed by a period of 3 months' suspension during which time it is ordered that Warrington be permitted by the Stewards to undertake trackwork to earn an income to support his wife and family with whom he is now apparently reconciled.

This sentence is concurrent with the sentence imposed by the Stewards for the other conviction under Rule 81A(1)(a).

The disqualification is ordered to be effective as and from the date of the offence, namely 27 February 2007. On that reckoning, Warrington is eligible to commence trackwork riding on 27 August next.

The appeal deposit is forfeited.

Leo Williams AO
Chairman

Brockwell Miller
Deputy Chairman

Dennis Standfield
Member
