

# **RACING APPEALS TRIBUNAL QUEENSLAND**

## **NOTICE OF DECISION**

**APPEAL NO:** RT015-08

**DATE:** 12 June 2008

**APPELLANT:** Danny Kenneth Peisley

**RESPONDENT:** Queensland Racing

**APPEAL FROM:** Decision of the Stewards of Queensland Racing

**BREACH OF RULE:** Australian Rule of Racing AR81A1(b)

**APPEARANCES:** Mr J E Murdoch SC instructed by Mr Paul Carter from  
Southern Gold Coast Lawyers for the appellant

Mr A J MacSporrans SC instructed by  
Mr Michael O'Connor of Gabriel Ruddy & Garrett  
Solicitors

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

Mr Leo Williams AO – Chairman

Mr Brockwell Miller - Deputy Chairman

Mr Dennis Standfield - Member

The appellant was charged with failing to provide a sample of urine when required to do so by the Stewards of Queensland Racing. The circumstances leading to his being required to provide such a sample arose when the stewards were informed by another jockey Terry Treichel just prior to the running of Race 5 on 29 March 2008 at the Gold Coast Racecourse that he had certain concerns regarding the conduct and behaviour of the appellant and another jockey William Pearson in the jockey's room. The evidence supports the suggestion that the two jockeys in question had been seen together in a cubicle of the toilet area and

that Peisley upon emerging from that cubicle was seen to wipe underneath his nose. The transcript before the stewards identifies that this incident occurred at approximately 2.30 pm on the day and that thereafter a search was conducted of both jockeys' bags but that no substances were located other than for a container in Pearson's bag containing glucoden powder. Jockey Peisley was then cleared by stewards to leave the Course and did so.

However a further search was undertaken and that search identified that there was a white powdered substance in a Colours bag and enquiries revealed that bag had previously been in the possession and control of jockey Pearson. That white powdered substance was later identified as being the banned drugs, Amphetamine and Cocaine. The stewards telephoned jockey Peisley on his mobile phone whilst he was at a nearby service station. They identified that he should return to the racecourse to provide a sample of urine. Peisley agreed to return and did so.

Upon being requested to provide a sample, Peisley stated that he was too ill to do so and that he proposed to go home confirming that he had been sick all week and that to provide a sample would take a considerably longer time than normal and that he was too ill to remain and that he was going to go home no matter what. He indicated to the steward in charge that he would be prepared to give a sample the following day but obviously this proposal was rejected by the steward. Dr Robson who was on the course at the time was called to examine jockey Peisley and the doctor indicated that in his opinion Peisley was fit to provide a sample. Peisley obviously denied ever having taken any banned substances and even though he had been told on a number of occasions to provide the sample before leaving the course he refused to comply with that requirement and left the track in question.

Mr Murdoch was at pains to identify that Peisley was prepared to co-operate at all times. He had confirmed to the doctor and the steward that he had been sick during the week and that on the previous Wednesday had been unable to significantly reduce his weight when he needed to for a particular ride. Interestingly on the Monday following this incident he was admitted to hospital and the history taken and reflected in the hospital notes which have been admitted into evidence in this appeal have identified a very heavy use of the drug Lasix a diuretic which, of itself, is a banned substance. It is therefore obvious that any appeal which might lay could only be against penalty as the disclosure of use of the drug Lasix would result in a penalty being imposed by the stewards. It was suggested that had jockey Peisley revealed his use of this drug, then the penalty that may have been imposed would have been that of a suspension for a period of one month.

During the course of his address Mr Murdoch identified that Peisley had put on weight during the course of an absence through injury and that he had used the drug in question to lose that weight. He had been particularly ill and was subsequently admitted to hospital having been taken there by friends who were concerned for his health and that on the day in question at the racecourse he had been sick and that he had called for the doctor. Mr Murdoch suggested that Peisley had been co-operative and had left the course the second time only because of his illness.

Mr MacSporran for the respondent identified that there were a number of factors that this Tribunal should take into account when assessing the penalty and he referred particularly to the following:

- (a) The background conduct which led to the direction to supply the sample must be taken into account. The serious aspect which cannot be ignored is that the conduct is unexplained and that the only reasonable conclusion can be that Peisley had been untruthful as to the circumstances leading up to the requirement to supply a sample of urine;
- (b) In this context the refusal to provide a sample should be treated seriously; and
- (c) Although claiming to be ill Peisley was certified fit to provide a sample by Dr Robson and deliberately chose to leave the course.

Mr MacSporran did raise further issues which related to comparable verdicts. There can be no doubt that the failure to supply, be it treated as a refusal or otherwise, is a serious breach of the rules. It is even more so when one considers the circumstances in which drugs were subsequently found to be on the racecourse and in the possession of a person with whom jockey Peisley was associating at the time in question of the inquiry by the stewards. There has never been any evidence adduced that jockey Peisley had actually used the drugs or that they were in his system. It is the fact that there is a suspicion that makes this even more serious. Suspicion of course does not of itself allow for extraordinary penalties to be

imposed. This is even more apparent when supporting evidence identifies possible reasons for Peisley being unable to supply a specimen or sample. In particular this evidence of significant and prolonged use of Lasix must of itself have some bearing on the outcome particularly when the medical evidence was before the stewards as well.

This Tribunal is concerned that were the penalty as imposed by the stewards to be maintained then jockey Peisley would be lost to the industry for some time substantially longer than the period of disqualification and might even have difficulty in returning to that industry.

The Tribunal is of the view that it is not appropriate that a 12 month disqualification should stand. In all the circumstances it believes that such a period of disqualification is too long and severe and it determines that the appeal against the finding should be allowed on the premise that the penalty be reduced to a period of nine months, the first six months of which are to be served as a disqualification with the remaining three months to be served as a suspension with the proviso that during the three month suspension the appellant be allowed to undertake track work riding and such other duties as may be determined by the stewards.

The deposit is refunded and Liberty to Apply is granted to both parties.

Mr Leo Williams AO  
Chairman

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Mr Brockwell Miller  
Deputy Chairman

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Mr Dennis Standfield  
Member

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