

RACING APPEALS TRIBUNAL

QUEENSLAND

NOTICE OF DECISION

APPEAL NO: RT011-09

DATE: 27 July 2009

APPELLANT: Mr Ronald Earle Maund

RESPONDENT: Queensland Racing

APPEAL FROM: Appeal from the Decision of the Stewards of Queensland Racing to impose a penalty of 12 months disqualification for a breach of Australian Rules of Racing 178. Appeal against penalty only.

BREACH OF RULE: AR178.

DECISION: Appeal dismissed.

APPEARANCES: Mr Frank Martin of Counsel instructed by Greenhow & Yeates Solicitors appeared on behalf of the Appellant.

Mr Colin Reid of Counsel instructed by Patrick Murphy Solicitor appeared on behalf of the Respondent.

AJ MacSporran S.C. instructed by Crown Law appeared on behalf of the Queensland Office of Racing on application to become a party to the Appeal.

REASONS FOR DECISION

Mr Leo Williams AO - Chairman

Mr Brock Miller - Deputy Chairman

Mr Dennis Standfield - Member

On 1 June 2009 Trainer Mr Ronald Earle Maund filed a Notice of Appeal with the Tribunal against the penalty of twelve months disqualification imposed upon him by the Stewards of Queensland Racing on 18 May 2009 for breach of AR178.

The Notice alleged three grounds of appeal being stated as:-

"1. The Swab Test certificates were conflicting at all stages of the Enquiry until the charge was Laid?"

2. *The penalty was Harsh-excessive and Unjust.*
3. *Misled into pleading Guilty when informed the likely penalty would be a fine.”*

On 16 June 2009 the Tribunal received an application by letter from the Crown Solicitor that the Office of Racing become a party to the Appeal under the provisions of Section 184 of the Racing Act 2002 (“the Act”). That letter stated:-

“The bases on which the Office of Racing seeks to be joined as a party are as follows:

- (a) *During the course of the hearings of the charge against Mr Maund, heard by Stewards of Queensland Racing, Mr Maund made allegations of corruption against the Queensland Racing Science Centre. That Centre is a unit of the Office of Racing. Mr Maund has therefore made an allegation of corruption against part of the Office of Racing. It appears that these allegations are echoed in the first of Mr Maund’s grounds of appeal, namely:*
 - (1) *the swab test certificates were conflicting at all states of the Enquiry until the charge was laid?*
- (b) *the Office of Racing has an overall role in preserving the integrity of racing in Queensland. It is the regulator of the control bodies (such as Queensland Racing) that manage the codes of racing in Queensland. As such, in serious cases, where the relevant penalty is significant (as it is in Mr Maund’s case) the Office of Racing should be able to make submissions on the applicable penalty, from its perspective of regulator of racing control bodies.”*

While it is correct that in the transcript of the Stewards Inquiry there were allegations made against the Racing Science Centre there were also allegations made against various other bodies including the Tribunal. The allegations though repeated on many occasions were unsubstantiated and stated in a rambling manner by Mr Maund.

The transcript of the Stewards Inquiry is voluminous with the Inquiry being held over an extraordinary number of days being 14 April, 7 May, 14 May and 18 May 2009. The Stewards certainly gave the Appellant latitude in the manner which he conducted

himself at the Inquiry with him repeatedly making allegations which had no relevance to the issue of the breach of AR178 which they were determining.

On 17 July 2009 advices were received by the Tribunal from the Appellant's solicitors that the matter would be proceeding on the basis of an Appeal against the severity of the penalty only. This was reiterated in the Appellant's Submissions stating that the Appellant had abandoned grounds 1 and 3 stated on the Notice of Appeal.

Notwithstanding the Appellant's abandonment of those grounds, the Office of Racing continued with an application to be permitted to be joined as a party under the provisions of Section 184 of the Act which states:-

184 Joinder of person as party

- (1) The tribunal may join a person as a party to an appeal if it is satisfied the person's interests will be affected by the outcome of the appeal.*
- (2) the tribunal may act under subsection (1) on application by the person or on its own initiative.*

The basis of the Office of Racing's Submissions that it be joined were set out in paragraphs 4 and 7 of its Submissions being:-

"4. The Appellant, through his counsel, has foreshadowed an intention to abandon all grounds of appeal except that ground that relates to a challenge to the penalty imposed by the stewards. In theory, such a course would result in the instant appeal not being concerned with any allegations of corruption directed against the Racing Science Centre or anyone else. However, it is submitted that in those circumstances, the allegations which were made by the Appellant before the stewards without any supporting evidence and without in any way being tested would be left hanging and open to speculation.

...

7. In any event, the Queensland Office of Racing has a clear interest in protecting the integrity of racing by seeking to ensure that appropriate penalties are imposed for breaches of the rules."

In relation to the matter of the allegations "left hanging and open to speculation" the Tribunal does not see this as the position. On reading the transcripts the allegations against the Racing Science Centre and all other parties are clearly without foundation

and seen as an attempt to deflect the issue of a breach of AR178. Indeed the Tribunal is surprised that the Stewards allowed the Appellant to continue with the unsubstantiated allegations which were irrelevant to the matters before them.

With respect to the issue of penalty referred to in paragraph 7 of the Office of Racing Submissions, the Tribunal cannot see how the issue of a penalty is an “interest” which “...will be affected by the outcome of the Appeal”. Any “interest” within the scope of Section 184(1) must be particular to a person to trigger the joinder of that person as a party and not matters such as penalty which is of interest and concern to many stakeholders in the industry and not specific to the Office of Racing.

The application to be joined as a party by the Office of Racing is refused.

The breach of the rule which the Appellant finds himself is AR178 which reads:-

“AR178

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 particulars of the charge as stated at the Stewards Inquiry (Stewards Inquiry Transcript (“SIT”) 14.05. 2009 page 20 from line 824) were stated as:-

“... Mr Ron Maund, as the trainer of the registered racehorse Pelltro did present that horse to race at the Sunshine Coast Turf Club Race Meeting on Sunday, the 1st of March 2009 when a urine sample taken from that horse subsequent to the race revealed the presence of the prohibited substance hydrocortisone as prescribed in the Australian Rule of Racing 178C1 subsection(f).”

Upon being charged with a breach of the Rule, Mr Maund entered a plea of guilty stating (SIT 14.05.2009 page 20 from line 845):

“MR MAUND: Um, as it stands as – even though I think there was mitigating circumstances, I feel I have no option but to plead guilty to the charge.”

The mitigating circumstances which Mr Maund put forward to the Stewards and which have been relied upon by him and his submissions before the Tribunal can be summarised as:-

1. He wasn't personally in attendance at the Sunshine Coast Turf Club racemeeting of 1 March 2009 as he was attending horse sales in Melbourne from 1 March to 4 March 2009.
2. The horse was in the care of Mr Lex Fraser who had also treated the horse from time to time with Neotopic and a Chlorocort eye ointment.
3. He didn't know that Mr Fraser was using those ointments on the horse; and
4. Doubt was cast on the evidence presented by Dr John Vine by Professor Colin Chapman that hydrocortisone hemi succinate (which was found to be in the horse's sample) was not present in either of the substances used by Mr Fraser.

With respect to mitigating circumstance number 4 above, the Tribunal finds no need to make a determination as to the differences in evidence concerning hydrocortisone hemi succinate as hydrocortisone is in itself a prohibited substance and no distinction is made within the Rules between difference prohibited substances.

In determining the penalty of 12 months disqualification, the Stewards took into account Mr Maund's four previous breaches of the Rules which are summarised as:-

- | | | |
|-------|------------|------------------------------------|
| (i) | 15/06/2002 | Fined \$4,000.00 |
| (ii) | 19/06/2003 | Fined \$8,000.00 |
| (iii) | 16/10/2004 | Disqualified 08/02/2005-08/08/2005 |
| (iv) | 19/09/2008 | Fined \$12,000.00 |

The Appellant also presented to the Stewards his personal circumstances which were referred to in the Stewards Inquiry Transcript with the relevant matters being summarised as:-

- (a) Head of Trainers Association – 14 to 15 years.
- (b) Active member of Australian Trainers Association since its foundation.

- (c) Licensed within the industry since the age of 14 years.
- (d) 40 year clear history in Victoria.
- (e) Rode as a jockey for 9 years.
- (f) Has a wife and one dependent.

On assessing penalty, the Stewards also referred to the Appellant’s stable practices, stating that the Appellant has an unacceptable practice in not having a treatment book and criticised the Appellant leaving a set of keys to the stable outside the premises allowing a commercial farrier, feed merchants and staff unsupervised access to the horses.

In considering the appropriate penalty in this matter, while the Tribunal does accept there are matters in mitigation presented by the Appellant, the overriding matter which the Tribunal believes it must consider is the previous breaches of the Rule by the Appellant. This is the Appellant’s fifth offence for a breach of AR178 since 2002 and notwithstanding that the Appellant may feel that he was not to blame, the fact that there is a fifth offence is deplorable. While the Tribunal is reluctant to refer to the Appellant as a multiple offender, it must be accepted that he has had multiple breaches of the Rule. It was advised at the hearing that there have been no similar cases where there has been four previous breaches in Queensland or throughout Australia.

While it is accepted that a twelve month disqualification will cause detriment to the Appellant, the penalty as deterrent for trainers who repeatedly breach AR178 needs to be reinforced.

The Tribunal is of the opinion that a twelve month disqualification period is the appropriate penalty in this matter.

The Appeal is dismissed and the Appeal Deposit Fee forfeited.

Mr Leo Williams AO
Chairman

Mr Brock Miller
Deputy Chairman

Mr Dennis Standfield
Member