

## **RACING APPEALS TRIBUNAL**

### **QUEENSLAND**

#### **NOTICE OF DECISION**

**APPEAL NO:** RT012-08

**DATE:** 22 May 2008

**APPELLANT:** Robert Graeme Smith

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Decision of the Stewards of Queensland Racing imposing a penalty of 9 months disqualification for a breach of Australian Rules of Racing 178. Appeal against penalty.

**BREACH OF RULE:** AR178

**DECISION:** Appeal dismissed.

**APPEARANCES:** JE Murdoch SC appeared on behalf of the Appellant.

Mr Norm Torpey Senior Steward appeared on behalf of the Respondent.

#### **REASONS FOR TRIBUNAL'S DECISION**

Mr Dennis Standfield - Member

On 12 April 2008 the horse Attackengo won race 5, the Class 5 Handicap at the Toowoomba Turf Club. The horse's trainer Mr Les Smith was overseas on that day and the person in charge of the horse was his stable foreman and son the Appellant Mr Robert Smith. A pre-race blood sample was taken from the horse and upon analysis by the Racing Science Centre there was detected a total plasma carbon dioxide ("TCO<sup>2</sup>") concentration at 37.7mmol/L. The Stewards Inquiry concerning the elevated TCO<sup>2</sup> finding was held at the Queensland Racing Offices on 30 April 2008 with the Chairman being Chief Steward Mr Reid Sanders. Both Mr Les Smith and Mr Robert Smith were charged under Rule AR178 which provides:

**“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.”

Mr Les Smith was charged as the Licensed Trainer and reserved his plea. He was found guilty by the Stewards and received a six months suspension which has not been appealed.

Mr Robert Smith was charged as the person in charge of the horse with the particulars stated by the Stewards (at page 27 from line 7 of the Stewards Inquiry Transcript (“SIT”)) as:

“The particulars of the charge are that you, Mr Robert Smith, stable foreman for your father and trainer Mr Les Smith, were the person who was in charge of Attackengo at the relevant time and therefore presented that horse to race at the Toowoomba Turf Club on Saturday, 12 April 2008 when a pre-race blood sample taken from that gelding upon analysis has reported a total carbon dioxide concentration greater than the 36 millimoles per litre, as prescribed under Australian Rules of Racing 178(c)(1)(a). For the purpose of your benefit I will read you that rule. It says:

“The following prohibited substances when present at or below the concentrations respectively set out are expected from the provisions of AR178B:-

(a) Alkalinising agents when evidenced by total carbon dioxide (TCO<sub>2</sub>) at a concentration of 36 millimoles per litre in plasma.”

Mr Robert Smith pleaded guilty to the charge and the Stewards imposed a disqualification period of nine months.

Mr Robert Smith has appealed against the penalty with the grounds of appeal referred to in the Notice of Appeal lodged 6 May 2008 being "Severity of Charge".

The explanation given by the Appellant and Mr Les Smith of how Attackengo had the elevated  $TCO_2$  reading is that the horse was given bicarb in its feed to increase the bicarb level on their vet's advice.

The stable practice is to take blood samples from the horses prior to them racing and this was done on Friday morning before the Saturday race. The blood samples from Attackengo and other horses were delivered to the stable's veterinary surgeon Mr Lindsey McNaught. The bicarb level reading for Attackengo was 28 mmol/L. When the Appellant told Mr McNaught that the horse was running over a mile distance he was advised the horse could not run over a mile with that reading and suggested that 60 to 70 grams of bicarb be fed to the horse. The Appellant states that this was given to the horse around 4.30 pm on the Friday afternoon.

After the elevated reading of 37.7 mmol/L was advised to the Appellant he indicated he spoke to Mr McNaught and a probable explanation was that the blood sample had been left in the car in the heat for too long and the reading of 28 mmol/L was probably an error.

The Appellant denied feeding Attackengo with any bicarb on Saturday or "tubing" the horse. The reason why Mr Sanders put questions to the Appellant of "tubing" was because of evidence given at the inquiry by Dr Bruce Young. Dr Young is the manager of Veterinary Services at the Racing Science Centre. When asked about Attackengo being fed 60 to 70 grams of bicarb on Friday afternoon as an explanation for the horse's elevated  $TCO_2$  of 37.7 mmol/L Dr Young dismissed that as being probably and stated that bicarb could be given orally. This evidence was in answer

to questions raised by Mr Sanders concerning the matter (at page 17 from line 26 of the SIT) as:

“THE CHAIRMAN: So the 60 to 70 grams fed to it on a Friday would see an increase Friday night but by the time it got to racing on Saturday some 24 hours later, you would expect, in your expert opinion, that it would be back to somewhere near normal?”

DR YOUNG: Back to normal or approaching normal, yes.

THE CHAIRMAN: So again, in your expert opinion, how would a horse such as this when sampled on that day - what is the most plausible reason for it to return such a high level?

DR YOUNG: An administration of an alkalising agent, bicarb being the most common one, prior to presentation. Certainly on that day of racing - or more than likely.

THE CHAIRMAN: So would that be orally or via -----

DR YOUNG: It could be given orally, however usually given the amount that would be required to get to a level in excess of 36, a nasal-gastric tube or a stomach tube is usually what people employ.”

While this is Dr Young’s evidence the charge against the Appellant is one of presentation and there is nothing in the particulars of the charge that refer to anything other than presenting the horse to race. Mr Murdoch does state that this line of questioning by the Stewards shows it was a basis on which the Stewards imposed a penalty of nine months disqualification. I will refer to this aspect later in my reasons.

Mr Murdoch advised that the Appellant was 25 years old and completed Year 10 education though he left school during Year 11. He stated the Appellant has no trade except that as a horseman and his income is dependant on him working in the industry. The Appellant also supports his finance and has a 4 year old son. References were presented to the Inquiry from Trainers Kevin Kemp and Gary

Wells. It is clear from those references that the Appellant is considered a valuable asset because of his track work riding and breaking in of horses.

Mr Murdoch referred to the Appellant's position as a "foreperson" and submitted that it is not appropriate to deal with a "foreperson" as you would a trainer in considering penalty for the presentation of defences. Mr Murdoch submitted that the primary responsibility is that of the trainer and the benefit which a trainer receives is much more than that of a "foreperson". While I have considered Mr Murdoch's submissions in this regard the rule is quite clear in that it refers to trainer and "... any other person who was in charge of such horse at any relevant time ...". Clearly the Appellant comes within this definition and the circumstances of this matter is not simply a person being in charge of a horse on raceday as the Appellant was "in charge" of the horse some days prior while his father was overseas.

There was presented to the Inquiry a letter from the Veterinary Surgeon Dr McNaught which confirms the bicarb level of 28 mmol/L for Attackengo on 11 April 2008. That letter further states that Dr McNaught advised the Appellant that "... between 100 and 150 grams should bring the level to a competitive 31/33, still well within the legal limit of 36". While this letter differs from the "60 to 70 grams" referred to at the Stewards Inquiry it does support the Appellant's reason for feeding the horse bicarb.

Mr Murdoch submits that there is nothing to be gained by disqualifying the Appellant for nine months and he would be lost to the industry. He submits that although it would be a struggle a fine of \$5,000 to \$10,000 would be more appropriate as the punishment.

Mr Torpey submitted that the Appellant should be dealt with as a repeat offender and referred the Tribunal to previous decisions concerning Trainers Caught (RT021-06) and Wallace (RT012-07). Mr Torpey stated that the Appellant is a “repeat offender” as there was a previous positive swab involving an elevated TC0<sup>2</sup> reading which resulted in the Appellant being suspended for six months which expired on 27 May 2007. Mr Torpey stated that with the loss of racing because of the EI crisis the Appellant effectively has only been in the industry for seven months since the earlier offence.

While the Appellant is a young man and is dependant on racing the industry has to be conducted on a drug free basis. Certainly a disqualification will cause him severe hardship but where there has been a repeat offence over a relatively short period of time the disqualification period has to be such to enforce the industry stance of drug free racing.

In circumstances such as this I am of the opinion that nine months disqualification is the appropriate penalty. In considering this penalty I accept that there is no evidence of any “tubing” of the horse.

The Appeal against penalty is dismissed and the Appeal deposit fee forfeited.

Mr Dennis Standfield  
Member

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