

**RACING APPEALS TRIBUNAL
QUEENSLAND
NOTICE OF DECISION**

APPEAL NO: RT009-09
DATE: 22 June 2009
APPELLANT: Dale Andrew Evans
RESPONDENT: Queensland Racing
APPEARANCES: Mr Winning, solicitor for the appellant
Dale Andrew Evans 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 was charged with an offence under AR175(Q) which reads:

The Committee of any Club or the Stewards may punish;

(q) Any person who in their opinion is guilty of any misconduct, improper conduct or unseemly behaviour.

The charge was levelled by the Chairman Mr M Halliday during the course of an Inquiry into various charges against the appellant jockey. At the Inquiry there were two charges one for improper conduct under 175(q) and another in respect to an issue that has not been determined by the stewards relative to the non-payment of various cheques. The particulars of the charge with which this Tribunal is concerned is noted on page 2 of the transcript which was enunciated by Mr Halliday in this regard.

The first charge is:

That on 20th April 2009 you engaged in improper conduct by conspiring with Donna Carrigg to deceive stewards, and thereafter, creating and supplying to Donna Carrigg an instrument containing your urine, with a view to it being passed off to stewards as urine supplied by Donna Carrigg.

When asked whether he understood the charge jockey Evans confirmed that he did and indicated that he pleaded guilty and that he did so freely and voluntarily and of his own free will.

Jockey Evans had attended the Rockhampton Jockey Club for the purpose of riding track work on the day in question and was notified by stewards that he was required to provide a urine sample as were other riders at track work on that same day. Donna Carrigg another track work rider and a friend of jockey Evans was also directed to provide a urine sample and it appears that jockey Evans provided a means that may have availed jockey Carrigg of avoiding testing positive. During the course of the Inquiry jockey Evans gave evidence that, in his opinion, jockey Carrigg on the Saturday evening prior had appeared to be under the influence of some drug or other substance.

Donna Carrigg the other track work jockey has already been dealt with by the stewards and by this Tribunal in matter RT008-09. The facts leading up to her charge and the issues also leading to the charge against jockey Evans are fully set out in transcript of that matter and in the Notice of Decision of this Tribunal. It is not intended to repeat all of those issues and material facts in these reasons but suffice to say that the appellant Evans did provide his sample of urine in a condom with a mechanism for releasing that condom of its urine if jockey Carrigg so wished. It is not denied that jockey Carrigg did not use the urine supplied to her.

Mr Halliday succinctly identified all of the steps that had been taken by both Carrigg and Evans in his determination commencing at page 26 of the Transcript of the Inquiry. He was aware that Donna Carrigg had been convicted of the offence and had been disqualified for a period of 12 months. He was referred by the Prosecutor Ms Finlay to a case of *Warrington* which was a decision of the Racing Appeals Tribunal in May 2007 where jockey Warrington had attempted to use a penis device in a sample testing exercise but was caught in the act of attempting to utilise that device and suffered a penalty. This Tribunal noted in the decision of *Warrington* that:

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. This type of case raises a problem which goes to the very heart of the industry.

Mr Halliday used that quote and identified the comments as being apposite for application in his determination relative to the Evans charge. He confirmed that *At the end of the day it is the function of this Inquiry to ensure that there is a proper maintenance or proper standard of conduct and of discipline of licensees within the racing fraternity.*

Mr Halliday went further to identify that so far as Evans was concerned there was a deliberate attempt by him to frustrate and to nullify the Rules of Racing and the duties of jockeys and licensees under those Rules. He determined that an appropriate sanction was one of a disqualification to act not only as a personal deterrence but also to persuade other members of the racing fraternity that conduct of this type would not be tolerated in the future. He therefore imposed a penalty of 18 months disqualification. This Tribunal believes that Mr Halliday was wrong in the manner in which he came to the conclusion that deterrence was a necessary element even moreso in that such deterrence demanded a penalty in excess of that handed down to the primary offender Ms Carrigg.

Ms Carrigg never used the condom and was not persuaded by Mr Evans to do so. Mr Evans in his evidence before the Inquiry admitted that he provided his urine for Ms Carrigg to use if she so wished.

It is not, in the opinion of this Tribunal, reasonable to impose a penalty of disqualification which is significantly higher than that imposed against a person who was positive in testing to a banned substance. Jockey Evans did not use any substance of a banned nature.

Throughout the course of the Appeal Mr Winning for the appellant referred to the more recent decision in New Zealand of an action concerning jockey Herd and jockey Bossum. In that determination jockey Bossum, who provided the sample received a considerably more lenient penalty than that imposed upon jockey Herd who used the sample from jockey Bossum to avoid a positive test. This Tribunal believes that the arbiters of that case in New Zealand were correct.

That is not to say that what jockey Evans did was an acceptable practice. He breached the Rules of Racing and he pleaded guilty to a charge of improper conduct however he did not impose his will upon anyone else and was not involved in any *conspiracy* to thwart the rules. What he did was undoubtedly wrong and he must pay the penalty. In the Tribunal's opinion however the penalty is too severe. In the circumstances this appeal is upheld and in lieu of the penalty imposed by Mr Halliday it is ordered that Jockey Evans' be disqualified for a period of six months such disqualification period to be followed by a further three months suspension. The deposit is ordered to be refunded.

Mr Leo Williams AO _____
Mr Brockwell Miller _____
Mr Dennis Standfield _____