

**RACING APPEALS TRIBUNAL
QUEENSLAND
NOTICE OF DECISION**

APPEAL NO: RT008-09
DATE: 26 May 2009
APPELLANT: Donna Louise Carrigg
RESPONDENT: Queensland Racing
APPEARANCES: Mr Mark Plunket, barrister instructed by Terry Fisher & Associates for the appellant Donna Louise Carrigg and Allison Finlay on behalf of the respondent Queensland Racing

REASONS

Mr Leo Williams AO – Chairman

Mr Brockwell Miller – Deputy Chairman

Mr Dennis Standfield - Member

The appellant is a licensed jockey who on Monday 20 April 2009 provided a urine sample which upon testing proved positive to a banned substance. By letter dated 1 May 2009 Queensland Racing advised the appellant that she was charged with two counts of breaching Australian Rule of Racing 81A(1)(a) which states:

Any rider commits an offence and may be penalised if –

(a) A sample taken from him (sic) is found upon analysis to contain the substance banned by AR.81B.

There is an identification of the specifics of the first charge and then of the second charge. Suffice to say that the two charges levelled against Ms Carrigg arise out of ingestion of the same substance one being relative to a metabolite of the other banned substance. It is not therefore

proper in the opinion of this Tribunal for two charges to have been levelled as that will reflect poorly on the record of the appellant in the future. It is therefore necessary to identify that there should only have been one charge. A composite penalty was imposed by the Chairman of the Inquiry Mr Michael Halliday. He was correct in his identification that there should only be one penalty and it is perhaps appropriate that the record be amended to reflect that there should only have been one charge.

The appeal is against penalty only in respect to this charge and against a further charge under Rule 175(q). The Notice of Appeal referred only to Rule 175(q). During the course of this appeal Mr Plunket for the appellant sought leave which was granted by this Tribunal to appeal also against the severity of the penalty imposed under AR81A(1)(a).

The Tribunal is of the opinion that a period of six months disqualification imposed in respect to the offence against Rule 81A(1)(a) is appropriate and proper in all the circumstances has referred to all of the precedents that have come before this Tribunal relative to the ingestion of the banned substance. It is the Order of this Tribunal that the appeal against the severity of sentence in that respect be dismissed.

The appellant was convicted of the charge under Rule 175(q) and in that respect a penalty was imposed of 12 months disqualification. The Chairman of the Inquiry confirmed that he had exercised his discretion such that that period of disqualification be served concurrently with the six months disqualification imposed in respect of the first charge.

Mr Plunket for the appellant provided us with a significant history of the appellant's life and asked us to take into consideration the tender youth of his client. His view simply was that 12 months disqualification for an attempt to escape the imposition of a penalty was not reasonable in all the circumstances and in fact he considered that the charge under 175(q) should more properly have

been brought under AR81A(1)(b). In his submissions he suggested that it was an attempt only by her to deliver a sample or to tamper with or hinder the collection of a sample. The circumstances that arose are properly identified in the transcript before the Tribunal and in the initial enquiry of investigation. The appellant without doubt procured a false sample of urine for the purposes of using same should she be the subject of a test. She did so, she says, because she had been forewarned on the Monday in question that in the preceding Saturday evening when she was drinking there had been a suggestion made of someone tampering with the drinks that she had imbibed. She alleges that she felt unwell and sweated profusely during the evening of Saturday 18 April and the morning of Sunday 19 April which led her to believe that there may have been some unlawful administration of a substance to her drink. The allegation was never rebutted or in fact questioned and this Tribunal is obliged to effectively accept what she has said to be factual. Be that as it may that does not go to the heart of the matter so far as conviction is concerned because the offence imposes an absolute liability under the relevant legislation in that she has presented with a substance in her system and as such is deemed, without proof or adequate explanation, to be guilty of the offence in question. Relative to the question of penalty however this Tribunal most assuredly should and is obliged to take the issue into consideration.

In that respect the attempt by Ms Carrigg to substitute the urine of another person for that of her own was really an exercise in futility. It was never likely to have any prospect of success and in fact Ms Carrigg was, by her own admission, attempting to dispose of the false sample when she was effectively *caught in the act*. She effectively *chickened out* appreciating that to do otherwise would have been a most serious offence and wrong morally. Whether that is true or otherwise is really something that this Tribunal does not have to determine but suffice to say that all parties have accepted that had she been charged under 81(A)(1)(b) then the penalty that would have been imposed would have been lower than that of 12 months disqualification.

Mr Plunket has suggested that the case of *Warrington* should be seen as the benchmark. This Tribunal determined *Warrington* on the premise that the use of a substituted sample warranted the imposition of a severe penalty but not that of 12 months disqualification. In fact a period of nine months disqualification was imposed in respect to *Warrington* with the last three months being reduced to that of a suspension. Ms Finlay for Queensland Racing was staunch in her representations that this attempt by Ms Carrigg was far more serious than the attempt by *Warrington* however the Tribunal does not agree. If one could suggest otherwise one could hazard a guess that a reasonable person would have considered *Warrington's* state of affairs and actions to have warranted a more serious imposition but one has to temper that view with what has occurred in the Racing Industry in the recent 12 months. It is in that period that there has been a significant increase in the use of so called *social drugs* and Queensland Racing has embarked on an attempt to stamp out such use by members of the racing fraternity particularly those who are entrusted with the management, control and operation of thoroughbred horses during the regime of racing and track work riding. For these reasons this Tribunal is of the opinion that the appropriate penalty that should be imposed is that for the offence against 175(q) a period of nine months disqualification should be imposed with the last three months thereof being reduced to a suspension and the Tribunal so orders.

Decision of the Tribunal

The decision of the Tribunal is that the appeal against the charge under AR81(A)(1)(a) is reduced to one charge only and that the appeal against that charge is dismissed and further that the appeal against AR175(q) is upheld and in substitution therefore the penalty imposed is a disqualification for a period of nine months with an order that the last three months of that disqualification be served as a suspension.

For the purposes of clarity the Tribunal determines that the charges are to be served concurrently and that the appellant effectively be disqualified for a six month period and thereafter serve a

further three month period of suspension. It is the order of this Tribunal that the deposit be refunded.

Mr Leo Williams AO

Mr Brockwell Miller

Mr Dennis Standfield
